

FILED  
SUPREME COURT  
STATE OF WASHINGTON  
8/25/2020 3:43 PM  
BY SUSAN L. CARLSON  
CLERK

No. 98809-9

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SUPREME COURT  
STATE OF WASHINGTON

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HARLAN DOUGLASS and MAXINE H. DOUGLASS,

Plaintiff/Respondent

v.

BRYAN J. REILLY

Defendant/Appellant/Petitioner

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MOTION FOR RULE 11 SANCTIONS

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Steven J. Hassing, WSBA No. 6690  
425 Calabria Court  
Roseville, CA 95747  
(916) 677-1776  
sjh@hassinglaw.com  
Attorney for Plaintiff/Respondent  
Harlan Douglass and Maxine H.  
Douglass

**1. IDENTITY OF MOVING PARTY**

The Moving Party is Respondent, Harlan Douglass.

**2. STATEMENT OF RELIEF REQUESTED**

Mr. Douglass seeks an order awarding sanctions against Petitioner, Bryan J. Reilly and his attorney of record, Chad Freebourn for a Rule 11 violation.

**3. FACTS RELEVANT TO MOTION**

Reilly's Petition for Discretionary Review contains fifteen separate false statements of fact known to Mr. Freebourn to be false. The false statements are shown below with reference to the page in the Petition on which the false statement is made. In asserting facts 2 – 8, 15 and 16, Reilly refers to a *violation of a motion* rather than violation of an *order*. Douglass has simply followed suit.

1. Page 3—Reilly falsely represented that the Trial Court ruled that Douglass could not inform the jury of the six pending felonies with which Reilly had been charged. (The evidence showing that the statement is false is found at RP 78; 18- 85; 25).

2. Page 4—Reilly falsely represented that Douglass' counsel intentionally violated the motion in limine when he asked Reilly's mother whether she was aware Reilly had been charged with six felonies. (Id).

3. Page 10—Reilly made false reference to Douglass’ counsel violating the motion in limine. (Id).

4. Page 10—Reilly falsely represented that Division III essentially condoned Douglass’ violation of the motion in limine. (See Bottom of Page 7–top of Page 8; Unpublished Opinion, June 23, 2020, Case No 36134-9-III) (See also at Middle of Page 11 Decision).

5. Page 11—Reilly again falsely represented that Division III essentially condoned Douglass’ violation of the motion in limine. (Id).

6, 7 & 8 Page 11—Reilly again made three false representations regarding a *violation of the motion in limine*. (RP 78; 18- 85; 25).

9 & 10. Page 15—Reilly twice again falsely represented to the Supreme Court that there was an intentional violation of a motion in limine. (Id).

11. Page 16—Reilly again refers to a violation of a motion in limine. (Id).

12. Page 17—Reilly falsely represent to the Supreme Court that there was an Order in limine preventing Douglass from mentioning that Reilly had been criminally charged and that Hassing violated that Order. (Id).

13. Page 18—Reilly falsely represented that Division III used excluded evidence (referring to a non-existent Order) to justify the trial court’s decision. (Id).

14. Page 19—Reilly argued that evidence of prior bad acts (referring to Reilly’s theft of gold, silver, money and jewelry) violated the trial court’s Order in limine. (Id).

15. Page 20—Reilly again refers to Division III improperly using inadmissible evidence that was excluded by the trial court’s Order in limine. (Id).

Reilly made the same false representations at pages 42-47 of his Opening Brief. In response, Douglass referenced those parts of the oral argument on the parties’ hearing on the motions in limine as well as the order itself to show that Reilly’s representations were false. Yet, even after having been advised there was no such order and having been provided with citations to the record establishing same, the same false representations have now once again been made in Reilly’s Petition for discretionary review.

#### **4. GROUNDS FOR RELIEF AND ARGUMENT**

Authority allowing this Court to grant the requested relief is found within Civil Rules 11(a)(1), 11(a)(3) and RAP 18.9(a). The signature of an attorney constitutes a certificate by the attorney that he or she has read the pleading, motion, or legal memorandum, and that to the best of the attorney's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances it is well grounded in fact.

