90288-7

Tue 5/27/2014 9:41 AM

Case # 45435-1- II

In the Supreme Court

for the State of Washington

William Scheidler

Appellant/Petitioner

v

Scott Ellerby, Esq.

Defendant/Respondent

Petition for Discretionary Review

Case 09-2-00660-3

Successor Judge Kevin Hull

William Scheidler, Pro Per
1515 Lidstrom Place E.
Port Orchard, WA 98366
(360) 769-8531
billscheidler@wavecable.com

Table of Contents

Cases

Statutes

Rules

Constitutional Provisions

A IDENTITY OF PETITIONER

William Scheidler asks this court to accept review of the decision designated in Part B of this petition.

B DECISION

Petitioner request review of the Court of Appeals II (COA II) ORDER DENYING MOTION TO MODIFY, entered May 1, 2014. Appendix A.

C ISSUES PRESENTED FOR REVIEW

The COA II's bare order to deny Scheidler's motion to modify the clerks rulings to not file Scheidler's opening brief and then terminated review for non-filing raises the following issues:

1) The COA II ruling denies due process and equal protection:
2) The Clerk is in violation of that portion of RCW 2.32.050(4); the COA II order is wrong.

3) The Clerk is in Violation of RAP 1.2 and CAR 6. The COA II order is wrong

4) The Justices of the COA II should have disqualified themselves under RCW 2.28.030(1) and CJC 2.11, and transferred this case to another division or court under CAR 21(a,c).

D STATEMENT OF THE CASE

This case concerns the Court of Appeals order, noted in B above, denying Scheidler's motion to modify the unilateral actions taken by David Penzoha, clerk of Division II Court of Appeals, who is not a lawyer nor qualified to sit as judge, who ruled: 1) to ***not file*** Scheidler's opening brief; 2) to falsely characterize the opening brief as non-conforming; 3) to set the matter for hearing before a commissioner, and then 4) to rule on his own motion to terminate review for Scheidler's failure to file an amended brief rather than

having the matter heard by a commissioner. Appendix B: Ex 1, 2, 3, respectively.

David Penzoha's unilateral and unlawful decisions were explained to the Court of Appeals in Scheidler's motion to modify, filed 3-24-2014, pages 1-7, and in Scheidler's reply to response, filed 4-4-2014, pages 2-4. The Court has not refuted Scheidler's claims.

The COA II's bare order denying Scheidler's motion to modify without any explanation whatsoever must mean Scheidler's argument the Clerk's rulings are based in fallacious claims, vague allegations unsupported by fact, and are without authority and contrary to law and precedent.

Additionally, the COA II is conflicted with the issues Scheidler presents in his opening brief. Scheidler argues the conduct of David Penzoha and the justices of the COA II in the earlier appeal was unlawful and void for fraud. Appellants 'opening brief' at pages 37-41. The COA II should have transferred this case to either another Division or to the Supreme Court as they would be ruling on their

conduct. RCW 2.28.030(1) and CJC 2.11 prohibits judges from ruling on his/her own conduct.

The COA II order denying modification of the Clerks orders deprives Scheidler of his fundamental right to an appeal and a ***fair hearing*** on the merits by an impartial decision maker.

E ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

RAP 13.4 states that the Supreme Court will accept discretionary review if the issues meet any one of 4 prerequisites of RAP 13.4(b). Petitioner meets the conditions set by RAP 13.4(b)(1, 3,4) and review should be accepted.

1) **RAP 13.4(b)(1)** The decision of the Court of Appeals is in conflict with a decision of the Supreme Court.

Scheidler's right of petition has been 'abridged' by David Penzoha acting unilaterally, unlawfully, under his self-proclaimed power under his own interpretation of court rules. All being in conflict with the holdings of and rules established by the Supreme Court.

Scheidler, ***petitioner***, has a substantive ***right of petition*** and it shall never be abridged. See Article 1, Sec 4. Appendix C: Authorities.

