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No. 43114-9-II

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DIVISION II
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STATE OF WASHINGTON
BY *[Signature]*
DEPUTY

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

RICHARD E. SWANSON, Appellant,

vs.

DEPARTMENT OF RETIREMENT SYSTEMS, Respondent.

APPELLANT'S MOTION AND BTIEF FOR
DISCRETIONARY REVIEW BY THE SUPREME COURT

JEFFREY D. STIER, WSBA No. 6911
Attorney for Richard E. Swanson

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SEP 25 2013
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STATE OF WASHINGTON
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WASHINGTON STATE SUPREME COURT

RICHARD E. SWANSON,

Appellant,

vs.

DEPARTMENT OF RETIREMENT
SYSTEMS,

Respondent.

Superior Court No. 10-2-02666-2

Court of Appeals No. 43114-9-II

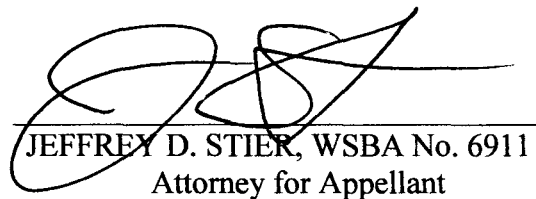
Supreme Court No.

**APPELLANT'S MOTION AND BRIEF
FOR DISCRETIONARY REVIEW BY
THE SUPREME COURT**

Appellant in this matter MOVES for discretionary review by the Supreme Court in this matter.

This Motion is based upon RAP 13 (specifically RAP 13.4), the files and records herein, and the Brief of Appellant filed of even date herewith.

Respectfully Submitted this 12th day of September, 2013.



JEFFREY D. STIER, WSBA No. 6911
Attorney for Appellant

**APPELLANT’S BRIEF IN SUPPORT OF HIS
MOTION FOR DISCRETIONARY REVIEW**

**I.
STATEMENT OF THE CASE**

On August 13, 2013, a panel of the Court of Appeals (COA) filed its Opinion affirming the trial judgment in this matter. Appellant now seeks to overrule that Opinion.

**II.
STATEMENT OF FACTS**

Appellant is a Public Employees' Retirement System Plan 1 ("PERS I") retiree who retired from state service on January 1, 1999 after exactly 30 years of employment. CP 398.

Pursuant to RCW 41.40.020 the Department of Retirement Services (“DRS” or “Respondent” interchangeably) has the responsibility to administer and manage governmental retirement systems according to the provisions of Ch. 41.40 RCW, including the calculation of monthly retirement benefits for Plan 1 members at the time they retire. A Plan 1 member's retirement benefit is based on a formula of 2% x service credit x Average Annual Compensation (“AFC”). See RCW 41.40.185(2) and CP 98 and 405. A Plan 1 member's AFC is the annual average of that member's compensation during his or her two consecutive highest earning years. RCW 41.40.010(8)(a).

In the case of Appellant his PERS 1 retirement benefit was calculated at the rate of \$3,080.53. CP 101 and 408.

On May 5, 1999, DRS sent a letter to Appellant indicating that a post-retirement audit had been performed that indicated that his AFC was \$5,134.21. CP 398. This version of Appellant's AFC included a credit for unused annual leave accumulated during his high two (2) years of annual compensation. CP 100 and 407. Accordingly, Appellant received a monthly "defined payment" benefit from DRS based upon his of \$5,134.21 (subject to various survivorship elections) from the date of his retirement on January 1, 1999, until DRS reconsidered that finding in August 2010. CP 100 and 407.

Unbeknownst to Appellant, allegedly following a statutory mandate, DRS promulgated WAC 415-108-510 on July 25, 1999 (after Appellant's retirement date), which, according to DRS, provided that the "first-in, first-out" rule ("FIFO") should have excluded consideration of annual leave because that annual leave was used up by the time of Appellant's retirement. CP 124-139 and 564. Despite this fact, Appellant has continued to receive his monthly retirement benefit calculated with respect to his AFC of \$5,134.21 to August 31, 2010, with applicable cost of living and survivorship adjustments. CP 100-103 and 407-410.

In 2010, the Appellantf contacted the Department to advise that he had remarried. Apparently as a result of that and following contacts, DRS recalculated Appellant's retirement benefit. CP 102 and 407.

