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SUPREME COURT OF THE STATE OF WASHINGTON

IN THE MATTER OF THE RECALL OF:

Terecia Fran Bolt, Mayor Town of Marcus and
Dennis L. Jenson, Council Member Position 4 Town of Marcus,
Respondents,

v.

Bradley C. Rippon, Jacqueline R. Howard and William S. Courtis,
Recall Petitioners,
Appellants.

REPLY OF APPELLANTS

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I. INTRODUCTION

After this appeal was commenced, Recall Petitioners filed a motion to strike the motion of Mayor Bolt and Council Member Jenson for reconsideration. The trial court granted the motion and Bolt and Jenson have filed an appeal the “Regarding the Striking of the Materials Attached to the Motion for Reconsideration.” Notice of Appeal to Supreme Court Regarding the Striking of Materials Attached to Motion for Reconsideration. Bolt CP _____, Jenson CP _____. Appendix C.

Their Notice of Appeal did not appeal the decisions of the trial court that Charge No. 4 against Mayor Bolt was legally and factually sufficient and that Charge No 3 against Council Member Jenson was factually and legally sufficient. Those charges still stand and remain the basis for Recall of Mayor Bolt and Council Member Jenson. *Id.*

This brief will first address Notice of Appeal to Supreme Court Regarding the Striking of Materials Attached to Motion for Reconsideration.

Next it will address Mayor Bolt’s arguments concerning the charges against her.

Next it will address the Council Member Jenson’s arguments concerning the charges against him.

Lastly, in the Conclusion, it will ask the court to be cognizant of

the time limitations on Appellant's Recall Petition and the necessity of having the necessary ballot synopses prepared immediately.

II. ARGUMENT

A. A Standards to Be Applied in Addressing the Proper Bases of Recall Charges.

Elected officials may be recalled for malfeasance, misfeasance, and violation of their oath of office. Wash. Const. Art. I, §§ 33-34; RCW 29A.56.110.

"[T]he courts serve as gatekeepers to ensure that public officials are not subject to 'frivolous or unsubstantiated Charges.'" *In re Recall Charges Against Lindquist*, 172 Wn.2d 120, 131, 258 P.3d 9 (2011).

Courts ensure that charges are factually and legally sufficient before the charges are placed before the voters, but courts do not evaluate the truthfulness of the charges. RCW 29A.56.140; *Recall Charges Against Lindquist*, 172 Wn2d at 132.

In order to be legally sufficient, the court must conclude that the actions alleged make out a prima facie case of malfeasance, misfeasance, or violation of the oath of office. *In re Recall of Reed*, 156 Wn.2d 53, 59, 124 P.3d 279 (2005). Malfeasance in office is defined as either (1) "wrongful conduct that affects, interrupts, or interferes with the performance of official duty" or (2) "the commission of an unlawful act."

RCW 29A.56.110(1)(b)." *In re Heiberg*, 171 Wn.2d 771, 777, 257 P.3d 565 (2011). *See also, In re Recall Charges Against Lindquist, supra.*

B. Respondents Have Not Appealed the Trial Court's Decisions as to Mayor Bolt Charge No. 4 and Council Member Jenson Charge No. 3.

As to Mayor Bolt Charge No. 4 the trial court said that "Mayor Bolt purchased or assisted in the purchase of town equipment including equipment valued at \$4000 on October 4, 2005; a utility vehicle valued \$1500 on August 10, 2007, and Turfcats valued at \$2000 on April 24, 2008, without advance authorization of the Town Council. This is legally sufficient." *In Re Bolt, Hearing, Conclusion of Law, and Determination – RCW 29A.56.140 at page 3. Bolt CP _____. Appendix D.*

As to Charge No. 3, the court said that "Councilman Jenson purchased or assisted in the purchase of Town equipment including equipment valued at \$4000 on October 4, 2005; a utility vehicle valued \$1500 on August 10, 2007, and Turfcats valued at \$2000 on April 24, 2008, without advance authorization of the Town Council. This is legally sufficient." *In Re Jenson, Hearing, Conclusion of Law, and Determination – RCW 29A.56.140 at page 3. Bolt CP _____. Jenson CP _____. Appendix E.*

Respondents did not include these decisions in their appeal herein

entitled "Notice of Appeal to Supreme Court Regarding the Striking of Materials Attached to Motion for Reconsideration." Bolt CP _____. Jenson CP _____. Appendix C. Respondents specifically did not appeal the court's decision concerning recall petitioners' motion to strike which was granted, in addition struck the trial date that had been scheduled and struck the materials that have been filed with the motion for reconsideration.

Obviously, this is important and that one cannot secure materials which were filed with a stricken motion unless the stricken motion is reversed. The matters filed with the motion to strike were part of the motion to strike and when the court granted it, it also struck the materials submitted with it. *See* the order entered January 2, 2013 entitled Order on Motion to Strike Motion for Reconsideration and Materials Attached Thereto. Bolt CP _____. Jenson CP _____. Appendix F.

Respondents have not been successful nor can they be successful in appealing the Motion to Strike.

Furthermore, one must also look at the response of the Respondents. They have not assigned error with respect to the matters of the Notice of Appeal. It is axiomatic that one cannot argue an appeal if one has not assigned error to the matter being appealed and identify the issues to be addressed.

Failure to argue an issue constitutes waiver of that issue. *See, e.g., Escude v. King County Pub. Hosp. Dist. No. 2*, 117 Wn. App. 183, 190 n. 4, 69 P.3d 895 (2003) ("It is well settled that a party's failure to assign error to or provide argument and citation to authority in support of an assignment of error . . . precludes appellate consideration of an alleged error." (citation omitted)). *See also, Frank v. Fischer*, 108 Wn.2d 468, 476, 739 P.2d 1145 (1987).

C. Failure to Assign Error: Order Striking Motion for Reconsideration.

Respondents appealed the order striking the materials filed with their motions for reconsideration. Notice of Appeal to Supreme Court . . . , Appendix C.

Nowhere in Respondent's Responsive Brief have they addressed the order of the trial court. Indeed, Respondents have not even assigned error to the order striking the motion and the related documents. *See, State v. Kipp*, 171 Wn. App. 14, 26 Fn. 4, 286 P.3d 68 (2012):

A party's failure to assign error or argue an issue precludes appellate consideration. RAP 10.3(g); *Escude v. King County Pub. Hosp. Dist. No. 2*, 117 Wn. App. 183, 190 n.4, 69 P.3d 895 (2003).

Further, Respondents admit in their brief that their motion for reconsideration was not timely filed – "A motion for reconsideration was

filed with the Superior Court but was inadvertently filed 1 day late and was stricken along with attached materials.” Brief of Respondents in “Summary of Argument” at page 3.

