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84903-0

No. 84903-0

SUPREME COURT
OF THE STATE OF WASHINGTON

D. EDSON CLARK,

Appellant/Intervenor/Petitioner,

v.

SMITH BUNDAY BERMAN BRITTON, P.S., *et al.*,

Respondents.

ANSWER TO PETITION FOR REVIEW

EDWARDS, SIEH, SMITH
& GOODFRIEND, P.S.

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TABLE OF CONTENTS

A.	Introduction And Relief Requested By Answering Parties.....	1
B.	Restatement Of Issue Presented For Review.	2
C.	Restatement Of Facts.....	2
D.	Reasons Why Review Should Be Denied.....	9
	1. The Court of Appeals Decision Does Not Conflict With <i>Rufer, Dreiling, or Tresler/Treadwell</i>	9
	2. The Court of Appeals Decision Is Consistent With This Court's Recognition In <i>Miles</i> of The Right Of Third Parties to Privacy In Business Records, And Is Good Public Policy.	11
E.	Conclusion.....	15

TABLE OF AUTHORITIES

CASES

<i>Allemeier v. University of Washington</i> , 42 Wn. App. 465, 712 P.2d 306, <i>rev. denied</i> , 105 Wn.2d 1014 (1985)	8
<i>Ameriquest Mortgage Co. v. State Attorney General</i> , 148 Wn. App. 145, 199 P.3d 468 (2009)	14
<i>Dreiling v. Jain</i> , 151 Wn.2d 900, 93 P.3d 861 (2004)	9-11, 14, 15
<i>Kodsi v. Gee</i> , 54 A.D.3d 613, 864 N.Y.S.2d 9 (2008)	12
<i>Ledee v. Devoe</i> , 225 Ga. App. 620, 484 S.E.2d 344 (1997)	12
<i>Marriage of Treseler and Treadwell</i> , 145 Wn. App. 278, 187 P.3d 773 (2008), <i>rev. denied</i> , 165 Wn.2d 1026 (2009)	10
<i>Rufer v. Abbott Laboratories</i> , 154 Wn.2d 530, 114 P.3d 1182 (2005)	9-11, 14, 15
<i>State ex rel. Fisher v. Cleveland</i> , 109 Ohio St.3d 33, 845 N.E.2d 500 (2006).....	12
<i>State v. Miles</i> , 160 Wn.2d 236, 156 P.3d 864 (2007)	11, 14

STATUTES

RCW 18.04.405.....	13
RCW ch. 21.20.....	14
26 U.S.C. §6103.....	12

RULES AND REGULATIONS

GR 15..... 7
GR 22..... 12
RAP 13.4..... 11, 15

CONSTITUTIONAL PROVISIONS

Washington Constitution, Article I, § 7 14
Washington Constitution, Article I, § 10 9, 11

A. Introduction And Relief Requested By Answering Parties.

Respondents Sharon Robertson and Smith Bunday Berman Britton, P.S., submit this answer to the petition for review filed by Intervenor Ed Clark, who was a stranger to this litigation until he was retained by plaintiffs as an expert in this accounting malpractice action. The underlying case was settled two years ago. Unfortunately, this collateral proceeding has become a stalking horse for personal and professional agendas being pursued by Mr. Clark and by his amici supporters, as is apparent from the 10 scattershot issues submitted for review, which as the Court of Appeals correctly noted (Opinion ¶¶ 34-38)¹ were largely unpreserved. This Court should deny review of the Court of Appeals well-reasoned decision, which is fully consistent with existing case law, and which will prevent misuse of our state constitution's open courts provisions by strangers to litigation demanding "public" access to confidential financial information of third parties that has never been the basis for a court's decision-making.

¹ Paragraph references to the Court of Appeals' decision are to the copy of the opinion attached as Appendix A to the petition for review.

B. Restatement Of Issue Presented For Review.

Whether the trial court erred in declining, on an intervening expert's motion, to unseal the expert's declaration attaching confidential tax documents of non-parties, which was filed after the parties settled the case, and which was never considered by the parties or the court in any decision-making?

C. Restatement Of Facts.

This lawsuit began as an accounting malpractice action commenced by plaintiff Rondi Bennett and her father, Gerald Horrobin, against the accounting firm Ms. Bennett and her husband Todd Bennett had used for many years in preparing tax returns, including returns for limited liability companies managed by Mr. Bennett in which plaintiff Horrobin claimed an interest. (Opinion ¶ 2) This malpractice litigation itself was collateral to the Bennetts' divorce. The parties settled this lawsuit on November 14, 2008, by dismissal of the underlying malpractice action. (Opinion ¶ 6; CP 246)

Petitioner, Intervenor Ed Clark, was initially retained by plaintiffs as an accountant and accounting expert. In that role, he was given access to the tax returns and tax preparation papers of several entities not parties to this action, including the limited

liability companies Mr. Bennett managed, on the express condition that Mr. Clark would not further disseminate the documents, and pursuant to an engagement agreement that limited Mr. Clark's use of these confidential papers consistent with a negotiated sealing order entered by the court after agreement of the parties and presentation months earlier. (CP 3) This December 11, 2007 order, which was proposed and prepared by plaintiffs, allowed the sealing of confidential discovery documents produced in the lawsuit and provided a mechanism for making confidential documents public. (Opinion ¶ 3; CP 1-5)

Several days after the settlement of the underlying lawsuit, Mr. Clark moved to intervene, claiming that he had an unfettered right to make freely available to the public the tax return materials of non-parties that had been made available to him on a confidential basis as an expert witness. (Opinion ¶ 8) Mr. Clark had attached non-party tax preparation materials he had obtained as an expert to a declaration filed in this action on the day the parties settled the lawsuit. (Opinion ¶ 6) Both respondent Smith Bunday and its client, non-party Todd Bennett, objected to Mr. Clark's efforts to make this confidential information public. (Opinion ¶ 10; CP 137, 227-30)

