

Supreme Court No. 90788-9

Court of Appeals No. 70917-8-I

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SUPREME COURT  
OF THE STATE OF WASHINGTON

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JACOB BECKWITH,  
Plaintiff/Respondent,

v.

SEIL REVELS,  
Defendant/Petitioner.

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STATE OF WASHINGTON  
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ANSWER BY RESPONDENT TO PETITION FOR REVIEW

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## I. INTRODUCTION

The Plaintiff/Respondent, Jacob Beckwith (“Beckwith” or “Respondent”) hereby answers the Petition for Review by Petitioner Seil Revels (“Revels”). The underlying case on which Revels Petition for Review is based involved a single, unremarkable, and well settled legal proposition, namely whether a trial court may condition the vacating of a default judgment, entered by reason of mistake, inadvertence, surprise or excusable neglect, on the defaulting party’s payment of the legal fees incurred by the judgment creditor as a result of the defaulting party’s mistake, inadvertence, surprise or excusable neglect. The trial court’s decision, affirmed below by Division I of the Washington Court of Appeals, is supported by well-established Washington law, and is not in conflict with a decision by the Washington Supreme Court or a decision by any of the divisions of the Washington Courts of Appeal.

The underlying claims by Beckwith against Revels on which judgment was entered against Revels included, among others, claims for Revels misuse of funds, failure to account, and breach of fiduciary duty in the context of a business relationship between Beckwith and Revels – not claims by Revels against Beckwith or anyone else involving “access to justice” and any substantial public interest. Since none of the RAP 13.4(b)

basis for accepting a petition for review are met in this case, Revels' petition for review should be denied.

## II. ARGUMENT

1. The Court of Appeals' decision in this case is not in conflict with any decision by the Washington Supreme Court or any division of the Washington State Courts of Appeal.

The underlying decision by the Court of Appeals on which Revel's petitions this Court for review is not, as Revels argues, in conflict with this Court's decision in *Morin v. Burriss*, 160 Wn.2d 745, 161 P.3<sup>rd</sup> 956 (2007). To the contrary, the trial court's decision, as affirmed by the Court of Appeals, is entirely consistent with *Morin v. Burriss*, as the trial court liberally granted Revels' motion to vacate a default judgment, properly entered, based upon Revels' claim of mistake, inadvertence, surprise or excusable neglect.

Revels' complaint here is not that the trial court failed to liberally grant him relief from a properly entered default judgment, but rather is that the trial court did so on the condition that Revels make the plaintiff whole by reimbursing Beckwith the legal fees Revels caused Beckwith to incur by reason of Revels "mistake, inadvertence, surprise or excusable neglect." Imposing such a condition is not in conflict with this Court's ruling in *Morin v. Burriss*; indeed, *Morin v. Burriss* involved no

such issue. Further, the trial court's decision, as noted by the Court of Appeals in its opinion affirming the trial court's decision, is entirely consistent with well-developed case law in Washington which allows a trial court to condition the vacating of a default judgment on the **payment** of fees. *Hendrix v. Hendrix*, 101 Wash. 535, 538, 172 P. 819 (1918) (upholding conditions imposed in an order vacating judgment that included an obligation to comply with a prior order of the court which included an award of attorneys' fees); *Pamelin Industries, Inc. v. Sheen-U.S.A., Inc.*, 95 Wn.2d 398, 622 P.2d 1270 (1981) (motion to vacate default judgment "was granted on condition that defendants **pay** plaintiffs' attorneys' fees and post a \$50,000 performance bond, *id.* at 400; "the trial judge had sufficient justification to impose conditions on the order setting aside the default judgment", *id.* at 404); *see also Friebe v. Supancheck*, 98 Wash. App. 260, 269, 992 P.2d 1014, 1018 (1999) (where the trial court conditioned order vacating default judgment upon an award of \$3,500 in attorneys' fees to the plaintiffs). CR 60(b) specifically grants a trial court the discretion to impose conditions on the vacation of a default judgment.

The true gravamen of Revels' petition is that his trial counsel committed malpractice and then allegedly sought to cover up that malpractice by having Revels sign a declaration falsely claiming Revels was served on a date several days later than the date Revels knew he

actually was served (as reflected in the affidavit of service on file with the court).<sup>1</sup> Revels argues he should not be burdened by the mistakes of his attorneys and that it was an abuse of discretion for the trial court to impose the payment of fees condition on Revels, rather than his attorneys, and that the Court of Appeals likewise erred in affirming that decision.

This argument is not a basis to grant a petition for review in this case. As the Court of Appeals noted, “[A]s for any dispute between Revels and his attorney, that issue is not before us.” Indeed, it long has been the law in Washington that the actions of an attorney bind that attorney’s client, and relief against the client is the proper result in such cases. *Haller v. Wallis*, 89 Wn.2d 539, 547, 573 P.2d 1302 (1978). If, as Revels contends in his argument, his attorneys acted improperly or otherwise failed to meet their duty of care to Revels, then Revels recourse is against his counsel, an issue not before this Court, and an issue that is not contrary to any existing decision by this Court or any of the divisions of our Courts of Appeal.

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<sup>1</sup> Although Revels seeks to blame his attorneys for the false declaration signed by Revels, Revels is not blameless here, as he either falsely told his attorneys the date on which he was served with the summons and complaint, or he was complicit in signing a declaration under penalty of perjury in which he falsified the alleged date of service.

2. Revels' petition involves no issue of substantial public interest.

Revels' petition involves no issue of substantial public interest. The underlying case does not involve "access to justice" by indigent parties whose civil rights are being violated. As noted above, Revels was the defendant in this case – not a plaintiff seeking to right a social wrong by requesting access to the courts. The underlying litigation involved a complaint by the plaintiff, Beckwith, against Revels (and also against a limited liability company controlled by Revels), based upon Revels' misuse of funds, refusal to provide an accounting, and breach of fiduciary duties to Beckwith. It was the plaintiff, Beckwith, who invoked his right to access the courts by suing Revels for Revels misconduct. Revels simply is a defendant who failed to comply with the civil rules by timely appearing and answering, and who then was granted relief from a default judgment conditioned only on paying a few thousand dollars in attorney's fees to compensate Beckwith for his failure to comply with the rules. The trial court's decision to condition vacating the default judgment upon the payment of attorney's fees was entirely consistent with Washington law and is not a case involving any substantial public interest.

### III. CONCLUSION

For all of the foregoing reasons, Revels Petition for Review should be denied.

RESPECTFULLY SUBMITTED this 25 day of September, 2014.

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## CERTIFICATE OF SERVICE

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

That on Date of Mailing, I deposited in the mails of the United States of America, postage prepaid, an envelope containing a true and correct copy of Answer by Respondent to Petition for Review addressed to:

Michael J. Bond  
Schedler Bond, PLLC  
2448 76<sup>th</sup> Avenue SE, Suite 202  
Mercer Island, WA 98040

DATED this 26<sup>th</sup> day of September, 2014, at Seattle, Washington.



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Karen L. Baril

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Proof of mailing is attached to the Answer. Thank you.



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