The Clerk, by his oath to protect and maintain Scheidler's individual rights, is required by law "to file all papers delivered to him" (See RCW 2.32.050(4)) to insure individuals have a meaningful appeal; as opposed to the clerical duties of .050(4), associated with the mode of filing such papers. The Supreme Court is clear with respect to such rights by the express language of RAP 18.22(b) - court rules supersede statutes only to "procedural" matters in conflict.[1] There are no conflicts between RCW 2.32.050(4) with any Court Rule. Appendix C: Authorities.

Further, the Supreme Court emphasizes this due process right of petition in ***STATE v. SCHULZE 116 Wn.2d 154, 161 804 P.2d 566***

---

[1] A court will make every effort to reconcile an apparent conflict between a court rule and a procedural statute. STATE v. BLILIE 132 Wn.2d 484 (1997)

"a substantive matter and cannot be amended by a procedural court rule" and in ***City of Fircrest v. Jensen 158 Wn. 2d. 384, 419 (2006)*** "If the right is substantive, then the statute prevails; if it is procedural, then the court rule prevails." Scheidler's due process right cannot be modified by a court rule as David Penzoha has done.

Cases are to be decided on the merits as RAP 1.2 states or the case disposed by a three judge panel, per CAR 6; and only by explaining the reasons the merits will not be considered as required by RAP 1.2. Neither of which occurred in this matter.

The COA II was wrong to deny Scheidler's motion to modify without any rationale justifying the clerk's unilateral action.

2) **RAP13.4(b)(3)** A significant question of law under the Constitution of the State of Washington or of the United States is involved.

"The fundamental requisite of due process of law is the opportunity to be heard...at a meaningful time and in a meaningful manner...the opportunity to be heard ***must be tailored to the capacities and circumstances of those who are to be heard.***" **Goldberg v Kelly 397 U.S. 254 (1970).**

The ***circumstances*** of this case are self-evident – Scheidler has been denied due process as his "opportunity to be heard" has been obstructed by the unlawful actions by the clerk to terminate review under fallacious claims and vague allegations that Scheidler' opening brief didn't meet 'formatting' requirements. Even more egregious, the ***circumstance*** of this case yield further equal protection issues. Scheidler, pro se, is the only 'individual' involved in this case. ***All*** others, including defendant, are ***officers of the court*** who are bound by their oath, RCW 2.48.210 and APR 5(c), to support the WA Constitution. WA constitution Article 1 Sec. 1 mandates, 'governments are established to protect and maintain Scheidler's individual right'. This surely includes Scheidler's Article 1, Sec 4, right of petition as manifest by his brief.

"The broad language of the constitutional provision is self-executing and needs no legislation to vest this power..." **STATE EX REL. CLARK v. HOGAN 49 Wn.2d 457 (1956)**; "All constitutional provisions are self-executing to the extent that they void all action taken in violation of them and preclude enforcement of any statute violating them." **PEDERSON v. MOSER 99 Wn.2d 456, 662 P.2d 866**

Said another way, these ***officers of the court*** have intentionally abandoned their duty to the constitution by using court rules specifically to injure Scheidler and deny his fundamental right of petition rather than protect him as their lawful duty requires. It is the lawyer who must remedy all that he can. And clearly "clerical issues" of the nature Clerk David Penzoha cites as reasons to deny Scheidler's rights, are matters easily fixed by the lawyers involved who possess both the expertise and the identical information to carry out their duty.

"The judicial system and the administration of justice is dependent on the honesty of attorneys as officers of the court". **In re Disciplinary Proceeding Against Poole 156 Wn.2d 196, 201 (2006).**

3) **RAP13.4(b)(4)** The petition involves an issue of substantial public interest that should be determined by the Supreme Court.

Scheidler recognizes the need for procedural rules – rules promote efficiency, lower court costs and lead to better opinions.

However, when lawyers breach their oath, ... when judges disregard the law and common law precedents in the rulings they make, so as to protect the lawyers who breach their oath, ... and when justices of the appellate courts perjure pleadings and fabricate facts to protect the "legal establishment" rather than protect Scheidler, as argued in petitioners opening brief, the level of harm and complexity in seeking a "redress of grievances" easily overwhelms any expected efficiencies in procedural rules.

It is disingenuous at best, oppressive at worst, to look past the unethical conduct that permeates the "legal system" and overwhelms the good intentions in procedural rules, especially when it is the duty of lawyers, who serve the constitution, to remedy error by their oath to 'never delay a man's cause and to conduct himself with truth and honor' for the protection of individual rights so cases are decided on the merits and upon the truth.