**(Rule 11(a) (1)).** The attorney’s signature also constitutes a certification that the pleading, motion, or legal memorandum is not interposed for any

improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. **(Rule 11(a) (3))**.

On motion of a party the appellate court may order a party or counsel who files a frivolous appeal to pay terms or compensatory damages to any other party who has been harmed thereby and direct the entry of a judgment in accordance with the award. **(RAP 18.9(a))**.

When Douglass' filed his Response Brief on August 5, 2019 he attached, as Appendix "A", the trial court's April 16, 2018 Order on Motions in Limine filed May 3, 2018. He simultaneously filed a motion seeking to supplement the record to include the order. The order is attached as Exhibit 1 Hassing's declaration.

The argument on motions in limine relevant to this issue is found at RP 78 through 86. At RP 78; 18 Douglass' attorney began arguing Douglass' own motion in limine seeking to preclude Reilly's mention that he had not been charged with stealing the money from the Douglass' safe. Reilly opposed Douglass' motion because he wanted to offer evidence that Reilly had not been criminally charged with theft from the safe. To bolster his argument, Reilly's counsel conceded that Douglass probably gets to introduce evidence of the existing criminal charges against Reilly and used that concession as a basis to oppose Douglass' motion that Reilly

not mention that he had not been charged with theft of the larger amount of cash from the safe.

***I think they probably do get to introduce that evidence, but I don't think they get to exclude part because it doesn't help their case.*** (RP 80; 11-12).

The trial court granted Douglass' motion prohibiting Reilly from mentioning that he had not been charged with stealing the money from the safe. That ruling then caused Reilly to orally move to exclude reference to his being charged with six felonies for other thefts from the Douglass' home. The trial court, however, refused to grant Reilly' untimely oral motion stating instead if Douglass' attorney mentioned Reilly's felony charges and if Reilly then objected the trial court would ***probably*** sustain the objection. (RT 85; 7- 25).

Division III even references the statement of the Trial Court at pages 7 and 8 of its Decision. Accordingly, though Douglass' attorney's one question to Reilly's mother was improper it did not violate any order.

When this Court looks at the April 16, 2018 order (filed May 2) it will notice that the trial court ruled first on Plaintiffs' 21 motions. Plaintiffs' motion number 4 sought to preclude questions concerning prior criminal charges. It was granted. Plaintiff had not moved to preclude himself from mentioning Reilly's current felony charges in this case. The

motion was directed at criminal charges against Plaintiff and Third Party Defendant Tanner Haynes.

Plaintiffs' motion number 5 was to preclude Reilly from mentioning that he had not been charged with a crime involving theft from the safe. That motion was granted.

Defendant only made five motions none of which sought to preclude mention of Reilly's felony charges. Defendant made the motion orally and it was denied as shown by the transcript.

Douglass' attorney did not violate any pre-trial order. At page 11 of its Decision, Division III agreed that the question to Reilly's mother about the existence of criminal charges was **improper**. Division III did not agree that there was a violation of any order. Division III, in its Decision said the following:

**...the court granted Mr. Douglass' motion in limine to preclude evidence that Mr. Reilly had not been criminally charged with theft. In granting the motion, the court noted it would also "probably" sustain an objection to any testimony that Mr. Reilly had been charged criminally, should such evidence be elicited at trial. (citing RP (Apr. 6, 2018) at 85-86).**

(Div III Decision at p 7-8).

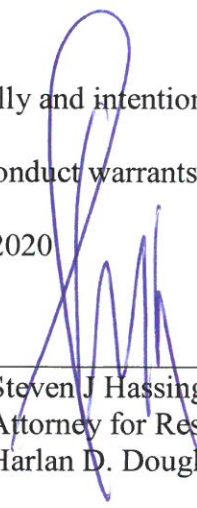
On August 3, 2020 Douglass' attorney, Steven J. Hassing, provided Mr. Freebourn with advance notice that if he did not correct the record to remove intentionally false statements from Reilly's Petition for

Discretionary Review that Mr. Douglass would seek rule 11 sanctions.  
(Exhibit "B" to Hassing Dec). As of the date hereof Hassing has received  
no response from Mr. Freebourn. (Id).