This case began with DRS' August 23, 2010, decision (memorialized by letters to Appellant dated August 23, 2010) to reduce Appellant's AFC to \$4,860.98 retroactively to the

date of his retirement (subject to the 3-year statute of limitations) and in the future so long as he continued living. This version of his AFC did not include a credit for unused annual leave accumulated during his high two (2) years of annual compensation, being June 1, 1990, through May 31, 1992. See CP 122, 126-129 564.

DRS responded to a Public Records Request of Appellant (“PDR Response” by letter dated October 13, 2010, indicating that the FIFO promulgated after Appellants retirement in WAC 415-108-510 proscribes consideration of annual leave in computing a PERS 1 retiree’s AFC in a situation where AFC was not in the last two years immediately preceding retirement. CP 123, 134-148 and 564. In that PDR Response, DRS included an e-mail to an interested person dated May 3, 2010, stating:

In determining your benefit calculation, we are only able to use the salary and leave earned during your highest 24-month AFC period. For most individuals, this is the last 24-month period prior to retirement. However, in some situations-like yours, the highest 24-month period may not be the last 24 months of employment. The FIFO accounting rule allows us to determine in which months the cashed out leave was earned. With the FIFO rule, the leave you used while still employed is considered to be the oldest leave accrued. The leave that is paid out at retirement is considered to be the unused leave that was earned during your employment and is therefore reportable compensation to DRS.

CP 138 and 564.

DRS’ October 13, 2010, PDR Response also included copies of power point training to DRS staff members to the effect that under the FIFO rule, DRS could exclude a portion of, or all, annual leave in the AFC calculation where a retiree’s AFC was calculated on a two (2) year period that did not immediately precede his/her retirement. CP 139-146 and 564.

On December 9, 2010, Appellant commenced a Damages lawsuit (the “Damages Case”) in Thurston County Superior Court Cause No. 10-2-02666-2 seeking to provide

damages in the case of lost retirement benefits upon invalidation of the application of WAC 415-108-510 to Appellant and those similarly situated. CP 6-30. On January 19, 2011, Appellant commenced another case, Thurston County Superior Court Cause No. 11-2-00169-2 (the “Rules Revision Case”) to invalidate the contention that WAC 415-108-510 required Respondent to ignore annual leave that was cashed out in AFC years under FIFO. That case also involved a potential class action for those retirees who were similarly situated. CP 618-645. Appellant did not seek an administrative hearing under RCW 34.05.542(2) prior to filing either lawsuit. Both cases were consolidated.¹

Both cases were eventually dismissed by the trial court (the Damages case on May 13, 2011, and the Rules Revision Case on January 27, 2012, 2011), for an alleged failure to exhaust administrative remedies-i.e. for Appellant’s failure to appeal the administrative decision within thirty (30) days. CP 331-332 and 614-615. In addition, the dismissal order for the Rules Case specifically found that “. . . Appellant has failed to establish the futility exception to the exhaustion of remedies requirement.” CP 615.

Appellant appealed those dismissals to the Court of Appeals, Division II, claiming that the case raised the issue of the constitutionality of Respondents actions under the case of *Bowles v Retirements System*, 121 Wn. 2d 52, 847 P. 2d 440 (1993) and the issues revolve around jurisdiction granted by RCW 34.05.570 which gives the Court jurisdiction to hear legal questions involving constitutional issues that are either “direct” or “applied.” Unfortunately, the Court of Appeals rejected Appellant’s arguments to this effect and filed its opinion on September 13, 2013. A copy of that Opinion is attached.

¹ The consolidation was for the convenience of the parties and Court only. In the Consolidation Order both cases retained their separate cause numbers and identity.

A Motion for Reconsideration of that Opinion was filed and served on September 3, 2013. That matter remains pending. The sole purpose of this Motion for Discretionary Review is to make sure that Appellant has timely filed his motion to the Supreme Court in this matter. A copy of Appellant's Reconsideration Brief is attached.

**III.
SUMMARY OF GROUNDS FOR RELIEF**

A. A significant question of law under the Constitution of the State of Washington or of the United States is involved.

As stated above this case is premised upon constitutional issues raised by the case of *Bowles, Infra*, and, as such, must necessarily involve a significant question of law under the Constitution of the State of Washington or of the United States.