The "legal system" is the Supreme Court's responsibility and it needs an immediate overhaul as intended in Article 1, Section 32 by returning to fundamental principles for its remedy.

F CONCLUSION

This court should accept review for the reasons indicated in Part E and order Scheidler's brief to be filed, with any "imperfection in format" cured by the lawyers whose duty is to protect and maintain individual rights. This Court should disqualify the COA II, as the law requires, from hearing this matter and either assume jurisdiction or assign the case to a different division of the COA for a thorough review.

May 23, 2014

Respectfully submitted,

Signature

APPENDICIES

APPENDIX A
Copy ORDER DENYING MOTION TO MODIFY

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

WILLIAM SCHEIDLER,

Appellant,

v.

SCOTT ELLERBY,

Respondent.

No. 45435-1-II

ORDER DENYING MOTION TO MODIFY

APPELLANT filed a motion to modify a Clerk's ruling dated March 19, 2014, in the above-entitled matter. Following consideration, the court denies the motion. Accordingly, it is

SO ORDERED.

DATED this 1st day of May, 2014.

PANEL: Jj. Worswick, Lee, Melnick

FOR THE COURT:

Worswick CJ
CHIEF JUDGE

William Scheidler
1515 Lidstrom Place East
Port Orchard, WA, 98366
billscheidler@wavecable.com

Jeffrey Paul Downer
Lee Smart PS Inc
701 Pike St Ste 1800
Seattle, WA, 98101-3929
jpd@leesmart.com

APPENDIX B

Exhibit 1: Clerks letter stating he will not file Scheidler's opening brief; and to falsely characterize the opening brief as non-conforming; and Exhibit 2, Clerks order to have Commission rule on clerks motion; Exhibit 3, Clerks ruling on his own motion.

EXHIBIT 1

Washington State Court of Appeals
Division Two

950 Broadway, Suite 300, Tacoma, Washington 98402-4454
David Ponzoha, Clerk/Administrator (253) 593-2970 (253) 593-2806 (Fax)
General Orders, Calendar Dates, and General Information at http://www.courts.wa.gov/courts **OFFICE HOURS:** 9-12, 1-4.

January 28, 2014

William Scheidler
1515 Lidstrom Place East
Port Orchard, WA, 98366
billscheidler@wavecable.com

Jeffrey Paul Downer
Lee Smart PS Inc
701 Pike St Ste 1800
Seattle, WA, 98101-3929
jpd@leesmart.com

CASE #: 45435-1-II/William Scheidler, Appellant v. Scott Ellerby, Respondent
Case Manager: Cheryl

Dear Mr. Scheidler:

The brief you submitted to this court in this matter does not conform to the content and form requirements set out in the Rules of Appellate Procedure for one or more of the following reasons:

Brief does not include assignments of error together with issues pertaining to assignments of error. RAP 10.3(a)(4).

Brief does not cite to the record. RAP 10.3(a)(5).

Brief is overlength. RAP 10.4(b).

Attachments to the brief are not part of the record on review and, therefore, this Court cannot consider them. RAP 9.1.

An original and one copy must be filed with the court. RAP 10.4(a)(1).

The Court will not file the brief as part of the official record but will stamp it and place it in the pouch without filing. Therefore, you must submit and re-serve a corrected brief by **February 7, 2014**. For your reference, I am attaching a sample Appellant's Brief.

If you have any questions, please contact this office.

Very truly yours,

David C. Ponzoha
Court Clerk

DCP:c

EXHIBIT 2

Washington State Court of Appeals
Division Two

950 Broadway, Suite 300, Tacoma, Washington 98402-4454
David Ponzoha, Clerk/Administrator (253) 593-2970 (253) 593-2806 (Fax)
General Orders, Calendar Dates, and General Information at http://www.courts.wa.gov/courts **OFFICE HOURS**: 9-12, 1-4.