Further, Respondents have not added any materials to the record before this court dealing with the appeal and so-called additional materials. Respondents have not filed a Designation of Clerk’s Papers for purposes of the appeal.

The Motion for Reconsideration Was Not Timely. Exhibit A attached. CR 50 requires that a motion for reconsideration be file within 10 day of the court’s decision. Here the motion was filed on December 7, 2012. The decision was made on November 26, 2012. This was the date of the hearing and the “operative act” of the decisions of the court. *In re Recall West*, 156 Wn.2d 244, 252, 126 P.3d 798 (2006).

Hearing Date. CR 59 (b) states that the “[t]he motion shall be noted at the time it is filed, to be heard or otherwise considered within 30 days after the entry of the judgment, order, or other decision, unless the court directs otherwise. Here, the motion was noted for January 22, 2013 – 46 days from the time the motion for reconsideration was filed.

Special Time Lines for Recall Petitions. Petitioners assert that the time lines set for in the Chapter pertaining to recall petitions (RCW

Ch. 56). The superior court within 15 days of receipt of the petition “shall have conducted a hearing on and shall have determined, without cost to any party, (1) whether or not the acts stated in the charge satisfy the criteria for which a recall petition may be filed, and (2) the adequacy of the ballot synopsis. RCW 29A.56.140.

Only Review Is under the Recall Law. RCW 29A.56.270 provides “[a]ppellate review of a decision of any superior court shall be begun and perfected within fifteen days after its decision in a recall election case and shall be considered an emergency matter of public concern by the supreme court, and heard and determined within thirty days after the decision of the superior court.

Thus, only a motion filed and determined in the 15 day window of RCW 29A.56.270 would comply. The motion here was not filed within the 10 day time period and was not heard within the 15 day time period. The only recourse the officers subject to recall had was to file an appeal within the 15 day period.

Time for Hearing. There is yet another ground for striking the so-called motion for reconsideration. The motion. It seems to be saying that “[i]f motion for reconsideration is granted by the Court” the Petitioner “requests reconsideration for an additional hearing with oral argument to

be held 30 days from the filing of this document in approximately the third week in January 2013.”

The Notice of Hearing dated December 7, 2012 set the hearing for January 22 at 1:30 P.M. Bolt CP _____. Appendix G.

D. Respondents Have Responded to Recall Petitioners’ Brief and the Recall Charges Against Them in an Improper Way.

In nearly every response to a charge, each Respondent has asserted statements which they use to contend that the charges are not true. The statements are not based upon any testimony in the record. In fact, they are found for the first time in their joint Responsive Brief.

For example, Mayor Bolt in response to the Charge No. 1 says: “This charge is factually insufficient. Upon inquiry with Municipal Research, I was advised that this is an ‘At Will State’ unless the employee is subject to union or civil service regulations, I had the right to terminate for cause. ‘RCW 35.27.070.’” She is asking the court to take her statements and to determine the truth of what Recall Petitioners say. She is asking the court to be trier of fact and is not asking the court to perform

¹ RCW 35.27.070 Town officer enumerated (in part) ...All appointive officers and employees shall hold office at the pleasure of the mayor subject to any applicable law, rule, or regulation relating to civil service, and shall not be subject to confirmation by the town council....

its proper function under RCW 29A.56.140 – “The court shall not consider the truth of the charges, but only their sufficiency.”

Council Member Jenson responds in a similar fashion – ignores the issues of factual and legal sufficiency and tries to get the court into making fact determinations as to the truth of his conduct.

“Factually sufficient indicates that although the charges may contain some conclusions, taken as a whole they do state sufficient facts to identify to the electors and to the official being recalled acts or failure to act which without justification would constitute a prima facie showing of misfeasance, malfeasance, or a violation of the oath of office.” *Chandler v. Otto*, 103 Wn.2d 268, 273, 693 P.2d 71 (1984).

E. Responses to Recall Charges Against Mayor Bolt.

***1. Charge No. 1– Termination of Town Employee:
Failure to Follow Personnel Policy.***

Mayor Bolt's position as to Charge No. 1 is that she has "at will" authority over an employee unless the employee is subject to union or civil service regulations. She, in essence, says that the Marcus Personnel Policy is subordinate to her will, in fact her arbitrary will. Thus the issue is: Does a mayor have a power by law to ignore the legislation of the town Council? She does not. The town Council has entered into an personnel agreement with the employee. RCW 29A.56.110.

The town personnel policy does not give the mayor arbitrary power to ignore the policy and the ordinance used to create it. Every ordinance has to be signed by the mayor. RCW 35.27.290.

She has violated her oath of office and has engaged in misfeasance and malfeasance.

2. Charge No. 2 – Allowing Council Member to Supervise and Manage a Town Employee.

Respondents have not challenged the factual and legal sufficiency of this Count No. 2. Instead, they seek to involve the court in making factual determinations. This is not permitted in this proceeding.

3. Charge No. 3. -- Violation of Employee's Right Executive Session.

Every town employee has a right to have an executive session of the Town Council if the matter concerns the discipline of the employee.

RCW 42.30.110 provides

(1) Nothing contained in this chapter may be construed to prevent a governing body from holding an executive session during a regular or special meeting:

...

(f) To receive and evaluate complaints or charges brought against a public officer or employee. However, upon the request of such officer or employee, a public hearing or a meeting open to the public shall be conducted upon such complaint or charge;

The Open Meetings laws specifically envision and require that

whenever an employee is to be complained of or charges are being brought against him he has a right to a closed public meeting of the meeting members in executive session.

4. Charge No. 4 - Circumventing Council Approval and Spending of Town Funds.

The trial court found Charge No. 4 to be legally sufficient.

Appendix D. Mayor Bolt did not appeal this decision. Appendix C, Notice of Appeal to Supreme Court.

Numerous cases have held that the "failure to appeal an order, even one containing a clear error of law, turns the order into a final adjudication, precluding any reargument of the same claim."

Leuluaialii v. Department of Labor & Industries at 12, 41601-8-II (Wash. App. 9-25-2012) quoting *Kustura v. Dep't of Labor & Indus.*, 142 Wn. App. 655, 669, 175 P.3d 1117 (2008).

5. Charge No. 5 - Personal Use of Town Resources.

Mayor Bolt does not challenge the factual and legal sufficiency of Recall Petitioner's Charge No. 5.

Instead she tries to argue the facts. In this review, the court is not a fact finder.