**5. CONCLUSION**

Reilly and his counsel wrongfully and intentionally attempted to  
mislead the Supreme Court and their conduct warrants sanctions.

Dated this 21<sup>th</sup> day of August, 2020



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Steven J Hassing, WSBA #6690  
Attorney for Respondent  
Harlan D. Douglass



**DECLARATION OF STEVEN J. HASSING**

I, Steven J. Hassing, declare;

1. I am licensed to practice before this Court, represent Respondent, Harlan Douglass herein and have personal knowledge of each fact stated.

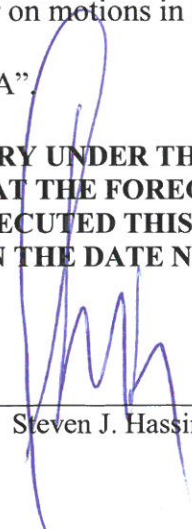
2. On August 3, 2020 Douglass' attorney I mailed and emailed Mr. Freebourn, Reilly's attorney, a letter providing advance notice that if he did not correct the record to remove intentionally false statements from Reilly's Petition for Discretionary Review that Mr. Douglass would seek rule 11 sanctions. A true and correct copy of the letter is attached as Exhibit "B".

As of the date hereof I have received no response from Mr. Freebourn

3. The trial court's April 16, 2018 order on motions in limine, filed May 3, 2018, is attached hereto as Exhibit "A".

**I SWEAR UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT AND THAT I EXECUTED THIS DECLARATION IN ROSEVILLE, CA ON THE DATE NOTED BELOW.**

DATED this 21 day of August, 2020

  
\_\_\_\_\_  
Steven J. Hassing

**CERTIFICATE OF SERVICE**

Case No: 98809-9

I, the undersigned, declare:

I am and at all times hereinafter mentioned was a citizen of the United States. I am over the age of eighteen years and not a party to the within action; my business address is 425 Calabria Court, Roseville, CA 95747. I am readily familiar with the business practice for collection and processing of correspondence for mailing with the United States Postal Service. On August 25, 2020, I served the foregoing described as:

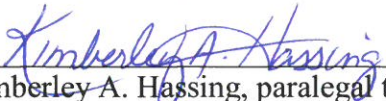
**1. Motion for Rule 11 Sanctions**

by the method indicated below, and addressed to the following:

Chad Freebourn	<input type="checkbox"/>	via US Mail
Roberts & Freebourn, PLLC	<input type="checkbox"/>	via Hand Delivery
1325 W. 1 <sup>st</sup> Ave., Ste. 303	<input checked="" type="checkbox"/>	via Electronic Mail
Spokane, WA 99201	<input type="checkbox"/>	via Facsimile
	<input type="checkbox"/>	Overnight delivery

I declare under penalty of perjury under the laws of the State of California and the State of Washington that the foregoing is true and correct.

Signed at Roseville, California this 25<sup>th</sup> day of August, 2020

  
 \_\_\_\_\_  
 Kimberley A. Hassing, paralegal to  
 Steven J. Hassing

# **EXHIBIT “A”**

**HASSING DECLARATION**

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HONORABLE JOHN O. COONEY

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FILED

MAY - 2 2018

Timothy W. Fitzgerald  
SPOKANE COUNTY CLERK

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

HARLAN D. DOUGLASS & MAXINE H.  
DOUGLASS, husband and wife

Plaintiffs,

vs.