February 11, 2014

William Scheidler
1515 Lidstrom Place East
Port Orchard, WA, 98366
billscheidler@wavecable.com

Jeffrey Paul Downer
Lee Smart PS Inc
701 Pike St Ste 1800
Seattle, WA, 98101-3929
jpd@leesmart.com

CASE #: 45435-1-II
William Scheidler, Appellant v. Scott Ellerby, Respondent
Case Manager: Cheryl

William Scheidler:

Our records indicate you have failed to timely perfect the above-referenced appeal by not filing the **Amended Appellant's Brief**, due February 7, 2014.

Accordingly, we will impose **a sanction of $200** against you unless you filed the Amended Appellant's Brief with this court on or before fifteen days from the date of this letter. If you do not, a check for the amount of the sanction, payable to the State of Washington, will be due. Once a sanction becomes due, we will accept no further filings from you until you pay that sanction in full.

Further, we have scheduled a motion for dismissal and/or further sanctions because of your failure to timely file the Amended Appellant's Brief. A commissioner will consider this motion, without oral argument, if you do not file the Amended Appellant's Brief, by March 3, 2014. We will strike the clerk's motion for further sanctions if you cure the defect before that date. Please note, however, that even if we strike the clerk's motion for dismissal, you will not be released from paying the sanction imposed on **February 26, 2014**, unless you file your response before that date.

Very truly yours,

David C. Ponzoha
Court Clerk

DCP:c

EXHIBIT 3

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

WILLIAM SCHEIDLER, Appellant, v. SCOTT ELLERBY, Respondent.	No. 45435-1-II RULING DISMISSING APPEAL

THIS MATTER comes before the undersigned to dismiss the above-entitled appeal as it appears to have been abandoned. A review of the file indicates that the Amended Appellant's Brief has not been filed as previously ordered in the Conditional Ruling of Dismissal and that dismissal is warranted. Accordingly, it is

ORDERED that the above-entitled appeal is dismissed.

DATED this 19th day of March, 2014.

COURT CLERK

FILED
COURT OF APPEALS
DIVISION II
2014 MAR 19 AM 8:39
STATE OF WASHINGTON
BY
DEPUTY

William Scheidler
1515 Lidstrom Place East
Port Orchard, WA, 98366
billscheidler@wavecable.com

Jeffrey Paul Downer
Lee Smart PS Inc
701 Pike St Ste 1800
Seattle, WA, 98101-3929
jpd@leesmart.com

APPENDIX C
Relevant Authorities.

WA Constitution

ARTICLE I
DECLARATION OF RIGHTS
SECTION 1 POLITICAL POWER. All political power is inherent in the people, and governments derive their just powers from the consent of the governed, and are established to protect and maintain individual rights.
SECTION 2 SUPREME LAW OF THE LAND. The Constitution of the United States is the supreme law of the land.
SECTION 3 PERSONAL RIGHTS. No person shall be deprived of life, liberty, or property, without due process of law.
SECTION 4 RIGHT OF PETITION AND ASSEMBLAGE. The right of petition and of the people
SECTION 32 FUNDAMENTAL PRINCIPLES. A frequent recurrence to fundamental principles is essential to the security of individual right and the perpetuity of free government.peaceably to assemble for the common good shall never be abridged.

Revised Code of WA

RCW 2.28.030
Judicial officer defined — When disqualified.
A judicial officer is a person authorized to act as a judge in a court of justice. Such officer shall not act as such in a court of which he or she is a member in any of the following cases:

(1) In an action, suit, or proceeding to which he or she is a party, or in which he or she is directly interested.

(2) When he or she was not present and sitting as a member of the court at the hearing of a matter submitted for its decision.

(3) When he or she is related to either party by consanguinity or affinity within the third degree. The degree shall be ascertained and computed by ascending from the judge to the common ancestor and descending to the party, counting a degree for each person in both lines, including the judge and party and excluding the common ancestor.

(4) When he or she has been attorney in the action, suit, or proceeding in question for either party; but this section does not apply to an application to change the place of trial, or the regulation of the order of business in court.

In the cases specified in subsections (3) and (4) of this section, the disqualification may be waived by the parties, and except in the supreme court and the court of appeals shall be deemed to be waived unless an application for a change of the place of trial be made as provided by law.

RCW 2.32.050

Powers and duties of court clerks.