6. Charge No. 6 -- Failure to Administrate and Assert Administrative Authority.

Again, Mayor Bolt fails to challenge the factual and legal

sufficiency of the Recall Petitioners Charge No. 6.

7. Charge No. 7. Job Commingling.

Once again, Mayor Bolt fails to challenge the factual and legal sufficiency of the Recall Petitioners Charge No. 7.

8. Charge No. 8 – Failure to Have Safety Meetings.

Here, Mayor Bolt acknowledges that she should have had safety meetings.

She does not challenge Recall Petitioners Charge No. 8 as to factual and legal sufficiency.

9. Charge No. 9 – Mayor’s Relationship with Council Member Jenson.

The Recall Charges show that there was a favored relationship between Mayor Bolt and Council Member Jenson.

As has been previously said, “the Mayor allowed Council Member Jenson the use of town property, she allowed the use even after she was told it was improper, she allowed the use after the town had adopted legislation pertaining to the use of town property. She allowed Council Member Jenson to act as a leader of the Town Park Department and to engage in a gym roof construction which was not authorized, involving the expenditure of considerable sums.

She delegated, contrary to law, supervisory authority by Council Member Jenson over the town's maintenance man.

She colluded with Council Member Jenson in taking their criticisms of Mr. Bear, the maintenance man, to an Open Public Meeting when they, under law, had a duty to make such criticisms in an executive session.

In doing what she has done and what Council Member Jenson has done with her and for her, the mayor and the council member blurred the lines of authority between the administrative and the legislative. In the process of blurring the lines, Mr. Jenson could not act independently as a council member, his vote was already committed to the mayor, in fact he had already acted out the vote he would take.

10. Charge No. 10. – Payment for Hours Not Yet Worked.

What is to be said here? By making payment to an employee for work not yet performed is the same thing as make a gift or loan of public funds. This is specifically prohibited by our state constitution. Wash. Const. Art. VIII, Section 7. *U.S. v. Town of Bonneville*, 94 Wn.2d 827, 836, 621 P.2d 127 (1980) (“Even though a loan of public funds may be for public purposes, it violates article 8, section 7, if it inures to the primary benefit of private entities.”)

F. Responses to Recall Charges Against Council Member Jenson.

1. Charge No. 1 – Supervision and Direction of Town Employee.

Council Member Jenson fails to challenge the factual and legal sufficiency of the Recall Petitioners Charge No. 1. In fact, he admits the charge.

2. Charge No. 2 – Actions Regarding Mr. Bear, Maintenance Man.

Council Member Jenson attempts to ignore the factual and legal sufficiency of Charge No. 2 against him by attempting to prove, based upon facts outside of the record, that no executive session was necessary because "Mr. Bear was not the topic of this meeting and no request was ever made to address criticism by me or any other person. There is no doubt from his statements that Mr. bear was being complained of at the council meeting of May 1, 2012 and was entitled to an executive session with respect of the complaints." Brief of Respondents at 17.

The response does not address the sufficiency or illegality of the charges. Instead, the Respondent attempts to show that the charges are not true. The statements she uses are not a part of the record of the case, nor are they attested to. They are not within the authority of the court – the court is not charged with getting to the truth of the Recall Charges.

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**3. Charge No. 3 – Purchase of Town Assets,
Spending of Funds.**

The trial court ruled that this charge was factually and legally sufficient. Respondent Jenson did not appeal this decision and cannot do so here.

The "failure to appeal an order, even one containing a clear error of law, turns the order into a final adjudication, precluding any reargument of the same claim." *Leuluaialii v. Department of Labor & Industries* at 12, 41601-8-II (Wash. App. 9-25-2012) quoting "*Kustura v. Dep't of Labor & Indus.*, 142 Wn. App. 655, 669, 175 P.3d 1117 (2008).

**4. Charge No. 4 – Personal Use of Town Assets and
disregard of Legislative Action.**

Yet again, Council Member fails to address the factual and legal sufficiency of Recall Petitioner's charge. Instead, he defends against the charge by admitting he used the personal property to park at a friend's house, that there was a call to the Auditors office during which the town was told he should stop (Response at 19), and that the service to the town was a benefit and the use was de minimus. Respondent Jenson argues it was all right to break the law. This amounts to misfeasance and violation of his oath of office.

5. Charge No. 5 -- The Gym Roof.

Here there is more submitted to the court as argument and not as facts the court can look to respond to the sufficiency and illegality of Recall Petitioners charges.

He says the charges could not stand due to the fact that there was no Parks Commission. Yet, he and the Mayor made it seem so because the Mayor designated him to serve as the Parks and Recreation Chairman. In this capacity, he and the Mayor "co-authored a successful grant application. This is obviously misfeasance and a violation of the oath of office of a Parks and Recreation Chairman. His actions with the mayor were a lie.

Here again, the Respondent argues that the Recall Petitioners' Charges are untrue and that the town benefitted by the efforts of Mr. Jenson.

He admits he was appointed as the Parks and Recreation Chairman. He colluded with the mayor to use this position to secure grant funds for the town. Brief of Respondents at 20 - 21.

6. Charge No. 6 -- Relationship with the Mayor.

See discussion of Charge No. 9 as to Mayor Bolt and this situation *supra* at 12 and 13.

III. CONCLUSION

Mayor Bolt and Council Member Jenson have failed to establish that the charges brought against them are factually or legally insufficient. In addition to Charge No. 4 against Mayor Bolt and in addition to Charge No. 3 against Council Member Jenson, all of the charges should be put on a ballot which seeks the recall of Mayor Bolt and Council Member Jenson.

Provision should be made for the immediate preparation of a proper synopsis for each Recall Petition. *See* Appendix A for a proper synopsis for the Mayor Bolt Recall, and Appendix B for a proper synopsis of the Council Member Jenson Recall Petition.

There is immediate need to finalize the synopses for each recall. This is vitally necessary due to the severe time constraints Recall Petitioners are working under.²

² RCW 29A.56.210 (Fixing date for recall election — Notice.)

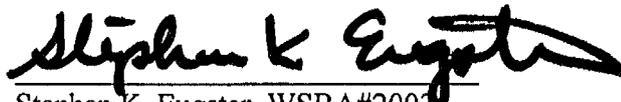
If, at the conclusion of the verification and canvass, it is found that a petition for recall bears the required number of signatures of certified legal voters, the officer with whom the petition is filed shall promptly certify the petitions as sufficient and fix a date for the special election to determine whether or not the officer charged shall be recalled and discharged from office. The special election shall be held not less than forty-five nor more than sixty days from the certification and, whenever possible, on one of the dates provided in RCW 29A.04.330, but no recall election may be held between the date of the primary and the date of the general election in any calendar year. Notice shall be given in the manner as required by law for special elections in the state or in the political subdivision, as the case may be. [Emphasis added.]

