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64832-2

Case No. 64832-2-I

COURT OF APPEALS, DIVISION 1

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Whatcom Superior Case No.09 2 02664 1

Quiet Title Action

(on appeal as a result of interlocutory orders for sanctions)

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LUBA PEKISHEVA,

Appellant,

vs.

LYNN J. MOSER,

Respondent

CHRISTIAN LEE HATCH,

Defendant

---

BRIEF of APPELLANT

appearing pro se

*6131 Linden Ct*

*Maple Falls, WA, 98266*

*(360)599-9512*

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Bryant v. Joseph Tree, Inc., 119 Wn.2d 210, 829 P.2d 1099 (1992), *cited 41*

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State v. S.H. 102 Wn. App. 468, 8 P.3d 1058 (Div. 1, 2000) *cited 29*

T.S. v. Boy Scouts of Am. 157 Wn. 2d. 416 (2006) quoting State ex rel. Clark v. Hogan , 49 Wn.2d 457 , 462, 303 P.2d 290 (1956). *cited 36*

United Pac. Ins. Co. v. Discount Co., 15 Wash. App. 559, 550 P.2d 699 (Div. 2 1976) *cited 8, 10, 11, 12, 37, 45, 46*

### *WA Constitutional provisions:*

Article 1, section 3. DUE PROCESS. No person shall be deprived of... property without due process of law

*cited 21, 23, 25, 49*

Article 1, SECTION 5. FREEDOM OF SPEECH. Every person may freely speak, write and publish on all subjects, being responsible for the abuse of that right. *cited*

### *Statutes:*

Oath of office: RCW 2.08.080 *cited 31*

Judicial powers: RCW 2.28.060 *cited 31*

Harmless error disregarded: RCW 4.36.240 *cited*

*Court rules:*

CR 11 *cited* 23, 37, 38, 39, 41

CR 12 *cited* 8, 10, 11, 41, 44, 46, 49

CR 54 *cited* 29

CR 59 *cited* 10, 19, 21, 22, 27, 41

*Other authorities:*

Code of Judicial Conduct *cited* 19, 20, 39

Black's Law Dictionary, Abridged, 8 Edition *cited* 40, 41, 45

15A WAPRAC (Handbook of Civil Procedure); Article 8.6 *cited* 45

### **Assignments of error**

1. Trial court erred in entering the order denying Plaintiff's motion for reconsideration and awarding terms, signed back-dated to 1/15/10.
2. Trial court erred in entering the order and judgment denying Plaintiff's motion for reconsideration and upholding terms [of \$750] awarded on 1/15/10 and awarding additional terms [of 1600] for violation of CR 11, signed on 2/19/10 and amended on 5/14/10.
3. Trial court erroneously justified its 2/19 order by concluding that the Plaintiff's motion was essentially frivolous, groundless, and was brought in bad faith, for which an award of terms is reasonable in its amended order of 5/14/10.
4. Trial court erred in entering the order denying Plaintiff's motion to vacate, denying motion for default and awarding terms, signed on 5/14/10.
5. These actions of the trial court encouraged baseless pleadings and litigation abuses, contrary to the intent behind sanctions under both CR 11 and the inherent power of the court to deter bad faith litigation conduct.

### **Issues pertaining to assignments of error**

1. Did trial court abuse its discretion and act in violation of due process and freedom of speech by refusing to examine whether dismissal was

granted in error and awarding terms of 750 to Ms. Moser for my having moved for reconsideration? Trial court dismissed my action against Defendant Moser for insufficiency of service despite uncontested evidence Ms. Moser was obviously evading service and the documents would have been handed to her if not for her rolling up her window and quickly driving away when the packet of papers was extended to her. Ms. Moser's motion to dismiss was filed a day after her Answer and after signing pleadings and making appearances to argue the case on its merits. Her Answer didn't include any defenses. I brought up a precedent on what constitutes delivery on evasive defendants as well as failure to comply with CR 12(b). Trial court responded to the precedent with one of its own decisions and suggestions on serving evasive defendants by mail or publication. When I correctly quoted CR 12(b), trial court said, "Read (b). You're not reading (b)". In reconsideration, I presented the content of the dismissal hearing by sworn transcription to make the deadline. Opposing counsel asked for terms in his Response, not citing any legal authority entitling him to terms. The accuracy of the transcription was never disputed. Trial court refused to consider the affidavit because it wasn't an official transcript; has read, but refused to consider my untimely Reply; required new legal authority and concluded my motion was not based in law or fact and didn't have a good faith basis. (error 1)