On December 5, 2008, the trial court allowed Mr. Clark to intervene, but denied his motion to unseal, affirmatively and indisputably finding that it had not considered the materials appended to petitioner's declaration in any matter prior to the parties' settlement. (Opinion ¶¶ 12, 30; CP 232) This December 2008 order is the only order ever appealed by Mr. Clark, and the only decision properly before the appellate courts. Nevertheless, Mr. Clark's belated intervention, and his attempt on appeal to bootstrap his limited objection in the trial court into an insistence on a "public" right to use confidential financial information of a non-party that was unilaterally filed in this court record for his own purposes, has forced respondents, who thought they had settled this lawsuit, to defend their clients' statutory and constitutional privacy rights against an ever-expanding assertion of the "public" right to "open courts" by Mr. Clark and his amici supporters.

In considering the petition for review, this Court must recognize, as the Court of Appeals did (Opinion ¶¶ 34-38), that many of the issues that petitioner Clark now seeks to raise have not been properly preserved, both because Mr. Clark did not object in the trial court or assign error in the appellate court to previous orders sealing documents, and because he did not provide the

appellate court with the record relevant to the agreed sealing of discovery documents. Petitioner (who was appellant below) did not designate the trial court's April 18 and May 2, 2008 orders addressing discovery issues (Dockets #76 or #79) as clerk's papers, and they are not in the appellate record.² This is significant because the Declaration of Wright Noel (CP 6-55), which included Exhibits I and P (CP 191-203), the first documents filed under seal, was submitted *by plaintiffs*, who hired petitioner as an expert witness, in response to those orders. (See Opinion ¶¶ 34)

Exhibits I & P are 12 pages of respondent's tax workpapers for non-party clients. The Exhibits were filed under seal pursuant to the December 2007 Stipulation and Protective Order (CP 1-5), which provided that "Documents designated Confidential, and information derived therefrom, may be referred to in discovery responses and requests, motions, briefs, and other court papers. . . . However, no such documents shall be used for any of these purposes unless the document, or the portion of the court paper where the document is revealed, is appropriately marked and separately filed under seal with the Clerk of this Court." (CP 3)

² The Superior Court docket is attached as Appendix A to this answer.

After plaintiffs filed Exhibits I & P under seal, the trial court never ruled on the remaining discovery issues to which the Noel declaration (CP 6-55) was directed. This is because in addition to opposing the submission (in Docket #94, undesignated), respondent Smith Bunday on June 11, 2008, filed a motion for judgment on the pleadings (Docket #92, undesignated). The trial court granted Smith Bunday's motion for judgment on the pleadings, dismissing all of plaintiff Rondi Bennett's claims, without ruling on her request for additional discovery (Opinion ¶ 4; CP 243-44), and without considering the Noel declaration. In its order granting the motion for judgment on the pleadings, the trial court recites the documents reviewed in deciding that motion. (CP 243) The May 2008 Noel declaration (CP 6-55) is not included in that list of documents.

Documents were next filed under seal in fall 2008. The disposition of some of these documents, in the order from which petitioner Clark took his appeal, arose as follows: Respondent Smith Bunday filed a summary judgment motion on October 7, 2008, to dismiss the remaining plaintiff Horrobin's claims. (Opinion ¶ 4; Docket #120, undesignated) On October 29, 2008, plaintiff Horrobin filed a motion to remove certain documents from the

protective order. (CP 56-76) On November 10, 2008, the trial court entered its order deferring decision on this motion to remove documents from the protective order, and listing by Bates number the documents that plaintiff Horrobin asked be removed from the protective order. (Opinion ¶ 5; CP 273-74) On November 14, 2008, the same day the parties settled the underlying dispute, petitioner Clark's declaration (CP 204-226) was filed, including as Exhibits 1-5 the same tax preparation documents that comprised Exhibits 1-5 of plaintiff Horrobin's motion to remove documents from the protective order. (Opinion ¶ 6; CP 275-294)

On November 25, 2008, Mr. Clark filed his motions to intervene and unseal his declaration. (Opinion ¶ 8; CP 103-109, 123-33) In his motion to intervene, Mr. Clark represented that he sought "the right to intervene to be heard on future sealing motions and to address previous sealing decisions and move to unseal records." (CP 109) Petitioner did not, however, ever address previous sealing decisions in the trial court. (CP 111; CP 182-86) Nor did petitioner ever address in the trial court the application of GR 15 or other rules to these decisions. (Opinion ¶¶ 37, 38)

On December 5, 2008, the trial court granted petitioner's motion to intervene and denied the motion to unseal. (Opinion

¶ 11; CP 231-33) As the Court of Appeals opinion correctly noted, and as the facts recited here make clear, the trial court never reviewed the documents at issue, nor did it make any decision based upon them, because the parties had settled. (Opinion ¶¶ 12, 26, 27, 30; CP 232: trial court's ruling reciting that it "did not review or consider the summary judgment papers or supporting documents involved, made no decision based upon" them.)