The clerk of the supreme court, each clerk of the court of appeals, and each clerk of a superior court, has power to take and certify the proof and acknowledgment of a conveyance of real property, or any other written instrument authorized or required to be proved or acknowledged, and to administer oaths in every case when authorized by law; and it is the duty of the clerk of the supreme court, each clerk of the court of appeals, and of each county clerk for each of the courts for which he or she is clerk:

(1) To keep the seal of the court and affix it in all cases where he or she is required by law;

(2) To record the proceedings of the court;

(3) To keep the records, files, and other books and papers appertaining to the court;

(4) To file all papers delivered to him or her for that purpose in any action or proceeding in the court as directed by court rule or statute;

(5) To attend the court of which he or she is clerk, to administer oaths, and receive the verdict of a jury in any action or proceeding therein, in the presence and under the direction of the court;

(6) To keep the journal of the proceedings of the court, and, under the direction of the court, to enter its orders, judgments, and decrees;

(7) To authenticate by certificate or transcript, as may be required, the records, files, or proceedings of the court, or any other paper appertaining thereto and filed with him or her;

(8) To exercise the powers and perform the duties conferred and imposed upon him or her elsewhere by statute;

(9) In the performance of his or her duties to conform to the direction of the court;

(10) To publish notice of the procedures for inspection of the public records of the court.

[2011 c 336 § 45; 1981 c 277 § 1; 1971 c 81 § 12; 1891 c 57 § 3; RRS § 77. Prior: Code 1881 §§ 2180, 2182, 2184.]

RCW 2.48.210

Oath on admission.

Every person before being admitted to practice law in this state shall take and subscribe the following oath:

I do solemnly swear:

I am a citizen of the United States and owe my allegiance thereto;

I will support the Constitution of the United States and the Constitution of the state of Washington;

I will maintain the respect due to courts of justice and judicial officers;

I will not counsel or maintain any suit or proceeding which shall appear to me to be unjust, nor any defense except such as I believe to be honestly debatable under the law of the land, unless it be in defense of a person charged with a public offense; I will employ for the purpose of maintaining the causes confided to me such means only as are consistent with truth and honor, and will never seek to mislead the judge or jury by any artifice or false statement of fact or law;

I will maintain the confidence and preserve inviolate the secrets of my client, and will accept no compensation in connection with his or her business except from him or her or with his or her knowledge and approval;

I will abstain from all offensive personality, and advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which I am charged;

I will never reject, from any consideration personal to myself, the cause of the defenseless or oppressed, or delay any person's cause for lucre or malice. So help me God.

[2013 c 23 § 1; 1921 c 126 § 12; RRS § 139-12. Prior: 1917 c 115 § 14.]

Rules on Appeal

RULE 1.2

INTERPRETATION AND WAIVER OF RULES BY COURT

(a) Interpretation. These rules will be liberally interpreted to promote justice and facilitate the decision of cases on the merits. Cases and issues will not be determined on the basis of compliance or noncompliance with these rules except in compelling circumstances where justice demands, subject to the restrictions in rule 18.8(b).

(b) Words of Command. Unless the context of the rule indicates otherwise: "Should" is used when referring to an act a party or counsel for a party is under an obligation to perform. The court will ordinarily impose sanctions if the act is not done within the time or in the manner specified. The word "must" is used in place of "should" if extending the time within which the act must be done is subject to the severe test under rule 18.8(b) or to emphasize failure to perform the act in a timely way may result in more severe than usual sanctions. The word "will" or "may" is used when referring to an act of the appellate court. The word "shall" is used when referring to an act that is to be done by an entity other than the appellate court, a party, or counsel for a party.

(c) Waiver. The appellate court may waive or alter the provisions of any of these rules in order to serve the ends of justice, subject to the restrictions in rule 18.8(b) and (c).

References

Rule 18.8, Waiver of Rules and Extension and Reduction of Time, (b) Restriction on extension of time, (c) Restriction on changing decision; Rule 18.9, Violation of Rules.

RULE 18.22

STATUTES AND RULES SUPERSEDED

(a) Generally. Rule 1.1(g) provides that these rules supersede all statutes and rules covering procedure in the appellate courts, unless a particular rule indicates that statutes control. The statutes and rules superseded by these rules continue to apply to any case pending before the Supreme Court or the Court of Appeals on July 1, 1976.

