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STATE OF WASHINGTON
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No. 89961-4

SUPREME COURT
OF THE STATE OF WASHINGTON

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No. 69300-0

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION I

JASON DILLON, an individual;
Appellant,

v.

SEATTLE DEPOSITION REPORTERS, LLC, a Washington
company; DAVIS WRIGHT TREMAINE, LLP, a Washington
Company; JAMES GRANT and Jane Doe Grant, individually and
the marital community composed thereof if any;
Respondents.

ON APPEAL FROM KING COUNTY SUPERIOR COURT
THE HONORABLE BRUCE HELLER

Jason Dillon's Response to Amicus Briefs

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 ORIGINAL

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Both amicus briefs, putatively brought on behalf of legitimate news organizations, should be rejected for the same reasons: (1) Both are ostensibly brought to protect reporter note taking functions, but this case did not involve note taking, it involved recording; (2) legitimate news reporter note taking, and news reporter recording for that matter, are specifically protected by the Privacy Act itself, at RCW 9.73.030(4); and finally, the Amicus Brief filed by the Allied Daily Newspapers of Washington was filed by Mr. Dillon's own former attorneys, the Garvey Schubert firm, without his consent and in violation of RPC 1.9.

1. RCW 9.73.030(4) protects legitimate news reporters and their legitimate note taking and recording methods, and neither Mr. Dillon nor the Division I case challenges that in any way whatsoever.

Both amicus briefs erroneously claim that this case is about protecting legitimate news reporters from lawsuits for taking notes. RCW 9.73.030(4) provides, however:

(4) An employee of any regularly published newspaper, magazine, wire service, radio station, or television station acting in the course of bona fide news gathering duties on a full-time or contractual or part-time basis, *shall be deemed to have consent to record and divulge communications or conversations otherwise prohibited by this chapter if the consent is expressly given or if the recording or transmitting device is readily apparent or obvious to the speakers.* Withdrawal of the consent after the communication has been made shall not prohibit any such employee of a newspaper, magazine, wire service, or radio or television station from divulging the communication or conversation.

The newspaper amicus claim a concern about their ability to take notes of a conversation, but they fail to even note the very exception that protects them and renders their arguments *moot ab initio*. Indeed, neither Amicus brief demonstrates a knowledge of the actual facts in this case or even a knowledge of the very text of the relevant statute. Both appear to be simply DWT tools to create a Constitutional controversy where there is none. As such, both are unhelpful to any reasoned discussion of the issues in this case.

Furthermore, the more serious matter in response to these Amicus briefs is the complete disregard of the Rules of Professional Conduct by the Garvey Shubert law firm in filing an Amicus brief which takes a position adverse to Mr. Dillon. As Garvey Shubert knows, one of its partners David Smith represented Mr. Dillon during a Federal Court hearing related to the recorded conversations in this case. Mr. Smith consulted privately with Mr. Dillon as his attorney prior to Mr. Dillon's testimony before Judge Martinez in federal court, and Mr. Smith accompanied his client, Mr. Dillon, through 2 separate hearings where Mr. Dillon testified about the recordings, in detail, for several hours. Prior to its filing, the Garvey Shubert firm did not receive Mr. Dillon's consent to waive the RPC 1.9 conflict, and in fact did not even advise Mr. Dillon or his counsel (the

undersigned) that it was involved in this case. Their conduct was a clear violation of RPC 1.9 and RPC 1.10:

(RPC 1.9(a)) A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing.
[Emphasis added].

(RPC 1.10): (a) Except as provided in paragraph (e), while lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 1.7 or 1.9, unless.....

- (e). ..(1) the personally disqualified lawyer is screened...
- (2) the former client of the personally disqualified lawyer receives notice of the conflict and the screening mechanism....;
- (3) the firm is able to demonstrate by convincing evidence that no material information relating that former representation was transmitted by the personally disqualified lawyer.

None of this was done by the Mr. Dillon's former law firm, the Garvey Schubert firm. Council for Allied made no attempt to comply with these rules. Like the DWT firm, the rule got in the way of what the lawyers wanted to do, so they ignored it.

This egregious violation of the Rules of Professional conduct is representative of what this case is about in the first place: There has evolved a culture in some large Seattle law firms of ignoring the law, of ignoring the rules, of simply claiming the

rules do not apply to them if they interfere with something they want to do.

Dated and Signed this 28th day of April, 2014 at Bellevue,
Washington

MORAN & KELLER PLLC

/s/William A. Keller 
Dennis M. Moran, WSBA #19999
William A. Keller, WSBA #29361
Attorneys for Jason Dillon

CERTIFICATE OF SERVICE

I declare under penalty of perjury under the laws of the State of Washington that the foregoing document was served on all parties of record by email and first class mail.

Dated and signed this 28th Day of April, 2014 at Bellevue, Washington

/s/William A. Keller 

OFFICE RECEPTIONIST, CLERK

From: OFFICE RECEPTIONIST, CLERK
Sent: Monday, April 28, 2014 11:55 AM
To: 'bill@morankellerlaw.com'; jessicag@summitlaw.com; volokh@law.ucla.edu; jendejan@gsblaw.com; Lyons, Heidi
Cc: rcromwell@byrneskeller.com; brucejohnson@dwt.com; ambikadoran@dwt.com; king@carneylaw.com; dmoran@fishermensfinest.com; Pierce, Narda; Way, Ann
Subject: RE: Amicus Curiae - Jason Dillon v. Seattle Deposition Reporters, LLC, No. 89961-4

Rec'd 4-28-14

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: bill@morankellerlaw.com [mailto:bill@morankellerlaw.com]
Sent: Monday, April 28, 2014 11:54 AM
To: OFFICE RECEPTIONIST, CLERK; jessicag@summitlaw.com; volokh@law.ucla.edu; jendejan@gsblaw.com; Lyons, Heidi
Cc: rcromwell@byrneskeller.com; brucejohnson@dwt.com; ambikadoran@dwt.com; king@carneylaw.com; dmoran@fishermensfinest.com; Pierce, Narda; Way, Ann
Subject: RE: Amicus Curiae - Jason Dillon v. Seattle Deposition Reporters, LLC, No. 89961-4

Attached please find our response to the Amicus briefs filed in this case.

Regards,

Bill Keller

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From: Lyons, Heidi [mailto:Heidi.Lyons@courts.wa.gov]
Sent: Wednesday, April 23, 2014 12:31 PM
To: jessicag@summitlaw.com; volokh@law.ucla.edu; jendejan@gsblaw.com
Cc: rcromwell@byrneskeller.com; brucejohnson@dwt.com; ambikadoran@dwt.com; king@carneylaw.com; dmoran@fishermensfinest.com; bill@morankellerlaw.com; Pierce, Narda; Way, Ann
Subject: Amicus Curiae - Jason Dillon v. Seattle Deposition Reporters, LLC, No. 89961-4

Attached is a letter from the Supreme Court Commissioner regarding an amicus curiae motion or motions filed in this case. The attached letter is the original for your file. A paper copy will not be sent by regular mail. If

you have any problems regarding receipt of this letter, please contact the Supreme Court Clerk's office. Thank you.