Thus, the trial court never ruled on, and petitioner did not ask the trial court to rule on, the sealing or unsealing of the May 2008 "discovery" pleadings on which petitioner spills significant ink in his petition to this Court. (Opinion ¶ 24) The trial court's December 5, 2008 order (CP 231-33), was the "only" order petitioner Clark identified in his Amended Notice of Appeal. (CP 236) Petitioner did not assign error to the earlier May orders sealing discovery documents, nor did petitioner appeal or assign error to the December 2007 Protective Order under which the May 2008 pleadings were filed. (See Opening Br. at 2; CP 236) Finally, petitioner, who as appellant had the obligation to provide the record necessary to address this issue if he intended to raise it on appeal, *Allemeier v. University of Washington*, 42 Wn. App. 465, 472, 712 P.2d 306, *rev. denied*, 105 Wn.2d 1014 (1985), never

designated as clerk's papers any of the other pleadings relevant to the discovery motions to which the May 2008 pleading was directed. (Opinion ¶ 34)

It is on this procedural and factual posture that the Court must consider the breathtakingly broad "right" to disseminate confidential information of non-parties obtained in discovery that petitioner now claims in these proceedings. In reality, as argued below, the only issue properly before the Court is the Court of Appeals decision that the trial court did not err in refusing, on an intervening expert's motion, to unseal the expert's declaration attaching confidential tax documents of non-parties, which was filed after the parties settled the case, and which was never considered by the parties or the court in any decision-making.

D. Reasons Why Review Should Be Denied.

1. The Court of Appeals Decision Does Not Conflict With *Rufer, Dreiling, or Tresler/Treadwell*.

"We have already held that article I, section 10 [of the Washington Constitution] is not relevant to documents that do not become part of the court's decision making process." *Rufer v. Abbott Laboratories*, 154 Wn.2d 530, 548 ¶ 27, 114 P.3d 1182 (2005), citing *Dreiling v. Jain*, 151 Wn.2d 900, 909-10, 93 P.3d

861 (2004). The record is clear in this case that the defendants had agreed to settle before, in violation of his ethical obligations and a protective order, Mr. Clark's unredacted "expert" declaration was filed, and neither the court *nor* the parties treated the pleading as relevant.

This distinguishes this case from each of the cases cited by petitioner Clark as a grounds for review. In this case, unlike in *Rufer*, 154 Wn.2d at 536-37 ¶ 18, neither party sought disclosure of the redacted and sealed confidential information Mr. Clark chose to attach to his irrelevant expert declaration. Further, neither the parties nor the court in this case considered the confidential materials in any decision, dispositive or otherwise. Unlike in *Rufer*, 154 Wn.2d at 548 ¶ 27, *Dreiling*, 151 Wn.2d at 909, *Marriage of Treseleer and Treadwell*, 145 Wn. App. 278, 187 P.3d 773 (2008), *rev. denied*, 165 Wn.2d 1026 (2009), or any of the other cases cited in the petition, neither the trial court nor the parties considered the material at issue in *any* decision in the case, much less one that was properly challenged on appeal.

Division One's recognition of this Court's rule that documents not considered in the court's decision-making process are not protected by any constitutional "open courts" analysis is

fully consistent with *Rufer, Dreiling*, and the intermediate appellate court cases cited in the petition. There are no grounds for review under RAP 13.4(b)(1) or (2).

2. The Court of Appeals Decision Is Consistent With This Court's Recognition In *Miles* of The Right Of Third Parties to Privacy In Business Records, And Is Good Public Policy.

Petitioner Clark focuses his arguments for review solely on the public's claimed right to access court records and court proceedings. But as this Court recognized in *Rufer* and *Dreiling*, that right is not without limitation:

Our state constitution mandates that "[j]ustice in all cases shall be administered openly, and without unnecessary delay." CONST. art. I, § 10. But while we presume court records will be made open and available for public inspection, court records may be sealed "to protect other significant and fundamental rights."

Rufer, 154 Wn.2d at 540 ¶ 14, quoting *Dreiling*, 151 Wn.2d at 909. Such significant privacy considerations are present here, even if the documents had been considered in decision-making. Disclosure of tax and financial records is regulated by federal and state statutes, and disfavored by the courts. Petitioner did not need the documents unsealed in order to gain access to them.

Moreover, the third parties to whom the information belonged objected to disclosure.

Congress has imposed disclosure restrictions on those engaged in the practice of accounting, such as Mr. Clark, with regard to tax returns and tax return information, including any information that may be extracted from the returns and associated or identified with a particular taxpayer. 26 U.S.C. § 6103(b)(3). “[T]he mere existence of the statutory scheme [26 U.S.C. §6103] is sufficient to support recognizing an individual’s expectation of privacy in the documents.” *State ex rel. Fisher v. Cleveland*, 109 Ohio St.3d 33, 845 N.E.2d 500, 505 ¶ 28 (2006). As a consequence, disclosure of tax returns and return information is disfavored, and when a party’s tax information is brought into litigation, the courts have typically designated the records confidential and protected them from disclosure under a protective order or seal. See, e.g., *Kodsi v. Gee*, 54 A.D.3d 613, 614, 864 N.Y.S.2d 9 (2008); *Ledee v. Devoe*, 225 Ga. App. 620, 484 S.E.2d 344 (1997). Indeed, in this state tax information of the sort at issue here is routinely sealed in family law cases. GR 22.

Consistent with the federal approach, Washington also has imposed significant prohibitions on accountants’ handling and

disclosure of client records and information. For instance, a certified public accountant, such as Mr. Clark, is prohibited from disclosing "any confidential information obtained in the course of a professional transaction except with the consent of the client or former client or as disclosure may be required by law, legal process, the standards of the profession, . . ." RCW 18.04.405. And Mr. Clark, a party's expert who had been allowed access to this tax preparation information in part because he himself had an affirmative obligation to keep the information confidential, had no need to unseal the redacted pleadings in order to obtain access to the information.