To deny Appellant his legal review of these constitutional issues on the grounds that Appellant failed to exhaust his administrative remedies is, in itself, a usurpation of Appellant's exercise of constitutional rights.

Further, denial of any right to effect discovery and cross-examination represents a denial of Appellant's Constitutional Due Process rights to know and confront the evidence against him.

B. The decision of the Court of Appeals is in conflict with another decision of the Court of Appeals.

The Opinion of the Court of Appeals is completely at odds with other decisions of the Court of Appeals, whether Division 2 or other Divisions.

C. The petition involves an issue of substantial public interest that should be determined by the Supreme Court.

The public interest in the resolution of constitutional issues on the merits is involved.

**IV.
ARGUMENT**

A. Standard of Review for Motion for Discretionary Review.

There are four (4) grounds² for a grant of discretionary review by the Supreme Court set forth in RAP 13.4. This matter meets three out of four requirements for discretionary review. These three grounds are addressed below.

B. A significant question of law under the Constitution of the State of Washington or of the United States is involved.

As stated above this case is premised upon constitutional issues raised in the case of *Bowles Infra*, and, as such, must necessarily involve a significant question of law under the Constitution of the State of Washington or of the United States.

² RAP 13.4 (b) Considerations Governing Acceptance of Review. A petition for review will be accepted by the Supreme Court only:

- (1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or
- (2) If the decision of the Court of Appeals is in conflict with another decision of the Court of Appeals; or
- (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or
- (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

To deny Appellant his legal review of these constitutional issues on the grounds that Appellant failed to exhaust his administrative remedies is, in itself, a usurpation of Appellant's exercise of constitutional rights.

Further, denial of any right to effect discovery and cross-examination represents a denial of Appellant's Constitutional Due Process rights to know and confront the evidence against him under U.S. Constitution, Amnd XIV and Washington State Constitution, Article 1, §3. See *Cuddy v State Department of Public Assistance*, 74 Wn.2d 17, 19, 442 P. 2d 617 (1968); Also see *Little v Rhay*, 8 Wn App 725, 509 P. 2nd 92 (1973). The Due Process Clause of the Fourteenth Amendment to the United States Constitution guarantees an orderly proceeding adapted to the nature of the case. *Cuddy*, supra at 74 Wn.2d 19. To be thrown out of Court because of an inapplicable rule is certainly not an orderly proceeding where Appellant was offered an opportunity to present his case against the government.

C. The decision of the Court of Appeals is in conflict with another decision of the Court of Appeals.

While the specific issue of whether challenge to the application of a rule may be dismissed for failure to exhaust administrative remedies within thirty (30) days³ may be of first impression, the decision on the Court of Appeals is completely at odds with other decisions of the Court of Appeals, whether Division 2 or other Divisions. See *Alpine Lakes Protection Soc. v Washington State Dept. of Ecology*, 135 Wn.App. 376, 144 P.2d 385, as amended, rev. den. 162 Wn.2d 1014, 178 P.3rd 1032 (2006) and *Schreiber v Riemcke*, 11 Wa.App. 873, 526 P2d 904 (1974).

³ Only because that decision flouts the clear authority of RCW 34.05.570 .

D. The petition involves an issue of substantial public interest that should be determined by the Supreme Court.

The action at bar denies Appellant the right to pursue his rights under the constitution. In addition, it denies the Appellant the right to challenge a reduction of his income by Respondent. Certainly the public interest in the resolution of constitutional issues on the merits is involved.

The test for “substantial public interest” contains one of five core issues:

(1) whether the issue is of a public or private nature;

(2) whether an authoritative determination is desirable to provide future guidance to public officers;

(3) whether the issue is likely to recur.

(4) the "level of genuine adverseness and the quality of advocacy of the issues; and

(5) "the likelihood that the issue will escape review because the facts of the controversy are short-lived. *In re Marriage of Horner*, 151 Wn.2d 884, 891, 93 P.3d 124 (2004).

The case at bar meets all of these tests and surely must satisfy at least one. The first 3 tests are considered preeminent and will be addressed here:

Whether the issue is of a public or private nature.

The case at bar is a class action. Although that issue is not relevant to the issues before the Court of Appeals and, therefore, discovery on that point is not yet part of the record, suffice it to say that numerous individuals are similarly situated to Appellant. It is the likelihood that additional plaintiffs have been or will be injured in exactly the same fashion that changes a

factual pattern from a private dispute to one that affects the public interest. *McRae v. Bolstad*, 101 Wn.2d 161, 166, 676 P.2d 496 (1984).