(b) List of Statutes and Rules. Some, but not necessarily all, of the statutes and rules which are superseded by these rules are listed below. If a listed statute relates to appellate procedure and to some other subject, ***it is superseded only as it relates to appellate procedure***. If a listed statute relates in part to one of these rules which specifies that statutes control, and in part to

other rules, the listed statute is superseded only as it relates to the other rules. The rules listed are superseded and no longer effective. Inter alia RCW 2.36.

Canons of Judicial Conduct

RULE 2.11 Disqualification

(A) A judge shall disqualify himself or herself in any proceeding in which the judge's impartiality* might reasonably be questioned, including but not limited to the following circumstances:

(1) The judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge* of facts that are in dispute in the proceeding.

(2) The judge knows* that the judge, the judge's spouse or domestic partner,* or a person within the third degree of relationship* to either of them, or the spouse or domestic partner of such a person is:

(a) a party to the proceeding, or an officer, director, general partner, managing member, or trustee of a party;

(b) acting as a lawyer in the proceeding;

(c) a person who has more than a de minimis* interest that could be substantially affected by the proceeding; or

(d) likely to be a material witness in the proceeding.

(3) The judge knows that he or she, individually or as a fiduciary,* or the judge's spouse, domestic partner, parent, or child, or any other member of the judge's family residing in the judge's household,* has an economic interest* in the subject matter in controversy or in a party to the proceeding.

(4) [Reserved]

(5) The judge, while a judge or a judicial candidate,* has made a public statement, other than in a court proceeding, judicial decision, or opinion, that commits the judge to reach a particular result or rule in a particular way in the proceeding or controversy.

(6) The judge:

(a) served as a lawyer in the matter in controversy, or was associated with a lawyer who participated substantially as a lawyer or a material witness in the matter during such association;

(b) served in governmental employment, and in such capacity participated personally and substantially as a public official concerning the proceeding, or has publicly expressed in such capacity an opinion concerning the merits of the particular matter in controversy;

(c) was a material witness concerning the matter; or

(d) previously presided as a judge over the matter in another court.

(B) A judge shall keep informed about the judge's personal and fiduciary economic interests, and make a reasonable effort to keep informed about the personal economic interests of the judge's spouse or domestic partner and minor children residing in the judge's household.

(C) A judge disqualified by the terms of Rule 2.11(A)(2) or Rule 2.11(A)(3) may, instead of withdrawing from the proceeding, disclose on the record the basis of the disqualification. If, based on such disclosure, the parties and lawyers, independently of the judge's participation, all agree in writing or on the record that the judge's relationship is immaterial or that the

judge's economic interest is de minimis, the judge is no longer disqualified, and may participate in the proceeding. When a party is not immediately available, the judge may proceed on the assurance of the lawyer that the party's consent will be subsequently given.

(D) A judge may disqualify himself or herself if the judge learns by means of a timely motion by a party that an adverse party has provided financial support for any of the judge's judicial election campaigns within the last six years in an amount that causes the judge to conclude that his or her impartiality might reasonably be questioned. In making this determination the judge should consider:

(1) the total amount of financial support provided by the party relative to the total amount of the financial support for the judge's election,

(2) the timing between the financial support and the pendency of the matter, and

(3) any additional circumstances pertaining to disqualification.

COMMENT

[1] Under this Rule, a judge is disqualified whenever the judge's impartiality might reasonably be questioned, regardless of whether any of the specific provisions of paragraphs (A)(1) through (5) apply. In many jurisdictions in Washington, the term "recusal" is used interchangeably with the term "disqualification."

[2] A judge's obligation not to hear or decide matters in which disqualification is required applies regardless of whether a motion to disqualify is filed.

[3] The rule of necessity may override the rule of disqualification. For example, a judge might be required to participate in judicial review of a judicial salary statute, or might be the only judge available in a matter requiring immediate judicial action, such as a hearing on probable cause or a temporary restraining order. In matters that require immediate action, the judge must disclose on the record the basis for possible disqualification and make reasonable efforts to transfer the matter to another judge as soon as practicable.