BRYAN J. REILLY, an individual, and  
DOES 1-10

Defendants,

Case No.: 2016-02-00196-8

ORDER ON MOTIONS IN LIMINE

The parties argued Motions in Limine to the Court on April 6. Plaintiff presented twenty-one motions, Defendant presented five. After reviewing the moving and opposition papers filed and after listing to argument of Counsel, the Court issues the following Order;

Order on Motions in Limine

Plaintiff's Motions:

1. To Preclude Mention that Steven Hassing is a California Attorney

GRANTED

2. To Preclude Witnesses From the Courtroom Prior to Testifying

GRANTED

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3. To Preclude Mention of Unsubstantiated Allegations of Prior Fraud

GRANTED:

4. To Preclude Questions Concerning Prior Criminal Charges

GRANTED

5. To Preclude Mention That Reilly Has Not Been Criminally Charged With Theft From Plaintiff's Safe

GRANTED

6. To Preclude Objections to Leading Questions Asked of an Expert

GRANTED IN PART

Expert witness may be asked a few leading questions on matters of background and to develop the witness' testimony but if the attorney begins to effectively testify to material facts in place of the expert by means of leading questions, objection is appropriate and warranted.

7. To Preclude Objection to Questions Asked of an Expert as Relying on Hearsay or Because Information on Which the Expert Relied is Not in Evidence

GRANTED

8. To View The Site Where The Bag of Money Was Found if There is Adequate Time Between the Final Witness and Closing Arguments

RESERVED

9. To Preclude Any Mention to the Jury of Video Surveillance Evidence During Opening Statement as it Likely Will Not be Admitted

Denied

10. To Preclude Mention of Ex Parte Temporary Anti-Harassment Order Obtained by Defendant Against Tanner Haynes in mid-2016

GRANTED

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2 11. For Order Determining That Equitable Claims are to be Decided by the Court,  
3 Not the Jury

4 **GRANTED**

5 The Jury shall decide Plaintiff's Conversion Claims and Defendant's Malicious  
6 Prosecution claim. All other claims shall be decided by the Court in the same proceeding.  
7 Since the jury will not be deciding any claim brought against the Third Party Defendants  
8 or Tanner Haynes, the fact that these individuals are defendants shall not be mentioned in  
9 the presence of the Jury. However, Defendant shall be able to question Third Party  
10 Defendants and Mr. Haynes pursuant to ER 611(c) without request.  
11

12  
13 12. That the Court Inform the Jury During Opening Instructions That One Month After  
14 This Case Was Filed Plaintiff Subpoenaed the Cell Phone Defendant Was Using on  
15 the Day That Plaintiff Alleges His Safe Was Burglarized. That Four Months Later,  
16 Instead of Turning it Over For Forensic Analysis Defendant Replaced That Phone  
17 With a New One, Thereby Denying Plaintiff's Forensic Analyst Access to the  
18 Phone.

19 **DENIED without prejudice to revisit when end of trial jury instructions are issued**

20 13. Seeking Order Prohibiting Defense Counsel From Objecting During Opening  
21 Statement or Trial Questioning When Plaintiff's Counsel Refers to the Conversion  
22 of Plaintiff's Money and Other Property as Having Been Stolen or the Result of  
23 Theft

24 **GRANTED**

25 14. To Preclude Testimony by or on Behalf of Defendant Regarding Money Received  
26 By Him in 2013-2015 Not Previously Disclosed in Discovery

27 **GRANTED IN PART**

28 Prior to offering evidence of money received by Defendant in 2013-2015 not  
previously disclosed during discovery, the matter will be discussed between counsel and  
the Court out of the presence of the jury.

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15. To Preclude Testimony by or on Behalf of Defendant Regarding Sale of Personal Property During the Years 2013-2015 Not Previously Disclosed in Discovery.

**GRANTED IN PART**

Prior to offering evidence of sale of personal property by Defendant in 2013-2015 not previously disclosed during discovery, the matter will be discussed between counsel and the Court out of the presence of the jury.

16. For Order Requiring Bryan Reilly Execute IRS Form 4506-T authorizing the IRS To Provide Full and Complete Copies of Tax Returns Filed by Defendant in 2016 and 2017 or, in the Alternative, Abstracts of Same and That he Execute the Form During Open Court on April 6, 2018 and Provide Same to Plaintiff's Counsel for Mailing to the I.R.S.