In addition, “as applied” challenges to governmental activities have been deemed to involve a “substantial public interest.” *Dioxin/Organochlorine Center v. Pollution Control Hearings Bd.*, 131 Wn.2d 345, 352, 932 P.2d 158 (1997).

Whether an authoritative determination is desirable to provide future guidance to public officers

The record indisputably shows that DRS employees were trained that the FIFO rule required them to exclude a portion of, or all, annual leave in the AFC calculation where a retiree’s AFC was calculated on a two (2) year period that did not immediately precede his/her retirement. CP 139-146 and 564. A decision of the Court in this regard would go far to change that training premise.

Whether the issue is likely to recur.

Appellant concedes that PERS 1 retirees are diminishing due to the passage of time. However, Appellant’s example is evidence that this issue can come out of nowhere to bite a PERS 1 retiree long after the PERS 1 retiree has retired. Appellant cannot point to any case where that might occur because that case hasn’t been uncovered yet, but it is not inconceivable that that case is still out there, just as Appellant’s case was out there until discovered by DRS.

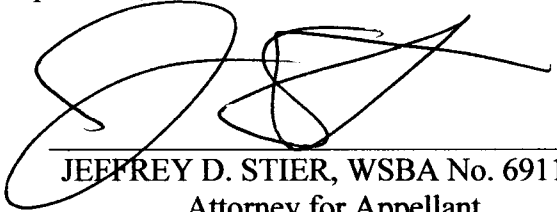
**V.
CONCLUSION**

Appellant asks this Court to accept discretionary review of this matter. the grounds for this under RAP 13.4 are (1) A significant question of law under the Constitution of the State of Washington or of the United States is involved; (2) The decision of the Court of Appeals is in

conflict with another decision of the Court of Appeals; and (3) The petition involves an issue of substantial public interest that should be determined by the Supreme Court.

These three grounds have been satisfied justifying acceptance of discretionary review by this Court.

Respectfully Submitted this 12th day of September, 2013.



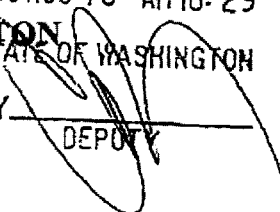
JEFFREY D. STIER, WSBA No. 6911
Attorney for Appellant

APPENDIX TO MOTION AND BRIEF FOR
DISCRETIONARY REVIEW IN SWANSON V DRS, COURT
OF APPEALS CAUSE NO. 43114-9-II V

FILED
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DIVISION II

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STATE OF WASHINGTON

BY 
DEPUTY

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

RICHARD E. SWANSON, and others
similarly situated,

No. 43114-9-II

Appellant,

v.

STATE OF WASHINGTON, DEPARTMENT
OF RETIREMENT SYSTEMS,

UNPUBLISHED OPINION

Respondent.

PENoyer, J. — Richard Swanson filed two complaints against the Department of Retirement Systems (Department) in superior court because the Department reduced the amount of his monthly retirement benefit. The trial court dismissed his complaints because he failed to comply with Washington Administrative Procedure Act's (APA)¹ requirements and, thus, did not invoke the court's jurisdiction. Swanson appeals, arguing that he is challenging the validity of a rule; therefore, he did not have to file his complaints within 30 days of the Department's action or exhaust his administrative remedies. The trial court properly dismissed Swanson's complaints because he did not comply with the APA's 30-day filing deadline. We affirm the trial court.

FACTS

Swanson is a Public Employees' Retirement System (PERS) Plan 1 retiree who retired from state employment in 1999. At that time, the Department calculated his monthly retirement

¹ Ch. 34.05 RCW.

benefit, using his two highest earning years² (1990 to 1992). In 2010, the Department audited Swanson's retirement account and discovered that it had incorrectly calculated the amount of his monthly benefit because it had included all of his unused leave. Unused leave may be included in an employee's monthly retirement benefit calculation provided the unused leave was earned during the two-year period used for computing the employee's monthly benefit—here, 1990 to 1992. WAC 415-108-510(1); 1976 Op. Att'y Gen. No. 1, at 10-11. The Department calculates the amount of unused leave earned during this time period using the first-in-first-out rule, which assumes that the first leave earned is the first leave used. WAC 415-108-510(2).