[4] The fact that a lawyer in a proceeding is affiliated with a law firm with which a relative of the judge is affiliated does not itself disqualify the judge. If, however, the judge's impartiality might reasonably be questioned under paragraph (A), or the relative is known by the judge to have an interest in the law firm that could be substantially affected by the proceeding under paragraph (A)(2)(c), the judge's disqualification is required.

[5] A judge should disclose on the record information that the judge believes the parties or their lawyers might reasonably consider relevant to a possible motion for disqualification, even if the judge believes there is no basis for disqualification.

[6] "Economic interest," as set forth in the Terminology section, means ownership of more than a de minimis legal or equitable interest. Except for situations in which a judge participates in the management of such a legal or equitable interest, or the interest could be substantially affected by the outcome of a proceeding before a judge, it does not include:

(1) an interest in the individual holdings within a mutual or common investment fund;

(2) an interest in securities held by an educational, religious, charitable, fraternal, or civic organization in which the judge or the judge's spouse, domestic partner, parent, or child serves as a director, officer, advisor, or other participant;

(3) a deposit in a financial institution or deposits or proprietary interests the judge may maintain as a member of a mutual savings association or credit union, or similar proprietary interests; or

(4) an interest in the issuer of government securities held by the judge.

[7] [Reserved]

[8] [Reserved]

Washington State Court Rules : Court of Appeals Administrative Rules

RULE 6

AUTHORITY

The presence of three judges and a concurrence of at least a majority thereof shall be required to dispose of a case, except for dismissal on stipulation of counsel of record. The Chief Judge may function on all procedural matters not affecting the content of the record or argument.

RULE 21

TRANSFER OF JUDGES AND CASES-- JUDGES PRO TEMPORE

(a) Generally. A judge of one division of the Court of Appeals may sit in any other division by mutual agreement of the Chief Judges of the two divisions involved. A case may be transferred from one division to another by written order of the Chief Judge of the transferring division, with the concurrence of the Chief Judge of the division to which the case is transferred.

(b) For Settlement Conferences. A judge or judge pro tempore of the Court of Appeals may be assigned to expedite the use of settlement conferences provided for under RAP 5.5 as follows:

(1) Judge. A judge of one division of the Court of Appeals may sit in any other division as a settlement conference judge or to replace during argument and decision a judge of another division who has acted as a settlement conference judge, by mutual agreement of the Chief Judges of the two divisions involved.

(2) Judge Pro Tempore. The Chief Judge of any division of the Court of Appeals may appoint an active or retired judge of a court of general jurisdiction to sit in that division as a settlement conference judge or to replace during argument and decision a judge who has acted as a settlement conference judge.

(c) Judges Pro Tempore. When a member of the court is disqualified or unable to function on a case for good cause, or whenever necessary for the prompt and orderly administration of justice, the Chief Judge of any division may by written order designate an active or retired judge of a court of general jurisdiction, or any active or retired justice of the Supreme Court or judge of the Court of Appeals as a judge pro tempore to sit with the court to hear and determine one or more cases. The designating order shall set forth the period of service.

Washington State Court Rules : Admission and Practice Rules

APR 5 RECOMMENDATION FOR ADMISSION; ORDER ADMITTING TO PRACTICE; PAYMENT OF MEMBERSHIP FEE; OATH OF ATTORNEY; RESIDENT AGENT

(a) Recommendation for Admission. The Board of Governors shall recommend to the Supreme Court the admission or rejection of each applicant who has passed the bar

examination or been approved for admission by motion, and, who has complied with the preadmission requirements set forth in this rule. A recommendation for admission shall be based upon the Board of Governors determination, after investigation, that the applicant appears to be of good moral character and in all respects qualified to engage in the practice of law. All recommendations of the Board of Governors shall be accompanied by the applicant's application for admission and any other documents deemed pertinent by the Board of Governors or requested by the Supreme Court. The recommendation and all accompanying documents and papers shall be kept by the Clerk of the Supreme Court in a separate file which shall not be a public record.