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///

Respectfully submitted this 22nd day of January, 2013.

EUGSTER LAW OFFICE PSC

A handwritten signature in black ink that reads "Stephen K. Eugster". The signature is written in a cursive style with a long, sweeping underline that extends to the right.

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CERTIFICATE OF SERVICE

I, Stephen K. Eugster, certify that on the date set forth below, I mailed a copy of the foregoing Reply of Appellants, together with the Appendices which follow, to the individuals named below at their addresses so indicated, by Pre-paid, First Class, U.S. Mail.

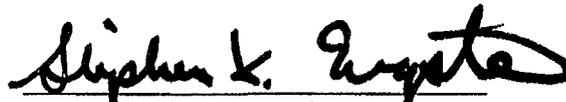
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Dated: January 22, 2013.


Stephen K. Eugster, WSBA 2003

APPENDICES

- A. Ballot synopsis for recall of Terecia F. Bolt Mayor of Marcus, Washington.
- B. Ballot synopsis for recall of Council Member Jenson of Marcus, Washington.
- C. Notice of Appeal to Supreme Court Regarding the Striking of Materials Attached to Motion for Reconsideration.
- D. In re Recall of Bolt: Hearing, Conclusions of Law and Determination – RCW 29A.56.140.
- E. In re Recall of Jensen: Hearing, Conclusions of Law and Determination – RCW 29A.56.140.
- F. Order on Motion to Strike Motion for Reconsideration and Materials Attached Thereto.
- G. Notice of Hearing, Motion for Reconsideration.

Appendix A

BALLOT SYNOPSIS FOR RECALL OF

TERECIA F. BOLT

MAYOR OF MARCUS, WA

Shall Mayor Terecia F. Bolt be recalled from office based upon these charges?

Recall Statement of Reason:

(1) the immediate, improper termination of Town employee and failure to follow Personnel Policy on September 4, 2012; (2) inappropriately allowing Councilman to supervise and manage a Town employee from approximately 2002 through 2011; (3) violating the employee's right to Executive Session, participating and allowing harassment, bullying, and denigration of Town employee during Council meetings of April 3, 2012 and May 1, 2012; (4) circumventing Council approval and spending public funds. Misc. equipment purchase October 4, 2006, Gator purchase June 26, 2007, and Jacobson purchase April 22, 2008; (5) knowingly failing to follow applicable law and policy relating to use of Town Resource from approximately 2007 to September 22, 2012; (6) failing to administrate and assert administrative authority from before 2000 to present; (7) commingling clerical and mayoral positions, duties, and wages from approximately 2008 through 2011; (8) failing to hold safety meetings and follow Labor and Industries directives from April 2012 to present; (9) engaging in long term personal, unethical, inappropriate and public relationship with Councilman, blurring Administrative and Legislative branches from before 2000 to present; (10) authorizing payment for hours not yet worked, prior to 2011 through February 2, 2012.

Word count 196

Appendix B

BALLOT SYNOPSIS FOR RECALL OF
DENNIS L. JENSON
COUNCILMAN TOWN OF MARCUS, WA

Shall Councilman Dennis L. Jenson be recalled from office based upon these charges?

Recall Statement of Reason:

(1) inappropriate supervision, directing, and management of Town employee from approximately 2002 through 2011; (2) the improper harassment, bullying and often time public denigration of Town employee and violating employees privacy and Executive Session rights, April 3, 2012 and May 1, 2012; (3) making a number of inappropriate, and questionable decisions to purchase Town assets, seeking Council approval after the fact. Misc. equipment purchase October 4, 2006, Gator purchase June 26, 2007. Jacobson mower purchase April 22, 2008; (4) personal use of Town Resource and refusal to follow Council actions and directives from approximately 2007 through September 22, 2012; (5) making a quasi-legislative unilateral decision authorizing a provision for the roof construction without Council action approximately June 2004; (6) maintaining a long term personal, unethical relationship with Town's Mayor from before 2000 to present also circumventing Council.

word count 141

No. 88227-4

SUPREME COURT OF THE STATE OF WASHINGTON

IN THE MATTER OF THE RECALL OF)

DENNIS L. JENSON, Councilperson)

Position 4 of the Town of Marcus, and)

TERECIA FRAN BOLT, Mayor of the)

Town of Marcus)

Stevens County Case Nos. 12-2-00506-9)

And 12-2-00507-7)

Supreme Court Nos. 88227-4)

NOTICE OF APPEAL TO SUPREME
COURT REGARDING THE STRIKING
OF MATERIALS ATTACHED TO
MOTION FOR RECONSIDERATION

1. IDENTITY OF MOVING PARTY

Respondents, Dennis L. Jenson and Terecia Fran Bolt, Officers charged with recall

submit the following statements regarding the Motion for Accelerated Review.

2. STATEMENT REGARDING RELIEF SOUGHT BY RESPONDENTS

Respondents, Dennis L. Jenson and Terecia F. Bolt seek appeal by the Supreme Court of

the decisions of the trial court concerning the Striking of materials attached to the

Motion for Reconsideration and as forwarded to this court on December 19, 2012.

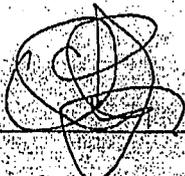
3. FACTS RELEVANT TO MOTION

Respondents filed a Motion for Reconsideration with the Stevens County Superior Court on December 7, 2012. Said hearing was scheduled for Jan. 22, 2013. Appellants filed their appeal to the Supreme Court On December 10, 2012. Respondents and Appellants were unaware of each other's actions and the respective Parties received notifications on the very same day.

Appellants then filed for a Motion to Strike Motion for Reconsideration and Materials Attached thereto on Dec. 21, 2012. Said hearing was scheduled for Jan. 2, 2013 in Stevens County Superior Court and which is the same day Respondents are required to have response to the motion for accelerated review.

Stevens County Superior Court Judge Nielsen entered a ruling to Strike the Motion for Reconsideration and attached materials thereto on Jan. 2, 2013 at approximately 2 pm.

The Motion for Reconsideration was based on additional and possible legal justification for the challenged officials conduct. *In re Recall of Wade* 115 WN 2nd, 544, 549, 799, p2nd 1179 with respects to sufficiency of Charge #3, Dennis L. Jenson and Charge #4, Terecia F. Bolt. We submit that all materials should be included in fairness to the charged officers.