The Department informed Swanson in an August 23, 2010 letter³ that it had discovered an overpayment and that it was required by statute⁴ to recover the overpayment. The Department also sent Swanson an invoice, which included three repayment options. Swanson did not reply to the invoice, as requested, or seek an appeal with the Department.

On December 9, 2010, Swanson filed a complaint against the Department in Thurston County Superior Court, seeking "damages and equitable relief against [the Department] for [its] application of the 'first-in, first-out' rule to exclude some, or all, of annual leave benefits in the calculation of [monthly retirement benefits]." Clerk's Papers (CP) at 8. His complaint alleged that the superior court had original jurisdiction over his claims under RCW 2.08.010. Rather

² Under RCW 41.40.185, retirement allowance is calculated using the employee's years of service and average final compensation. "Average final compensation" is the annual average of the greatest compensation earnable by a member during any consecutive two-year period. RCW 41.40.010(6)(a).

³ The Department also contacted Swanson by phone and e-mail.

⁴ RCW 41.50.130(1) allows the Department director to correct any errors appearing in the records of the retirement system and provides that, in the case of overpayments, the retiree shall repay the Department.

than serving the Department, Swanson served his complaint on the Office of the Attorney General, which, at that point, had not been named as the Department's attorney of record. The Department moved to dismiss, arguing that Swanson failed to invoke the trial court's subject matter jurisdiction. The trial court granted the Department's motion to dismiss.

On January 19, 2011, Swanson filed a second complaint against the Department in Thurston County.⁵ He again sought "equitable relief . . . and damages against [the Department] for its application of the 'first-in, first-out' rule" but alleged that the court had subject matter jurisdiction under RCW 34.05.570(2).⁶ CP at 621. The Department filed another motion to dismiss, arguing that Swanson again failed to invoke the court's subject matter jurisdiction and failed to exhaust his administrative remedies. The trial court granted the Department's motion to dismiss, finding that Swanson failed to invoke the trial court's subject matter jurisdiction, exhaust his administrative remedies, and establish the futility exception to exhaustion. Swanson appeals the dismissal of both complaints.

⁵ Swanson amended this petition on December 16, 2011.

⁶ Review of rules. (a) A rule may be reviewed by petition for declaratory judgment filed pursuant to this subsection or in the context of any other review proceeding under this section. In an action challenging the validity of a rule, the agency shall be made a party to the proceeding. (b)(i) The validity of any rule may be determined upon petition for a declaratory judgment addressed to the superior court of Thurston county, when it appears that the rule, or its threatened application, interferes with or impairs or immediately threatens to interfere with or impair the legal rights or privileges of the petitioner. The declaratory judgment order may be entered whether or not the petitioner has first requested the agency to pass upon the validity of the rule in question. . . . (c) In a proceeding involving review of a rule, the court shall declare the rule invalid only if it finds that: The rule violates constitutional provisions; the rule exceeds the statutory authority of the agency; the rule was adopted without compliance with statutory rule-making procedures; or the rule is arbitrary and capricious.

No. 43114-9-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

RICHARD E. SWANSON, Appellant,

vs.

DEPARTMENT OF RETIREMENT SYSTEMS, Respondent.

MOTION FOR RECONSIDERATION OF APPELLANT

JEFFREY D. STIER, WSBA No. 6911
Attorney for Richard E. Swanson

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WASHINGTON STATE COURT OF APPEALS, DIV. II

RICHARD E. SWANSON,

Appellant,

vs.

DEPARTMENT OF RETIREMENT
SYSTEMS,

Respondent.

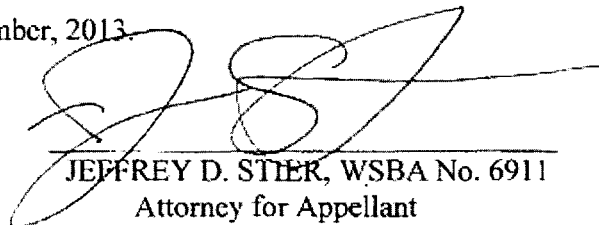
COA, Div. II No. 43114-9-II

MOTION FOR RECONSIDERATION OF
DECISION

COMES NOW Appellant, an aggrieved person, by and through his attorney, Jeffrey D. Stier, and hereby OBJECTS to the Opinion of the Court dated August 13, 2013, that states, in relevant part, "We affirm the trial court's dismissal of both of Swanson's complaints" and moves this Court for reconsideration of that ruling by the panel of judges that rendered said Opinion.