Moreover, the financial and tax records that petitioner asked the court to unseal so they could be publicly disseminated as attachments to his "expert" declaration were not even the records of any of the parties to the action. When confidential information of non-litigant third parties is revealed in discovery pursuant to a protective order, the court also properly considers the protected nature of that information, and the third party's objection to further disclosure, in deciding whether to keep the information confidential. (See CP 187-88; Resp. Br. 11-14; 6/1/09 Nonparty Todd Bennett's Joinder In Response by Respondents To Brief of Appellant)

This Court recently recognized that a third party's privacy interests in financial records sought pursuant to discovery could limit the state's statutory administrative subpoena authority under the Securities Act of Washington, RCW ch. 21.20, holding that bank records fall within the constitutionally protected privacy interests under Article I, § 7 of our state Constitution: "No person shall be disturbed in his private affairs . . . without authority of law." **State v. Miles**, 160 Wn.2d 236, 243 ¶ 11, 156 P.3d 864 (2007). See also **Ameriquest Mortgage Co. v. State Attorney General**, 148 Wn. App. 145, 156-57 ¶ 19, 165 ¶ 41, 199 P.3d 468 (2009) (requiring that customers whose loan files were obtained through discovery from plaintiff mortgage company be notified and provided an opportunity to respond before defendant Attorney General could disclose those files pursuant to a public records request). No less consideration should be given to a non-party's constitutionally protected privacy rights in this case.

"As long as the opposing party has a valid interest in keeping the information confidential, there is very little, if any, interest of the public or the moving party to balance against that asserted interest." **Rufer**, 154 Wn.2d at 548 ¶ 27; see also **Dreiling**, 151 Wn.2d at 917-18 (noting that work product or attorney privilege may

provide a basis for sealing materials). Unlike the information considered in *Rufer, Dreiling*, and the intermediate appellate court cases cited by petitioner, the materials at issue here are confidential not for claimed business or personal reasons, but as a matter of federal law. Division One's recognition of this Court's rule that documents not considered in the court decision-making process are not protected by any constitutional "open courts" analysis also properly recognizes the possible privacy rights of third parties in the information at issue. There also are no grounds for review under RAP 13.4(b)(3) or (4).

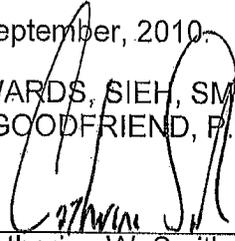
E. Conclusion.

Contrary to all the considerations addressed above, petitioner Clark advocates the misuse of the pleading dockets of this state's courts as a mechanism for strangers to settled litigation to make public otherwise confidential information about other third parties, even if those individuals object to the disclosure. The non-party tax preparation materials the litigants here had agreed should remain confidential, which were not used in any decision by the court or the parties, were properly redacted and sealed in this case. The Court of Appeals' well-reasoned rejection of petitioner Clark's claim to a constitutional right to free access to any material he

chooses to attach to any pleading filed in a court proceeding, no matter how scurrilous, irrelevant, embarrassing, statutorily-protected from disclosure, or false, is not inconsistent with any decision of this Court or the Court of Appeals, and should stand without further review.

DATED this 14th day of September, 2010.

EDWARDS, SIEH, SMITH
& GOODFRIEND, P.S.

By: 

Catherine W. Smith, WSBA No. 9542

Attorneys for Respondents

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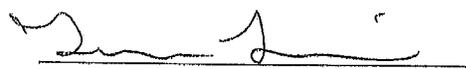
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The undersigned declares under penalty of perjury, under the laws of the State of Washington, that the following is true and correct:

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Superior Court Case Summary

Court: King Co Superior Ct
Case Number: 07-2-32307-4

Sub	Docket Date	Docket Code	Docket Description	Misc Info
1	10-05-2007	SUMMONS & COMPLAINT	Summons & Complaint	
2	10-05-2007	SET CASE SCHEDULE JDG0027	Set Case Schedule Judge Joan Dubuque, Dept 27	03-30-2009ST
3	10-05-2007	CASE INFORMATION COVER SHEET LOCS	Case Information Cover Sheet Original Location - Seattle	
4	10-09-2007	NOTICE OF APPEARANCE	Notice Of Appearance /defts	
5	10-10-2007	AFFIDAVIT/DCLR/CERT OF SERVICE	Affidavit/dclr/cert Of Service	
6	11-20-2007	AFFIDAVIT/DCLR/CERT OF SERVICE	Affidavit/dclr/cert Of Service	
7	11-20-2007	NOTICE OF HEARING	Notice Of Hearing /mntn For Default	11-30-2007
8	11-20-2007	MOTION FOR DEFAULT	Motion For Default	
9	11-28-2007	ORDER FOR CHANGE OF JUDGE	Order For Change Of Judge	
10	11-28-2007	ORDER FOR CHANGE OF JUDGE JDG0049	Order For Change Of Judge Judge Linda Lau, Dept 49	
11	11-29-2007	NOTICE OF HEARING	Notice Of Hearing Re Mtn Dsmss	01-04-2008
11A	11-29-2007	MOTION TO DISMISS	Motion To Dismlss /defts	
12	12-03-2007	NOTICE OF HEARING	Notice Of Hearing /default	02-26-2008
13	12-04-2007	NOTICE OF HEARING	Notice Of Hearing /default	02-26-2008
14	12-05-2007	NOTICE OF HEARING	Notice Of Hearing /dismiss	02-22-2008
15	12-11-2007	PROTECTIVE ORDER	Protective Order	
16	01-09-2008	ORDER DENYING MOTION/PETITION	Order Denying Motion For Default	
17	01-22-2008	DECLARATION	Declaration Of Wright A Noel	
18	01-22-2008	MOTION TO COMPEL	Motion To Compel / Pla	
19	01-22-2008	NOTICE OF HEARING	Notice Of Hearing /compel	01-30-2008
20	01-22-2008	AFFIDAVIT/DCLR/CERT OF SERVICE	Affidavit/dclr/cert Of Service	
21	01-25-2008	NOTICE OF HEARING	Notice Of Hearing/compel	02-08-2008