Dennis L. Jenson



Terecia F. Bolt

CERTIFICATE OF SERVICE

I, Angela D. Sphuler Certify that on the date set forth below I mailed a copy of the foregoing Response to: Motion for Accelerated Review to those below stated and e-mailed copies designated.

Stevens County Superior Court Clerk
215 S. Oak Street
Colville, WA 99114

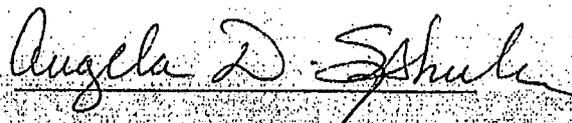
Tim Rasmussen, Pros.
215 S. Oak Street
Colville, WA 99114

Lloyd B. Nickel, Asst. Pros.
215 S. Oak Street
Colville, WA 99114

Stephen K Eugster (Sent by e-mail Only)
2418 W. Pacific Ave.
Spokane, WA 99201
Eugster@Eugsterlaw.com

Susan L. Carlson (Sent by e-mail Only)
Supreme Court Deputy Clerk
Temple of Justice
P.O. Box 40929
Olympia, WA 98504-0929

January 2, 2013



Angela D. Sphuler
P.O. Box 62
Marcus, WA. 99151-0696

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF STEVENS

IN THE MATTER OF THE RECALL OF:

TERECIA FRAN.BOLT,
Mayor of the Town of Marcus.

NO. 12-2-00507-7

HEARING, CONCLUSIONS OF LAW
AND DETERMINATION -- RCW
29A.56.140

I. HEARING

On November 26, 2012, the Court conducted a hearing on the November 15, 2012
Petition to Determine Sufficiency of Recall Charges and Adequacy of Ballot Synopsis. The
Petition was filed by the Stevens County Prosecuting Attorney as a result of the Recall
Charge Dennis L. Jenson, Councilman, Position 4, Town of Marcus, Stevens County,
Washington State; and Recall Charge Terecia F. Bolt, Mayor, Town of Marcus, Stevens
County, Washington State; which were both filed with the Stevens County Auditor on
November 5, 2012. Present at the hearing were those demanding recall, William S. Curtis,
Jacqueline R. Howard, and Bradley C. Rippon; and officers subject to recall, Terecia F. Bolt
and Dennis L. Jenson. The Court reviewed the files and heard argument as to the



1 sufficiency of the charges and adequacy of the ballot synopsis from the individuals
2 demanding recall and subject to recall.¹ The Court did not consider the truth of the charges,
3 only their sufficiency.² On November 27, 2012, the Ballot Synopsis For Recall of Terecia
4 Fran Bolt, Mayor of the Town of Marcus and a Ballot Synopsis For Recall of Dennis L.
5 Jenson, Councilman of the Town of Marcus were certified and mailed to the Stevens County
6 Auditor, the officers subject to recall, and those persons demanding recall.
7

8 II. CONCLUSIONS OF LAW

9 Do acts stated satisfy recall petition criteria? No as to all charges but Charge No. 6.

10 Charge No. 1. On September 4, 2012, Mayor Bolt terminated town maintenance
11 employee, Michael Bear, contrary to the incremental discipline requirements of the Town of
12 Marcus Personnel Policy ("Policy").³ The Mayor, under the Policy, had discretion "... to
13 discipline or discharge an employee ..." And, it was within her discretion to stack the
14 necessary four serious offenses which allowed for termination of Mr. Bear. Lawful
15 discretionary acts are not a sufficient legal basis for the recall of an elected employee.
16

17 *In re Recall of Wasson*, 149 Wn.2d 787, 791-92, 72 P.3d 170 (2003). An elected official
18
19

20 ¹ The petitions were heard together on agreement of the parties.

21 ² Those demanding recall filed documents authored by the Mayor.

22 ³ Those demanding recall and those subject to recall were self-represented. The charges must state each act
23 of misfeasance, malfeasance, or breach of the oath of office in concise language, and provide a detailed
24 description, including the approximate date, location, and nature of each act. *Recall Charges Against*
25 *Lindquist*, 172 Wn.2d 120, 132 (2011). But charges can include unverified attachments and a trial judge
has the power to correct an inadequate ballot synopsis as long as the gist of the charges remains the same.
Recall of Washam, 171 Wn.2d 503, 511-14, 257 P.3d 513 (2011). And, technical violations of statutes
governing recall are not fatal as long as the charges read as a whole, give the elected official enough
information to respond to the charges and the voters enough information to evaluate them. *In re Heiberg*,
171 Wn.2d 771, 778, 257 P.3d 565 (2011). The Court paraphrased the charges in order to frame their
review.

HEARING, CONCLUSION OF LAW AND
DETERMINATION – RCW 29A.56.140

Page 2

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1 cannot be recalled for exercising discretion granted by law. *Chandler v. Otto*, 103 Wn.2d
2 268, 274, 20 P.3d 930 (2001).

3 Charge No. 2. Mayor Bolt, at an unspecified time, inappropriately allowed
4 Councilman Jenson to supervise Mr. Bear. This charge is legally insufficient in that it does
5 not identify the standard, law, or rule that makes the Mayor's conduct wrongful, improper,
6 or unlawful. *In re Ackerson*, 143 Wn.2d 366, 371, 20 P.3d 930 (2001). This claim fails to
7 state with specificity substantial conduct clearly amounting to misfeasance, malfeasance, or
8 violation of oath of office. *Recall of Sandhaus*, 134 Wn.2d 662, 668, 953 P.2d 82 (1998).
9 And, this charge lacks sufficient precision and detail. *Recall of Sandhaus* at 669.

11 Charge No. 3. Mayor Bolt participated in illegal harassment, bullying, and open
12 public denigration of Mr. Bear; and she allowed an open meeting where Mr. Bear was
13 criticized in violation of his right to an executive session. This charge is legally insufficient
14 in that it fails to state with specificity substantial conduct clearly amounting to misfeasance,
15 malfeasance, or violation of oath of office. *Recall of Sandhaus*, at 668; *Teaford v. Howard*,
16 104 Wn.2d 580, 584-88, 707 P.2d 1327 (1985). Further, any criticism was in an open public
17 meeting which was not contrary to the Open Public Meeting Act, RCW Chapter 42.30. "It
18 is the intent of this chapter that their (public entities) actions be taken openly and that their
19 deliberations be conducted openly." RCW 42.30.010. Further, there is no evidence the
20 Mayor intended to violate the Open Public Meetings Act. *In re Recall of Wasson* at 791.