This Motion is BASED upon the files and records herein and the Brief of Appellant filed in support thereof.

SUBMITTED this 3rd day of September, 2013.



JEFFREY D. STIER, WSBA No. 6911
Attorney for Appellant
1801 West Bay Dr. NW, Suite 205
Olympia, WA 98502

BRIEF IN SUPPORT OF MOTION FOR
RECONSIDERATION OF DECISION

COMES NOW Appellant, Richard W. Swanson, by and through his attorney, Jeffrey D. Stier, and submits this Brief in support of his Motion for Reconsideration of the Court's Decision in this matter.

I.
RELIEF REQUESTED

Appellant respectfully requests that the Court reconsider its decision of August 13, 2013. Specifically, Appellant asks the Court to specify how it construes the Appellant's "As-Applied" argument for judicial review of this matter under RCW 34.05.570-to wit Assignment of Error A-1, and related issues, as stated below:

A.1 Error of law in ruling that Appellant insufficiently invoked the Court's limited appellate subject matter jurisdiction in this case by challenging application of a rule to Appellant and those similarly situated.

A.I. Issues:

- a. Is the Appellant correct in his argument that the defect in the agency's interpretation of the law in this case violates the constitution?
- b. Did the Appellant make it clear to the agency that he was challenging the rule, as interpreted by the agency?
- c. Is it for the Courts, or the agency, to determine whether the agency's interpretation of a rule follows the law?

II.
UPDATED FACTS

Appellant will not repeat the facts of this case as set forth in his Opening and Reply Briefs. He merely asks the Court to consider those facts where necessary. Appellant desires to update those facts with the following: On May 15, 2013, Appellant argued this case before a panel of the Court of Appeals, Division II. On August 13, 2013, the panel of the Court of Appeals, Division II, filed and e-mailed its Opinion in this matter affirming the decision of the

trial court. Appellant desires that the Opinion be reconsidered in light of its failure to address Appellant's "As-Applied" arguments under RCW 34.05.570.

III.
ISSUE

Did the Opinion of the panel of the Court of Appeals, Division II, fail to address Appellant's "As-Applied" arguments under RCW 34.05.570.

IV.
ARGUMENT AND AUTHORITY

The Opinion of the panel of the Court of Appeals, Division II, failed to address Appellant's "As-Applied" arguments under RCW 34.05.570.

Respectfully, nowhere in the Opinion of the panel of the Court of Appeals, Division II, assigned to this matter did the panel address Appellant's "As-Applied" arguments under RCW 34.05.570. In fact, the panel stated that "Swanson appeals, arguing that he is challenging the validity of a rule; therefore, he did not have to file his complaints within 30 days of the Department's action or exhaust his administrative remedies." Opinion, p. 1. This is not correct as the panel freely acknowledges later in its Opinion:

Moreover, nowhere in his briefs to this court does Swanson argue that the first in-first out rule itself is invalid for constitutional or other reasons. He merely repeats the argument in his complaint: the Department erred by applying the first in first out rule to him in this instance.

Obviously, the panel had no problem reading the underlying facts and requests in the complaints because it clearly acknowledged that:

Although Swanson cites RCW 34.05.570(2) which concerns judicial review of a rule, and titles his causes of action "Improper Rule Making," he continually refers to the Department's application of the rule to alter his benefits. CP at 367.

Opinion at p. 7.

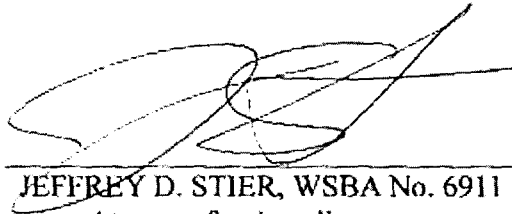
Neither did Respondent. In fact at the trial level Respondent specifically admitted that RCW 34.05.570 applied. CP 35. That means that Respondent not only admitted that a direct challenge was permissible, but an indirect challenge to the rule was also allowed whenever “The validity of any rule may be determined upon petition for a declaratory judgment addressed to the superior court of Thurston county, when it appears that the rule, or its **threatened application**, interferes with or impairs or immediately threatens to interfere with or impair the legal rights or privileges of the petitioner. The declaratory judgment order may be entered whether or not the petitioner has first requested the agency to pass upon the validity of the rule in question.” RCW 34.05.570(2)(b)(i). Emphasis added.