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			Discovery	
22	02-05-2008	AFFIDAVIT/DCLR/CERT OF SERVICE	Affidavit/dclr/cert Of Service	
23	02-05-2008	DECLARATION	Declaration /michael T Callan	
24	02-05-2008	DECLARATION	Declaration /todd Bennett	
25	02-05-2008	OBJECTION / OPPOSITION	Opp To Pltf Mtn To Compel Disc/def	
26	02-05-2008	DECLARATION	Declaration Sally A Lanham	
27	02-07-2008	AFFIDAVIT/DCLR/CERT OF SERVICE	Affidavit/dclr/cert Of Service	
28	02-07-2008	REPLY	Reply To Mtn To Compel/pltfs	
29	02-07-2008	DECLARATION	Declaration /wrlght A Noel/2nd	
31	02-19-2008	AFFIDAVIT/DCLR/CERT OF SERVICE	Affidavit/dclr/cert Of Service	
33	02-20-2008	DECLARATION	Declaration Of Stacy Goodman	
34	02-20-2008	AFFIDAVIT/DCLR/CERT OF SERVICE	Affidavit/dclr/cert Of Service	
35	02-20-2008	RESPONSE	Response /pl/def Mtn To Dismiss	
36	02-20-2008	DECLARATION	Declaration Of Stacey Goodman	
37	02-21-2008	MEMORANDUM	Reply Memo In Supp Of Mt Dismiss/df	
38	02-22-2008	ORDER GRANTING MOTION/PETITION	Order Grant Def Mtn Dism Re Definit Stmt/pltf To File Amnd Cmplnt	
39	02-22-2008	MOTION HEARING JDG0045	Motion Hearing Judge Jim Rogers, Dept 45	
40	02-26-2008	AMENDED COMPLAINT	Amended Complaint	
41	03-07-2008	NOTICE OF HEARING	Notice Of Hearing/re Mtn To Compel	03-17-2008
42	03-07-2008	AFFIDAVIT/DCLR/CERT OF SERVICE	Affidavit/dclr/cert Of Service	
43	03-07-2008	MOTION	Motion To Participate In Oral Arg	
44	03-11-2008	NOTICE OF HEARING ACTION	Notice Of Hearing Mtn For Ord To Participate In Oral Argument Re Mtn To Compel	03-17-2008
45	03-12-2008	RESPONSE	Response To Mtn To Participate/pla	
46	03-12-2008	AFFIDAVIT/DCLR/CERT OF SERVICE	Affidavit/dclr/cert Of Service	
47	03-13-2008	RESPONSE	Response To Motion By Nonparty Todd Bennett/defs	
48	03-18-2008	ORDER GRANTING MOTION/PETITION	Order Granting Mtn To Participate In Oral Argument/discovery	

49	03-31-2008	ORDER TO SHOW CAUSE ACTION	Order To Show Cause No Cj On File	05-01-2008JS
50	04-03-2008	MOTION FOR DEFAULT	Motion For Default /pltfs	
51	04-03-2008	NOTICE OF HEARING ACTION	Notice Of Hearing Mtn For Order Of Default	04-11-2008
52	04-03-2008	AFFIDAVIT/DCLR/CERT OF SERVICE	Affidavit/dclr/cert Of Service	
53	04-03-2008	NOTICE OF HEARING ACTION	Notice Of Hearing Discovery Conference	04-11-2008
54	04-03-2008	MEMORANDUM	Memo Fr Discovery Conference/pltfs	
55	04-03-2008	AFFIDAVIT/DCLR/CERT OF SERVICE	Affidavit/dclr/cert Of Service	
56	04-03-2008	NOTICE OF HEARING	Notice Of Hearing /compel Answer	04-11-2008
57	04-03-2008	MOTION TO COMPEL	Motion To Compel Pltf Answer/def	
58	04-09-2008	RESPONSE	Response To Mtn To Compel/plft	
59	04-09-2008	OBJECTION / OPPOSITION	Opp To Pltf Mtn For Ord Dflt/def	
60	04-09-2008	RESPONSE	Response To Mt Fr Discov/deft	
61	04-09-2008	AFFIDAVIT/DCLR/CERT OF SERVICE	Affidavit/dclr/cert Of Service	
62	04-10-2008	REPLY	Reply In Supp Compel Ans/deft	
63	04-10-2008	REPLY	Reply In Support Mtn For Default	
64	04-10-2008	DECLARATION	Declaration /barbara Schmidt	
65	04-10-2008	AFFIDAVIT/DCLR/CERT OF SERVICE	Affidavit/dclr/cert Of Service	
66	04-11-2008	NOTICE OF HEARING	Notice Of Hearing /rogers	04-21-2008
67	04-11-2008	NOTICE OF HEARING ACTION	Notice Of Hearing 2:00/rogers/mtn To Shorten Time	04-11-2008
68	04-11-2008	RESPONSE	Response To Mtn To Dismiss /defs	
69	04-11-2008	MOTION	Motion To Shorten Time	
70	04-11-2008	AFFIDAVIT/DCLR/CERT OF SERVICE	Affidavit/dclr/cert Of Service	
71	04-11-2008	MOTION	Motion To Strike 2nd Amd Cmplnt/def	
72	04-11-2008	MOTION HEARING JDG0045	Motion Hearing Judge Jim Rogers, Dept 45	
73	04-15-2008	ORDER DENYING MOTION/PETITION	Order Denying Motion For Default	
74	04-16-2008	RESPONSE	Response Re Defts Assertions/pltf	
75	04-16-2008	AMENDED COMPLAINT	Amended Complaint /third	
76	04-18-2008	ORDER	Order And Rulings On Mtns To Compel	
77	05-01-2008	HEARING STRICKEN:	Hearing Stricken: In	