**DENIED WITHOUT PREJUDICE TO FILE MOTION TO COMPEL**

17. For Order Permitting Don Vilfer to View and Report Meta Data From Five Photos Believed to Have Been Taken by Defendant's Cell Phone And Which Defendant Intends to Offer Into Evidence at Trial

**GRANTED**

18. To Preclude Mention That Harley Douglass, Lisa Bonnett-Douglass, Hayden Douglass or Tanner Haynes was the Real Thief Unless or Until Defendant Can Introduce Evidence That Would Realistically Support Such Claim.

**GRANTED**

19. To Preclude Mention That Representation of Plaintiffs, Third Party Defendants and Tanner Haynes by Steven J Hassing Constitutes a Conflict of Interest or is Otherwise Wrongful

**GRANTED**

20. To Preclude Mention to the Jury During Opening Statement that Lisa Bonnett-Douglass' Fingerprints Were Found on the Plastic Bag Which Contained the Buried Money

**GRANTED**

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21. For Order Allowing Plaintiff to Dismiss his Negligence Claim Against Defendant

**GRANTED**; Plaintiff's Negligence Claim is dismissed.

**Defendant's Motions;**

1. To preclude mention in the presence of the jury of motions in limine.

**GRANTED**

2. To require Plaintiff to Abide by Judge Tompkins' Order on Mr. Reilly's First Motion For Summary Judgment.

**DENIED AS WORDED AND ARGUED**

3. To exclude witnesses pursuant to ER 615.

**GRANTED**

4. To elicit testimony of prior felony convictions of Tanner Haynes.

**DENIED**

5. To exclude evidence under ER 404(b).

**GRANTED as to normal character evidence.**

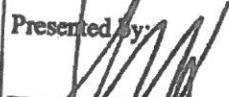
**DENIED as intended to preclude evidence of Defendant' theft of Plaintiff's personal property to prove up those claims.**

DATED this 16<sup>th</sup> day of April, 2018

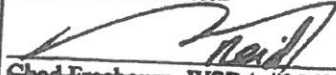


Honorable John O. Cooney  
Superior Court Judge

Presented by:

  
Steven J. Hassing, WSBA #6690  
Attorney for Plaintiff

Approved as to Form

  
Chad Freebourn, WSBA #35624  
Attorney for Defendant  
REIO, WSBA # 34166



# **EXHIBIT “B”**

**HASSING DECLARATION**

**LAW OFFICES**  
**OF**  
**STEVEN J. HASSING**

ALSO LICENSED AND PRACTICING IN  
WASHINGTON  
ARIZONA

425 CALABRIA COURT  
ROSEVILLE, CALIFORNIA 95747  
TELEPHONE: (916) 677-1776  
FACSIMILE: (916) 677-1770  
E-MAIL: sjh@hassinglaw.com

August 3, 2020

Chad Freebourn  
Roberts Freebourn  
1325 W. 1<sup>st</sup> Avenue, Suite 303  
Spokane, WA 99201

**RE: NOTICE OF RULE 11 VIOLATIONS AND  
INTENT TO SEEK RELIEF**

Dear Mr. Freebourn,

I've reviewed the Petition for Review by the Washington State Supreme Court and hereby advise you of the following intentional misrepresentations which subject you, your firm and your client to sanctions.

1	Page 3	You falsely represented that the Trial Court ruled that Respondents could not inform the jury of the six pending felonies with which Reilly had been charged
2	Page 4	You falsely represented that I intentionally violated the [Order] motion in limine when I asked Reilly's mother whether she was aware Reilly had been charged with six felonies
3	Page 10	You made false reference to me directly violating of the [Order] motion in limine preventing mention that Reilly [had been] criminally charged
4	Page 10	You also falsely represented that Division III agreed there was a violation of the [Order] motion in limine
5	Page 11	You represented that Division III essentially condoned Respondents' violation of the [Order] motion in limine.
6	Page 13	You again made three false representations regarding a <i>violation of the motion in limine</i> .
7	Page 15	You twice again falsely represent to the Supreme Court that there was an intentional violation of a [Order] motion in limine
8	Page 16	You again refer to a violation of a [Order] motion in limine.
9	Page 17	You falsely represent to the Supreme Court that there was an Order in limine preventing Respondents from mentioning that Reilly had been criminally charged and that Respondent violated that Order.