22 Charge No. 4. Mayor Bolt purchased or assisted in the purchase of Town equipment
23 including equipment valued at \$4,000 on October 4, 2005; a utility vehicle valued at \$1,500
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1 on August 10, 2007; and a Turfcats valued at \$2,500 on April 24, 2008 – without advance
2 authorization of the Town Council. This is legally sufficient.⁴

3 Charge No. 5. Mayor Bolt failed to enforce Council actions related to use of a gator
4 by Councilman Dennis L. Jenson from June 7, 2011 to September 22, 2012; such use being
5 “near daily two hour coffee gatherings at a friend’s garage.” This charge includes a number
6 of related, partial charges that are legally and factually insufficient. *In re Ackerson*, at 371;
7 *Recall of Sandhaus*, at 668-69. The remaining charge under Resolution No. 2011-04 “A
8 Resolution of the Town Council of Marcus Establishing Guidelines for the Ethical, Lawful,
9 Responsible and Non-Discriminatory Use of Town Resources by Town Officials,
10 Employees and Volunteers” adopted February 1, 2011, is also factually and legally
11 insufficient; and it also charges Mayor Bolt for actions well within her discretion. *In re*
12 *Recall of Wasson*, at 791-92. Councilman Jenson’s use of the gator, as described in the
13 charge, clearly was diminimus, permissible use, and was not prohibited use. Further, the
14 facts presented show Mayor Bolt did not intend to violate Resolution 2011-04 – to the
15 contrary, she did her best to determine whether Councilman Jenson’s actions were lawful.
16

17 Charge No. 6. Mayor Bolt allowed Councilman Jenson to use the gator, after he had
18 been directed to stop. This charge fails to identify a specific standard, law, or rule making
19 Mayor Bolt’s conduct wrongful, improper, or unlawful. *In re Ackerson*, at 371. It, too, is
20 not legally or factually sufficient; see Charge No. 5.
21

22 Charge No. 7. Mayor Bolt on April 16, 2008, April 30, 2008, September 15, 2008,
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25 ⁴ However, the Court was not provided, and was unable to locate, the statutory authority for the purchase of
personal property by a town.

1 October 1, 2008, February 15, 2011, February 28, 2011, December 31, 2010, May 31, 2011,
2 June 30, 2011, July 15, 2011, July 29, 2011, August 31, 2011, September 15, 2011, October
3 14, 2011, and October 31, 2011 received both Mayor's pay and Clerk's wages, comingled
4 the position of Mayor and Clerk, and had the Clerk sign off on the Mayor's time sheets.

5 This charge fails to identify a specific standard law or rule. *In re Ackerson*, at 371. The
6 Town of Marcus Personnel Policy provides:
7

8 "ELECTED TOWN OFFICIAL PERFORMING HOURLY EMPLOYEE DUTIES:

9 Any elected Town official may perform the duties/actions of any hourly Town
10 employee that the official is competent to perform, provided there is a short term
11 need for help as determined by Council for that position. The elected official may
12 request, and be authorized by Council, to be paid at the same rate as the hourly
13 employee. If the elected official is to be paid, time sheets must be completed the
14 same as is expected of the regular hourly employee. Town Official time sheets will
15 be subject to the same internal controls and work product review as the regular
16 hourly employee receives. The subject 'elected official', will remove themselves
17 from any internal control processes and final approval."

18 This fill-in work by Mayor Bolt was clearly not wrongful, improper, or unlawful.

19 Further, given that it was openly ongoing for three years, it was likely reviewed by the State
20 Auditor. It came within the Mayor's discretion. *Wasson*, at 791-92.

21 Charge No.8. Mayor Bolt, post May 7, 2012, has not held monthly safety meetings
22 required by the Washington Department of Labor & Industries. This charge is factually
23 insufficient – on a bare allegation. Further, it is legally insufficient in that it does not
24 reference a specific standard, law, or rule. *Recall of Sandhaus*, at 668-69.

25 Charge No.9. Mayor Bolt's long-term personal and public relationship with
Councilman Dennis L. Jenson makes for a conflict of interest, and appearance of
"unfairness" and blurs the lines between the administrative and legislative branches of Town

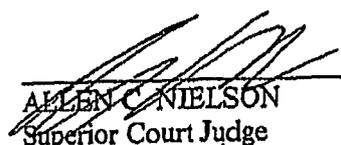
1 government. This is factually and legally insufficient. It references no specific standard,
2 law or rule. In particular, no conflict of interest is identified. And, the appearance of
3 fairness doctrine applies only to hearings – quasi-judicial, or legislative. *Zehring v. Bellvue*,
4 99 Wn.2d 488, 495, 663 P.2d 823 (1983).

5 Charge No.10. Mayor Bolt, contrary to the Town of Marcus Personnel Policy,
6 allowed payroll payments for hours not yet worked. This charge is legally insufficient in
7 that such early payments are not expressly contrary to the personnel policy. The
8 authorization of such payments is within a Mayor's discretion and no specific standard, law,
9 or rule is referenced. *In re Ackerson*, at 371.

11 Is the Ballot Synopsis legally sufficient? No.

12 The Ballot Synopsis for Recall of Terecia Fran Bolt, Mayor Marcus, Charges No. 1
13 to No. 10, is inadequate because none of the charges include dates and pertinent details.
14 *Recall of West*, 155 Wn.2d 659, 664, 121 P.3d 1190 (2005). Charge No. 4, has been
15 corrected to remedy these inadequacies. *Recall of West*, at 664-65.

16 DATED this 12th day of December, 2012.

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20 ALLEN C. NIELSON
21 Superior Court Judge
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CERTIFICATE OF MAILING/DELIVERY

I hereby certify, under penalty of perjury of the laws of the State of Washington, that I am a U.S. citizen and neither a party to nor interested in the above-entitled action and that a true copy of the Hearing, Conclusions of Law and Determination – RCW 29A.56.140, was mailed by U.S. Mail, postage prepaid, or hand delivered to the following parties on the date shown below:

Dennis L. Jenson
P. O. Box 666
Marcus, WA 99151

U.S. Mail
 Hand delivery

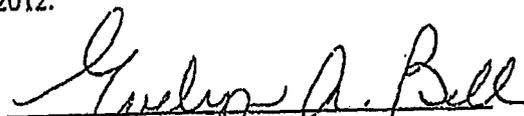
Terecia Fran Bolt
P. O. Box 687
Marcus, WA 99151

U.S. Mail
 Hand delivery

Stephen K. Eugster
Attorney at Law
2418 W. Pacific Ave.
Spokane, WA 99201-6244

U.S. Mail
 Hand delivery

DATED this 13th day of December, 2012.