		IN COURT OTHER JDG0051	Court Other Judge John Erlick, Dept 51	
78	05-01-2008	ORDER OF CONTINUANCE ACTION	Order Of Continuance /show Cause No Cjnsc On File - 1x	07-03- 2008JS
79	05-02-2008	ORDER	Order On Request For Clarification	
80	05-05-2008	ANSWER	Answer To 3rd Amnd Cmplnt/defts	
81	05-27-2008	NOTICE OF HEARING	Notice Of Hearing /suppl Discovery	06-04- 2008
82	05-27-2008	AFFIDAVIT/DCLR/CERT OF SERVICE	Affidavit/dclr/cert Of Service	
83	05-27-2008	DECLARATION	Declaration Of Wright Noel	
84	05-27-2008	BRIEF	Brief Support/suppl/bennetts	
85	05-27-2008	DECLARATION	Declaration Of Exs & P /sealed Per Sub 15	
85A	05-27-2008	DECLARATION	Declaration Of Robert J Chlcoine	
86	05-29-2008	NOTICE OF HEARING	Notice Of Hearing/spplmtl Discv Hrg	06-18- 2008
87	05-29-2008	AFFIDAVIT/DCLR/CERT OF SERVICE	Affidavit/dclr/cert Of Service	
88	06-11-2008	NOTICE OF HEARING	Notice Of Hearing /jdgmnt	06-19- 2008
89	06-11-2008	DECLARATION	Declaration Of Todd Bennett	
90	06-11-2008	DECLARATION	Declaration Of Larry N.johnson	
91	06-11-2008	DECLARATION	Declaration Of Sharon M.robertson	
92	06-11-2008	MOTION	Motion For Jdgmt On Pleadings	
93	06-11-2008	AFFIDAVIT/DCLR/CERT OF SERVICE	Affidavit/dclr/cert Of Service	
94	06-11-2008	OBJECTION / OPPOSITION	Opposition To Discovery Request	
94A	06-16-2008	DECLARATION	Declaration Of Rondi Bennett	
94B	06-16-2008	REPLY	Reply Of Mike Noble	
94C	06-16-2008	AFFIDAVIT/DCLR/CERT OF SERVICE	Affidavit/dclr/cert Of Service	
95	06-17-2008	NOTICE OF HEARING	Notice Of Hearing /jdgmt	06-27- 2008
96	06-17-2008	NOTICE OF HEARING	Re-note For Hearing /judgmt	06-27- 2008
97	06-23-2008	RESPONSE	Response /pltfs	
99	06-23-2008	AFFIDAVIT/DCLR/CERT OF SERVICE	Affidavit/dclr/cert Of Service	
100	06-25-2008	CONFIRM. JOIN.: NO STATUS CONFER.	Confirm. Join.: No Status Confer.	
101	06-25-2008	REPLY	Reply/def In Supp Of Mo For Judgm	
102	06-26-2008	OBJECTION /	Objection /	

		OPPOSITION	Opposition /pltf	
103	06-26-2008	AFFIDAVIT/DCLR/CERT OF SERVICE	Affidavit/dclr/cert Of Service	
104	07-03-2008	HEARING STRICKEN: IN COURT OTHER JDG0051	Hearing Stricken: In Court Other Judge John Erlick, Dept 51	
105	07-03-2008	ORDER ON STATUS CONFERENCE	Order On Status Conference/on Track	
106	07-11-2008	RESPONSE	Response In Opposition/deft	
107	07-15-2008	REPLY	Reply In Suppt Of Objection /pla	
108	07-15-2008	AFFIDAVIT/DCLR/CERT OF SERVICE	Affidavit/dclr/cert Of Service	
109	07-30-2008	MOTION HEARING JDG0045	Motion Hearing Judge Jim Rogers, Dept 45	
110	08-01-2008	ORDER GRANTING SUMMARY JUDGMENT	Order Granting Summary Judgment Of Dismissal Fr Defs	
111	08-04-2008	LETTER	Letter To Jdg Rogers	
112	08-07-2008	NOTICE OF HEARING ACTION	Notice Of Hearing Of Order	08-22-2008
113	08-07-2008	NOTICE OF HEARING ACTION	Notice Of Hearing Mtn For Clarification Of Order	08-22-2008
114	08-07-2008	MOTION	Motion To Clarify 8-1-08 Ord/pltf	
115	08-07-2008	AFFIDAVIT/DCLR/CERT OF SERVICE	Affidavit/dclr/cert Of Service	
115A	08-20-2008	OBJECTION / OPPOSITION	Objection / Opposition /def	
116	08-21-2008	REPLY	Reply Re Motion For Clarification	
117	08-29-2008	ORDER GRANTING MOTION/PETITION	Ord Grant Mt For Clarification/pltf	
118	10-07-2008	AFFIDAVIT/DCLR/CERT OF SERVICE	Affidavit/dclr/cert Of Service	
119	10-07-2008	NOTICE OF HEARING	Notice Of Hearing /summ Jdgmnt	11-07-2008
120	10-07-2008	MOTION FOR SUMMARY JUDGMENT	Motion For Summary Judgment/defs	
121	10-07-2008	DECLARATION	Declaration /todd Bennett	
122	10-07-2008	DECLARATION	Declaration /sharon Robertson	
123	10-20-2008	MOTION TO CONTINUE	Motion To Continue Smmry Jdgmnt/plt	
124	10-20-2008	NOTICE OF HEARING	Notice Of Hearing /shorten Time	10-23-2008
125	10-20-2008	AFFIDAVIT/DCLR/CERT OF SERVICE	Affidavit/dclr/cert Of Service	
126	10-20-2008	MOTION	Motion To Shorten Time/pltf	
127	10-21-2008	OBJECTION / OPPOSITION	Objection / Opposition /deft	
128	10-22-2008	AFFIDAVIT/DCLR/CERT OF SERVICE	Affidavit/dclr/cert Of Service	