10	Page 18	You falsely represent that Division III used excluded evidence (referring to a non-existent Order) to justify the trial court's decision.
11	Page 19	You argue that evidence of prior bad acts (referring to Reilly's theft of gold, silver, money and jewelry) violated the trial court's Order in limine.
12	Page 20	You again refer to Division III improperly using inadmissible evidence that was excluded by the trial court's Order in limine.

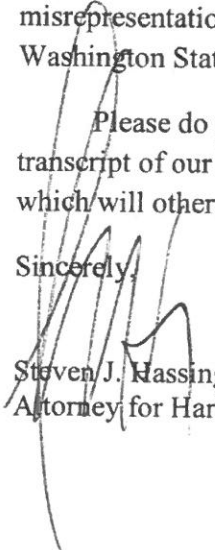
As you know the trial court **DID NOT** grant a motion in limine preventing mention of Reilly having been charged with six felonies. There was no such Order. One of the reasons given by Judge Cooney for not issuing such Order was your failure to even submit a motion seeking one. As Judge Cooney instructed, the rules required submission of a written motion seeking all in limine orders. You didn't bother to file any motion seeking the order to which you so often refer in your appeal briefs. When you tried, belatedly, to offer an oral motion on the day of the hearing, Judge Cooney refused to allow your disregard of court rules. He specifically advised that if there was mention of the six felony charges and **if** you objected, he would **likely** sustain the objection.

You obviously know all of this, not only because you were there, but because after you misrepresented the same facts to Division III I quoted, in my Response, page and line of the argument from the hearing which established that Judge Cooney clearly stated that he would not issue an order preventing mention the six felony charges.

I was shocked when you made those misrepresentations to Division III. I'm frankly baffled that you would make the same representations to the Washington State Supreme Court after reading my response to your original misrepresentations. Though I will take no pleasure in having to do so, I feel that if each of the false statements have not been formally corrected by you prior to the time I file Mr. Douglass' response, I will have no choice but to call your serious and intentional misrepresentations of material fact to the attention of both the Supreme Court and the Washington State Bar Association.

Please do yourself and your law firm a favor and review my responsive brief and the transcript of our hearing on the motions in limine before I have to take the distasteful actions which will otherwise be required of me.

Sincerely,

  
Steven J. Hassing  
Attorney for Harlan Douglass

**LAW OFFICE OF STEVEN J HASSING**

**August 25, 2020 - 3:43 PM**

**Transmittal Information**

**Filed with Court:** Supreme Court  
**Appellate Court Case Number:** 98809-9  
**Appellate Court Case Title:** Harlan D. Douglass, et ux. v. Bryan J. Reilly  
**Superior Court Case Number:** 16-2-00196-8

**The following documents have been uploaded:**

- 988099\_Motion\_20200825154159SC008611\_8981.pdf  
This File Contains:  
Motion 1 - Sanctions  
*The Original File Name was Douglass v Reilly Motion for Rule 11 Sanctions with page numbers.pdf*

**A copy of the uploaded files will be sent to:**

- chad@robertsfreebourn.com
- derek@robertsfreebourn.com
- kevin@robertsfreebourn.com
- victoria@robertsfreebourn.com

**Comments:**

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Sender Name: Kimberley Hassing - Email: kah@hassinglaw.com

**Filing on Behalf of:** Steven John Hassing - Email: sjh@hassinglaw.com (Alternate Email: kah@hassinglaw.com)

Address:  
425 Calabria Court  
Roseville, CA, 95747  
Phone: (916) 677-1776

**Note: The Filing Id is 20200825154159SC008611**