EVELYN A. BELL



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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF STEVENS

IN THE MATTER OF THE RECALL OF:

NO. 12-2-00506-9

DENNIS L. JENSON,

HEARING, CONCLUSIONS OF LAW
AND DETERMINATION -- RCW
29A.56.140

Councilperson Position 4 of the Town of
Marcus.

I. HEARING

On November 26, 2012, the Court conducted a hearing on the November 15, 2012
Petition to Determine Sufficiency of Recall Charges and Adequacy of Ballot Synopsis. The
Petition was filed by the Stevens County Prosecuting Attorney as a result of the Recall
Charge Dennis L. Jenson, Councilman, Position 4, Town of Marcus, Stevens County,
Washington State; and Recall Charge Terecia F. Bolt, Mayor, Town of Marcus, Stevens
County, Washington State; which were both filed with the Stevens County Auditor on
November 5, 2012. Present at the hearing were those demanding recall, William S. Courtis,
Jacqueline R. Howard, and Bradley C. Rippon; and officers subject to recall, Terecia F. Bolt
and Dennis L. Jenson. The Court reviewed the files and heard argument as to the

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1 sufficiency of the charges and adequacy of the ballot synopsis from the individuals
2 demanding recall and subject to recall.¹ The Court did not consider the truth of the charges,
3 only their sufficiency.² On November 27, 2012, the Ballot Synopsis For Recall of Terecia
4 Fran Bolt, Mayor of the Town of Marcus; and a Ballot Synopsis For Recall of Dennis L.
5 Jenson, Councilman of the Town of Marcus; were certified and mailed to the Stevens
6 County Auditor, the officers subject to recall, and those persons demanding recall.

8 II. CONCLUSIONS OF LAW

9 Do acts stated satisfy recall petition criteria? No as to all charges but Charge No. 6.

10 Charge No. 1: Councilman Jenson supervised maintenance man Michael Bear
11 throughout Mr. Bear's employment with the Town of Marcus.³ This charge is legally
12 insufficient in that it does not identify the standard, law, or rule that makes Councilman
13 Jenson's conduct wrongful, improper, or unlawful. *In re Ackerson*, 143 Wn.2d 366, 371, 20
14 P.3d 930 (2001). Also, this claim fails to state with specificity substantial conduct clearly
15 amounting to misfeasance, malfeasance, or violation of oath of office. *Recall of Sandhaus*,
16 134 Wn.2d 662, 668, 953 P.2d 82 (1998).

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20 ¹ The petitions were heard together on agreement of the parties.

21 ² Those demanding recall filed documents authored by the Mayor.

22 ³ Those demanding recall and those subject to recall were self-represented. The charges must state each act
23 of misfeasance, malfeasance, or breach of the oath of office in concise language, and provide a detailed
24 description, including the approximate date, location, and nature of each act. *Recall Charges Against*
25 *Lindquist*, 172 Wn.2d 120, 132 (2011). But charges can include unverified attachments and a trial judge
has the power to correct an inadequate ballot synopsis as long as the gist of the charges remains the same.
Recall of Washam, 171 Wn.2d 503, 511-14, 257 P.3d 513 (2011). And, technical violations of statutes
governing recall are not fatal as long as the charges read as a whole, give the elected official enough
information to respond to the charges and the voters enough information to evaluate them. *In re Heiberg*,
171 Wn.2d 771, 778, 257 P.3d 565 (2011). The Court paraphrased the charges in order to frame their
review.

1 Charge No. 2. Councilman Jenson participated in illegal harassment, bullying, and
2 open public denigration of Mr. Bear; and he allowed an open meeting where Mr. Bear was
3 criticized in violation of his right to an executive session. This charge is legally insufficient
4 in that it fails to state with specificity substantial conduct clearly amounting to misfeasance,
5 malfeasance, or violation of oath of office. *Recall of Sandhaus*, at 668; *Teaford v. Howard*,
6 104 Wn.2d 580, 584-88, 707 P.2d 1327 (1985).. Further, criticism was in an open public
7 meeting which was not contrary to the Open Public Meeting Act, RCW Chapter 42.30. "It
8 is the intent of this chapter that their (public entities) actions be taken openly and that their
9 deliberations be conducted openly." RCW 42.30.010. There is no evidence the Councilman
10 intended to violate the Open Public Meetings Act. *In re Recall of Wasson* at 791.

11 Charge No. 3. Councilman Jenson purchased or assisted in the purchase of Town
12 equipment including equipment valued at \$4,000 on October 4, 2005; a utility vehicle
13 valued at \$1,500 on August 10, 2007; and a Turfcat valued at \$2,500 on April 24, 2008 –
14 without advance authorization of the Town Council. This is legally sufficient.⁴

15 Charge No. 4. Councilman Jenson, contrary to Resolution No. 2011-04 "A
16 Resolution of the Town Council of Marcus Establishing Guidelines for the Ethical, Lawful,
17 Responsible and Non-discriminatory Use of Town Resources By Town Officials,
18 Employees and Volunteers" adopted February 1, 2011, did from May 31, 2011 to June 7,
19 2011, made non-diminimus, personal use of the gator. This use, as charged, was diminimus,
20 permissible personal use, and was not prohibited use under the Guidelines.
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25 ⁴ However, the Court was not provided, and was unable to locate, the statutory authority for the purchase of
personal property by a town.

1 Further, Councilman Jenson is charged with continuing to make such use of the
2 gator, even after he had been censured by the remaining councilpersons and warning by the
3 State Auditor. But the censure did not expressly terminate his use of the gator. And, no
4 conflict of interest is identified and the appearance of fairness doctrine does not apply.
5

6 Charge No. 5. Councilman Jenson, while out of office, authorized a roof
7 construction bid. Only the Town Council can erect or maintain buildings or purchase real or
8 personal property, RCW 35.27.360; but the charge has Councilman Jenson not in office at
9 the time of the bid. The charge is factually and legally insufficient. *Recall of Sandhaus*, at
10 668; *In re Ackerson*, at 371.