(b) Preadmission Requirements. Before an applicant who has passed the bar examination, or who qualifies for admission without passing the bar examination, may be admitted, the applicant must:

(1) take and pass the Washington Law Component;

(2) complete a minimum of 4 hours education in a curriculum and under circumstances approved by the Board of Governors;

(3) pay to the Bar Association the annual license fee and any assessments for the current year;

(4) file any and all licensing forms required of active members;

(5) take the Oath of Attorney; and

(6) designate a resident agent if required to do so by section (f).

For applicants who take and pass the bar examination, the preadmission requirements must be completed within 40 months from the date of the administration of the bar examination in which the score was earned. For applicants who apply by motion, the preadmission requirements must be completed within one year from the date of filing the application, except for good cause shown.

(c) Oath of Attorney. The Oath of Attorney must be taken before an elected or appointed judge, excluding judges pro tempore, sitting in open court in the state of Washington. In the event a successful applicant is outside the state of Washington and the Chief Justice is satisfied that it is impossible or impractical for the applicant to take the oath before an elected or appointed judge in this state, the Chief Justice may, upon proper application setting forth all the circumstances, designate a person authorized by law to administer oaths, before whom the applicant may appear and take said oath.

(d) Contents of Oath. The oath which all applicants shall take is as follows:

OATH OF ATTORNEY

State of Washington, County of _____ ss.

I, _____, do solemnly declare:

1. I am fully subject to the laws of the State of Washington and the laws of the United States and will abide by the same.

2. I will support the Constitution of the State of Washington and the Constitution of the United States.

3. I will abide by the Rules of Professional Conduct approved by the Supreme Court of the State of Washington.

4. I will maintain the respect due to the courts of justice and judicial officers.

5. I will not counsel or maintain any suit or proceeding which shall appear to me to be unjust, or any defense except as I believe to be honestly debatable under the law, unless it is in defense of a person charged with a public offense. I will employ, for the purpose of maintaining the causes confided to me, only those means consistent with truth and honor. I will never seek to mislead the judge or jury by any artifice or false statement.

6. I will maintain the confidence and preserve inviolate the secrets of my client, and will accept no compensation in connection with the business of my client unless this compensation is from or with the knowledge and approval of the client or with the approval of the court.

7. I will abstain from all offensive personalities and advance no fact prejudicial to the honor or reputation of a party or witness unless required by the justice of the cause with which I am charged.

8. I will never reject, from any consideration personal to myself, the cause of the defenseless or oppressed, or delay unjustly the cause of any person.

_____

(Signature)

SUBSCRIBED AND SWORN TO before me this _____ day of _____, 20__.

_____

Judge

(e) Order Admitting to Practice. After examining the recommendation and accompanying papers transmitted by the Board of Governors, the Supreme Court may enter such order in each case as it deems advisable. For those applicants it deems qualified, the Supreme Court shall enter an order admitting them to the practice of law.

(f) Nonresident Lawyers; Resident Agent. There shall be no requirement that an applicant or a member of the Bar Association be a resident in the state of Washington. Every member, except a judicial member, of the Bar Association who does not live or maintain an office in the state of Washington shall file with the Bar Association the name and address of an agent within this state for the purpose of receiving service of process or of any other document required or permitted by statute or court rule to be served or delivered to a resident lawyer. Service or delivery to such agent shall be deemed service upon or delivery to the lawyer.

[Amended effective July 9, 1965; March 10, 1971; April 26, 1974; May 14, 1982; September 1, 1984; October 11, 1985; June 25, 2002; June 1, 2006; January 8, 2013; January 1, 2014.]

Court of Appeals II

WILLIAM SCHEIDLER

Plaintiff/Petitioner

v.

SCOTT ELLERBY,

Defendant/Respondent,

Case Number: 45435-1-II

Certificate of Service

I certify that on the date indicated below and to the individuals noted I delivered as indicated below the following document(s):

1) Scheidler's Petition for Review

To: J.P. Downer, Lee Smart, via email at jpd@leesmart.com and Priority Mail to:

JP Downer
Lee Smart P.S., Inc.
1800 One Convention Place
701 Pike Street
Seattle, Washington 98101

May 27, 2014

Wm Scheidler
1515 Lidstrom Place E.
Port Orchard, WA 98366