		OF SERVICE	Service	
129	10-22-2008	REPLY	Reply To Mtn To Cont Smjg Motion	
130	10-23-2008	ORDER SHORTENING TIME	Order Shortening Time	
131	10-23-2008	ORDER OF CONTINUANCE	Order Of Continuance Summ Jdgt	11-26- 2008
132	10-27-2008	DEFENDANT'S LIST OF WITNESSES	Defendant's List Of Witnesses	
133	10-29-2008	NOTICE OF HEARING	Notice Of Hearing /shorten Time	11-03- 2008
134	10-29-2008	AFFIDAVIT/DCLR/CERT OF SERVICE	Affidavit/dclr/cert Of Service	
135	10-29-2008	MOTION	Motion To Shorten Time	
136	10-29-2008	MOTION	Motion To Modify Subpoenas Duces	
136A	10-29-2008	AFFIDAVIT/DCLR/CERT OF SERVICE	Affidavit/dclr/cert Of Service	
136B	10-29-2008	NOTICE OF HEARING	Notice Of Hearing /remove Documents	11-06- 2008
137	10-29-2008	MOTION	Mtn Remove Documents Protec Ord	
138	10-31-2008	REPLY	Reply Spprt Mtn To Modify Subpoenas	
139	10-31-2008	OBJECTION / OPPOSITION	Objection / Opposition /pltf	
140	10-31-2008	AFFIDAVIT/DCLR/CERT OF SERVICE	Affidavit/dclr/cert Of Service	
140A	10-31-2008	MOTION	Exhibits Motion To Remove /sealed Per Order 12- 10-07	
141	10-31-2008	OBJECTION / OPPOSITION	Objection To Subpoenas	
141A	11-03-2008	ADDENDUM	Addendum/errata/clarify Dclr Of Svc	
142	11-04-2008	AFFIDAVIT/DCLR/CERT OF SERVICE	Affidavit/dclr/cert Of Service	
143	11-04-2008	AFFIDAVIT/DCLR/CERT OF SERVICE	Affidavit/dclr/cert Of Service	
144	11-04-2008	AFFIDAVIT/DCLR/CERT OF SERVICE	Affidavit/dclr/cert Of Service	
145	11-04-2008	AFFIDAVIT/DCLR/CERT OF SERVICE	Affidavit/dclr/cert Of Service	
146	11-04-2008	RESPONSE	Response To Mtn To Remove Documents From Protective Order /defs	
147	11-05-2008	ORDER GRANTING MOTION/PETITION	Order Granting Shorten Time	
148	11-05-2008	ORDER GRANTING MOTION/PETITION	Order Granting & Denying Mtn To Modify Subpoena In Aprt	
149	11-05-2008	REPLY	Reply /defs	
150	11-05-2008	AFFIDAVIT/DCLR/CERT OF SERVICE	Affidavit/dclr/cert Of Service	
-	11-06-2008	ADDENDUM	Addendum	

151	11-10-2008	ORDER	Order Deferring Mtn To Remove Docs From Prot Order	
152	11-14-2008	CORRESPONDENCE	Correspondence Re Subpoenas	
153	11-14-2008	RESPONSE	Response To Motlon Fr Summ Jdgmnt /sealed Per Sub 181	
154	11-14-2008	DECLARATION	Declaration Of Ed Clark /sealed Per Sub 181	
155	11-14-2008	DECLARATION	Declaration Of Gerald Horrobln	
156	11-14-2008	DECLARATION	Declaration Of Wright Noel	
157	11-14-2008	DECLARATION	Declaration Of Rondl Bennett	
158	11-14-2008	AFFIDAVIT/DCLR/CERT OF SERVICE	Affidavit/dclr/cert Of Service	
159	11-17-2008	DECLARATION	Declaratlon Of Ed Clark /sealed Per Sub 181	
160	11-19-2008	AFFIDAVIT/DCLR/CERT OF SERVICE	Affidavit/dclr/cert Of Service	
161	11-19-2008	REQUEST	Request To Oppose Sealling Or Redact	
162	11-19-2008	AFFIDAVIT/DCLR/CERT OF SERVICE	Affidavit/dclr/cert Of Service	
163	11-19-2008	NOTICE OF HEARING	Notice Of Hearing /Intervene	12-01-2008
164	11-19-2008	OTHER	Other To Intervene	
165	11-19-2008	NOTE FOR MOTION DOCKET-LATE FILING ACTION	Note For Motion Docket- late Filing Intervene	11-26-2008
166	11-19-2008	REQUEST	Request /oppose Sealling	
167	11-19-2008	MOTION	Motlon To Intervene	
168	11-19-2008	AFFIDAVIT/DCLR/CERT OF SERVICE	Affidavit/dclr/cert Of Service	
169	11-25-2008	NOTICE OF HEARING	Notice Of Hearing /unseal	12-05-2008
170	11-25-2008	AFFIDAVIT/DCLR/CERT OF SERVICE	Affidavit/dclr/cert Of Service	
171	11-25-2008	DECLARATION	Declaration Of Melinda Drogseth	
172	11-25-2008	MOTION	Motion To Unseal Court Records	
173	11-25-2008	RESPONSE	Response To Intervene/def	
173A	11-25-2008	RESPONSE	Response Of Motion /bennett	
173B	11-26-2008	REPLY	Reply To Response Re Intervne/clark	
173C	11-26-2008	AFFIDAVIT/DCLR/CERT OF SERVICE	Affidavit/dclr/cert Of Service	
173D	11-26-2008	REPLY	Reply Re Mtn To Intervene /smith	
174	12-03-2008	RESPONSE	Response To Mtn To Unseal /def	
175	12-04-2008	AFFIDAVIT/DCLR/CERT OF SERVICE	Affidavit/dclr/cert Of Service	