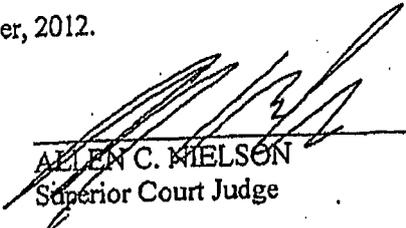
11 Charge No. 6. Councilman Jenson's long-term personal and public relationship
12 with Mayor Bolt makes for a conflict of interest and appearance of "unfairness" and blurs
13 the lines between the administrative and legislative branches of Town government. This is
14 factually and legally insufficient. It references no specific standard, law or rule. In
15 particular, no conflict of interest is identified. *Recall of Sandhaus*, at 668; *In re Ackerson*, at
16 371. And, the appearance of fairness doctrine applies only to hearings – quasi-judicial, or
17 legislative. *Zehring v. Bellvue*, 99 Wn.2d 488, 495, 663 P.2d 823 (1983).
18

19 Is the Ballot Synopsis legally sufficient? No.

20 The Ballot Synopsis for Recall of Dennis L. Jenson, Councilman, Position 4 of the
21 Town of Marcus, is inadequate because none of the charges include dates and pertinent
22 details. *Recall of West*, 155 Wn.2d 659, 664, 121 P.3d 1190 (2005). Charge No. 3 has been
23 corrected to remedy these inadequacies. *Recall of West*, at 664-65.
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DATED this 12th day of December, 2012.



ALLEN C. NIELSON
Superior Court Judge

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CERTIFICATE OF MAILING/DELIVERY

I hereby certify, under penalty of perjury of the laws of the State of Washington, that I am a U.S. citizen and neither a party to nor interested in the above-entitled action and that a true copy of the Hearing, Conclusions of Law and Determination – RCW 29A.56.140, was mailed by U.S. Mail, postage prepaid, or hand delivered to the following parties on the date shown below:

Dennis L. Jenson
P. O. Box 666
Marcus, WA 99151

U.S. Mail
 Hand delivery

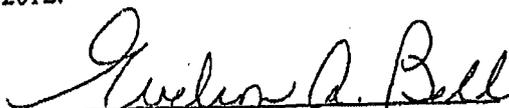
Terecia Fran Bolt
P. O. Box 687
Marcus, WA 99151

U.S. Mail
 Hand delivery

Stephen K. Eugster
Attorney at Law
2418 W. Pacific Ave.
Spokane, WA 99201-6244

U.S. Mail
 Hand delivery

DATED this 13th day of December, 2012.


EVELYN A. BELL

FILED
IN SUPERIOR COURT
STEVENS COUNTY
2013 JAN 2 PM 1 47
PATRICIA A. CHESTER
COUNTY CLERK

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7 SUPERIOR COURT FOR THE STATE OF WASHINGTON
8 IN AND FOR THE COUNTY OF STEVENS
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10 IN THE MATTER OF THE RECALL OF:) No. 12-2-00506-⁷⁻⁷~~9~~
11)
12 TERECLA FRAN BOLT) ORDER ON MOTION TO STRIKE MOTION
13) FOR RECONSIDERATION AND
14 Mayor of the Town Marcus.) MATERIALS ATTACHED THERETO
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15
16 Recall Petitioners William S. Courtis, Jacqueline R. Howard and Bradley C. Rippon,
17 (Recall Petitioners) by their attorney Stephen K. Eugster, on notice duly given, moved the court
18 to strike the Motion for Reconsideration herein and papers filed therewith and trial date in
19 conjunction therewith. The court heard the arguments of Stephen K. Eugster and Terecia Fran
20 Bolt and reviewed and considered the files herein and the details and legal argument in the
21 Motion to for Reconsideration.

22 FINDINGS

23 The finds that the Motion for Reconsideration and materials filed therewith was not
24 timely filed nor was it timely noted for hearing all as required by CR 50.

*Order on Motion to Strike Motion for Reconsideration
And Materials Attached Thereto -1*

Eugster Law Office PSC
2418 W. Pacific Ave.
Spokane, WA 99201
(509) 624-5566
Eugster@Eugsterlaw.com

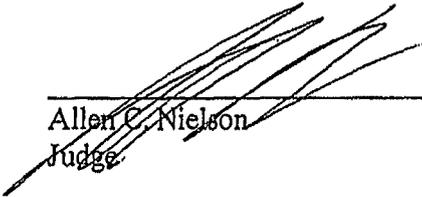
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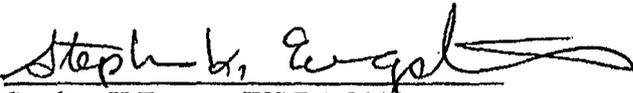
ORDER

IT IS HEREBY ORDERED that the Motion for Reconsideration, the materials filed therewith, and the hearing date with respect thereto be, and they hereby are, stricken.

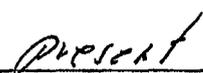
January 2, 2013.


Allen C. Nielson
Judge

Presented by:


Stephen K Eugster, WS BA 2003
Eugster Law Office PSC
Attorney for Recall Petitioners
2418 West Pacific Ave.
Spokane, Washington 99201- 6422

Approved and Notice of Presentation Waived:


Terecia Fran Bolt, Recall Petitioner

\\Eugsterliving\c\Wip\Marcus_Recall\motion_strike_bolt_order.wpd

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FILED
IN SUPERIOR COURT
STEVENS COUNTY
2012 DEC 7 AM 9 26
PATRICIA A. CHESTER
COUNTY CLERK

SUPERIOR COURT OF WASHINGTON FOR STEVENS COUNTY	
<u>Recall of Teresia F. Bolt</u> Petitioner	DOB
vs.	
Respondent	DOB

NO. 12-2-00507-7

NOTICE OF HEARING
(NTHG)
(Optional Use)
(Clerk's Action Required)

TO: Petitioner

Teresia F. Bolt (Petitioner/Respondent) has filed a motion for the following relief:
Motion for Reconsideration
(Name of Motion)

A hearing will be held on Jan 22, 2013 (date), at 1:30 a.m./p.m. at
Stevens County Superior Court, 215 South Oak, Room 208, Colville, Washington to determine
whether the requested relief should be granted. **IF YOU DO NOT APPEAR, THE COURT MAY
ENTER AN ORDER GRANTING THE RELIEF REQUESTED.**

Dated: 12-7-12

By: Teresia F. Bolt
(Name)
(Address) P.O. Box 687
Marous, WA, 99151

**This document must be served on the other party, and
proof of service must be in the court file prior to the hearing.**

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OFFICE RECEPTIONIST, CLERK

To: eugster@eugsterlaw.com
Subject: RE: In re Recall of Mayor Bolt and Council Member Jenson; Supreme Court No. 88227

Received 1/22/13

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

From: Stephen K. Eugster [mailto:eugster@eugsterlaw.com]
Sent: Tuesday, January 22, 2013 12:47 PM
To: OFFICE RECEPTIONIST, CLERK
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The email I just sent to you did not have my signature on the Reply nor on the Certificate of Mailing. This attachment of the Reply corrects such oversights.

As you know I am the attorney for the Recall Petitioners.

Stephen K. Eugster, WSBA 2003

My other contact information is set forth below.

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