Perhaps the captions of the Petition, as amended, implied that this case only involved a direct challenge to WAC 415-108-510, but it was clear from the text that the case was a challenge to WAC 415-108-510, as applied.

Washington State is a “notice pleading” state. Accordingly, a complaint should not be dismissed for failure to state a claim unless it appears, beyond doubt, that proof of no set of facts would entitle plaintiff relief. *Christensen v Swedish Hospital*, 59 Wn.2d 545, 368 P.2s 897 (1962). This Court did not even address this boilerplate proposition. The court rule itself mandates that the Court is to do “substantial justice” whenever that is required. CR 8(f). Certainly it is not “substantial justice” to ignore the text which spoke plainly, and the law of the case dictated by Respondent’s admission that RCW 34.05.570(2)

applied.

SUBMITTED this 3rd day of September, 2013.

A handwritten signature in black ink, appearing to read 'J. Stier', is written over a horizontal line.

JEFFREY D. STIER, WSBA No. 6911
Attorney for Appellant
1801 West Bay Dr. NW, Suite 205
Olympia, WA 98502

WASHINGTON STATE COURT OF APPEALS, DIV. II

RICHARD E. SWANSON,

Appellant,

vs.

DEPARTMENT OF RETIREMENT
SYSTEMS,

Respondent.

COA, Div. II No. 43114-9-11

Superior Court No. 10-2-02666-2

PROOF OF SERVICE OF MOTION AND
BRIEF FOR DISCRETIONARY REVIEW
BY THE SUPREME COURT

I, Jeffrey D. Stier, am over the age of eighteen (18) years and I am competent to make the following Declaration to my best information and belief:

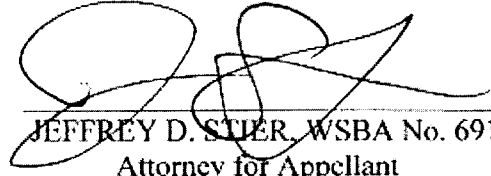
1. I am the attorney for the Appellant herein.

2. On September 12, 2013, I delivered a copy of the Appellant's Motion and Brief for Discretionary Review by the Supreme Court in this matter to the attorney of record for the Respondent, Ann C. Essko, by personally delivering the same in the name of Ann C. Essko, at the Office of the Attorney General, 7141 Cleanwater Drive SW, Olympia, WA 98504.

I declare under penalty of perjury under the laws of the State of Washington that the

foregoing is true and correct.

SUBMITTED this 12th day of September, 2013.



JEFFREY D. STIER, WSBA No. 6911
Attorney for Appellant
1801 West Bay Dr. NW, Suite 205
Olympia, WA 98502

WASHINGTON STATE COURT OF APPEALS, DIV. II

RICHARD E. SWANSON,

Appellant,

vs.

DEPARTMENT OF RETIREMENT
SYSTEMS,

Respondent.

COA, Div. II No. 43114-9-II

Superior Court No. 10-2-02666-2

PROOF OF SERVICE OF APPENDIX TO
MOTION FOR DISCRETIONARY REVIEW

I, Jeffrey D. Stier, am over the age of eighteen (18) years and I am competent to make the following Declaration to my best information and belief:

1. I am the attorney for the Appellant herein.
2. On September 12, 2013, I delivered a copy of the Appendix to Appellant's Motion and Brief for Discretionary Review by the Supreme Court to the attorney of record for the Respondent, Ann C. Essko, by personally delivering the same in the name of Ann C. Essko, at the Office of the Attorney General, 7141 Cleanwater Drive SW, Olympia, WA 98504.

I declare under penalty of perjury under the laws of the State of Washington that the

foregoing is true and correct.

SUBMITTED this 15th day of September, 2013.

A handwritten signature in black ink, appearing to read 'J. Stier', written over a horizontal line.

JEFFREY D. STIER, WSBA No. 6911

Attorney for Appellant

1801 West Bay Dr. NW, Suite 205

Olympia, WA 98502