176	12-04-2008	REPLY	Reply Re Defs Response/pltf	
177	12-04-2008	REPLY	Reply To Mtn To Unseal Records	
178	12-04-2008	AFFIDAVIT	Affidavit Of Fax Filling/abc Srvcs	
179	12-04-2008	DECLARATION	Declaration Of Chris Roslanlec	
180	12-05-2008	ORDER OF REDACTION	Order Of Redaction & Replace Docums	
181	12-05-2008	ORDER SEALING DOCUMENT	Order Sealing Documents Sub 153/154/159	
182	12-05-2008	ORDER SEALING DOCUMENT	Order Sealing Document Sub 159	
183	12-05-2008	DECLARATION	Declaration Of Ed Clak/exhiblts /sealed Per Order 12- 10-07/sub 15	
184	12-15-2008	RESPONSE	Response To Mtn To Unseal/pltf	
185	12-29-2008	NOTICE	Notice /change Address	
186	01-02-2009	NOTICE OF APPEAL TO COURT OF APPEAL	Notice Of Appeal To Court Of Appeal	
-	01-02-2009	APPELLATE FILING FEE	Appellate Filing Fee	250.00
187	01-02-2009	AFFIDAVIT/DCLR/CERT OF SERVICE	Affidavit/dclr/cert Of Service	
188	01-21-2009	AFFIDAVIT/DCLR/CERT OF SERVICE	Affidavit/dclr/cert Of Service	
189	01-28-2009	DESIGNATION OF CLERK'S PAPERS	Designation Of Clerk's Papers 62824-1/roslanlec/pgs 1-190 Sealed Pgs 191-226 Trans Coa 3/11/2009	
190	01-28-2009	AFFIDAVIT/DCLR/CERT OF SERVICE	Affidavit/dclr/cert Of Service	
191	02-02-2009	ORDER DISMISSING LITIGANT	Ord Dismlss Pltf Horrobln	
192	02-10-2009	INDEX	Index Cks Pprs Pgs 1- 190	
-	02-10-2009	CLERK'S PAPERS - FEE RECEIVED	Clerk's Papers - Fee Received 702603-cp/roslanlec/ Pd 3/4/2009	138.00
193	02-10-2009	INDEX	Index Cks Pprs Pgs 191- 226	
194	02-11-2009	NOTICE OF APPEAL TO COURT OF APPEAL	Notice Of Appeal To Court Of Appeal /amended	
195	02-11-2009	AFFIDAVIT/DCLR/CERT OF SERVICE	Affidavit/dclr/cert Of Service	
196	02-18-2009	DESIGNATION OF CLERK'S PAPERS	Designation Of Clerk's Papers-supp 62824-1/ Norman/ Pgs 227-247 And 248-256 Sealed Trans Coa 3/25/2009	
196A	02-18-2009	AFFIDAVIT/DCLR/CERT	Affidavit/dclr/cert Of	

		OF SERVICE	Service	
197	02-19-2009	DESIGNATION OF CLERK'S PAPERS	Designation Of Clerk's Papers-supp 62824-1/ Norman/ Did Not Prepare Duplicate To Sub 196	
198	02-27-2009	INDEX	Index Cks Pprs Pgs 227-247	
-	02-27-2009	CLERK'S PAPERS - FEE RECEIVED	Clerk's Papers - Fee Received 702637-cp/ Norman/ Pd 3/17/2009	40.00
199	02-27-2009	INDEX	Index Cks Pprs Pgs 248-256 Sealed	
200	03-06-2009	COMMENT ENTRY	Cks Pprs Pgs 1-190	
201	03-06-2009	COMMENT ENTRY	Cks Pprs Pgs 919-226 Sealed	
202	03-18-2009	COMMENT ENTRY	Cks Pprs Pgs 227-247	
203	03-18-2009	COMMENT ENTRY	Cks Pprs Pgs 248-256 Sealed	
204	04-23-2009	DESIGNATION OF CLERK'S PAPERS	Designation Of Clerk's Papers -supp 62824-1/ Roslanlec/ Pgs 257-274 & 275-322 Sealed Trans Coa 6/3/2009	
205	04-28-2009	INDEX	Index Cks Pprs Pgs 257-274	
-	04-28-2009	CLERK'S PAPERS - FEE RECEIVED	Clerk's Papers - Fee Received 702840-cp/ Roslanlec/ Pd 5/27/2009	58.00
206	04-28-2009	INDEX	Index Cks Pprs Pgs 275-322 Sealed	
207	05-07-2009	AFFIDAVIT/DCLR/CERT OF SERVICE	Affidavit/dclr/cert Of Service	
208	05-28-2009	COMMENT ENTRY	Cks Pprs Pgs 257-274	
209	05-28-2009	COMMENT ENTRY	Cks Pprs Pgs 275-322 Sealed	
210	06-03-2009	DESIGNATION OF CLERK'S PAPERS	Designation Of Clerk's Papers-supp 62824-1/ Schmidt/ Pgs 323-360 Trans Coa 7/8/2009	
211	06-08-2009	INDEX	Index Cks Pprs Pgs 323-360	
-	06-08-2009	CLERK'S PAPERS - FEE RECEIVED	Clerk's Papers - Fee Received 702990-cp/ Schmidt/paid 6/26/2009	44.00
212	07-01-2009	COMMENT ENTRY	Cks Pprs Pgs 323-360	

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Rec. 9-14-10

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Attached for filing in .pdf format is the Answer to Petition for Review, in *Clark v. Smith Bunday Berman Britton, P.S., et al.*, Cause No. 84903-0. The attorney filing this document is Catherine W. Smith, WSBA No. 9542, e-mail address: cate@washingtonappeals.com.

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