2. Did trial court (after Judge Mura recused himself) abuse its discretion by ignoring the legal and factual arguments of my motion, awarding additional terms, combining both awards into a judgment and prohibiting me from filing further pleadings re: Def. Moser until terms are paid in full, at the request of Ms. Moser's counsel? Judge Snyder considered all submissions, but awarded more terms, responding to my motion not falling under the classifications of CR 59(j), by saying I only get one crack at reconsideration under WA case-law. I could find no case-law supporting this contention. Judge Snyder explained that Judge Mura has advised me to seek relief in the COA, I already had my chance at reconsideration, and he couldn't reconsider something another judge has heard. Has trial court violated my rights to due process and freedom of speech by sanctioning me for seeking due process and prohibiting further pleadings regarding an indispensable party, until I, whom trial court has found indigent earlier that day, can pay \$2350, in effect, staying the action to determine who has superior title to the subject property? (error 2)

3. Has trial court abused its discretion in justifying its 2/19 order and judgment by entering findings that my motion was frivolous, groundless and brought in bad faith? Despite my request for all findings required by CR 11 and case-law, trial court couldn't make a finding that I failed to conduct reasonable inquiry or that I had an improper purpose. (error 3)

4. Has trial court abused its discretion in denying my motion to vacate the 2/19 judgment for lack of findings when the law demanded opposing counsel procure all required findings or abide by the consequences? Has trial court abused its discretion in sanctioning me for seeking clarity on the issue of findings to prevent remand and another round in the COA? Has trial court abused its discretion in denying my motion for default for being timely served, but filed a day late, and awarding terms of \$2277 for the 2 motions based on the prohibition of further pleadings? (error 4)

5. Have the actions of both trial court judges shown they have treated a pro se litigant by a harsher standard, looking the other way while her opposing counsel violates legal requirements and sanctioning her for bringing issues grounded in law and fact or making harmless errors? Have the actions of the trial court damaged the integrity of the court by rewarding and encouraging litigation abuses and fee shifting? (error 5)

#### **Statement of the case**

10/8/09 was chosen to be the day to get Ms. Moser and Mr. Hatch served with my lawsuit as I watched. Ms. Moser was spotted near her residence and pointed out to the server, Ms. Stevens, who then walked towards her with the packet of documents. Ms. Moser got in her truck and started to drive out into the cul-de-sac. The server approached her truck, held out the

packet, and seeing that Ms. Moser was rolling up her window as fast as she could, tried to get the packet thru to her. Ms. Moser rolled up her window before that could be done, accelerating at the same time and passing the server, who then threw the packet at her truck. It missed the bed of the pick-up and landed in the street. I yelled, "You've been served". Ms. Moser sped away. After a discussion with me\*(\**detail CP, p.161*), the server picked up the packet and placed it at the foot of Ms. Moser's driveway. The server happened to return via the same route taken by Ms. Moser and Mr. Hatch and saw them animatedly talking to deputies at the Kendall police station. Then, Ms. Stevens followed them back to Silver Spruce. Recognizing Ms. Stevens, Ms. Moser started maneuvering her truck to block her. Ms. Stevens repositioned her car and approached Ms. Moser again. Ms. Moser began rolling up her window and the server told her, "You've been served. It's in your driveway." *All statements, CP, 90* Ms. Moser pulled up her truck and blocked Ms. Stevens from leaving the cul-de-sac. Ms. Stevens managed to get away unharmed. *All, CP, 91* Ms. Moser appeared at hearings pro se, with co-defendant Hatch, beginning with an 8:30am ex-parte the next day after service, and signed responses, affidavits and interrogatories, opposing the case on its merits. *CP, 123* On Oct. 25th, she handed me documents in the same envelope she was served with. Ms. Moser has never to this day provided a sworn statement or

testimony of her version of the facts around service. *All, CP, 123 and 150*. I moved for default and on 11/9/09, Ms. Moser signed and filed an Answer, which included no defenses. *CP, 154* On 11/10/09, Ms. Moser signed and filed the Motion for Dismissal of Plaintiff's Complaint, raising insufficiency of service and including arguments apparently to failure to state a claim. *CP, 151-153* In my Response to her motion, I inferred that Ms. Moser's silence on the service revealed she herself didn't believe service was improper and was uncomfortable perjuring herself outright. My Response was supported by 3 detailed affidavits from 3 people who witnessed the service. *CP, 122* They were never disputed. *CP, 123* Ms. Moser's motion for dismissal referred to attached affidavit of Chris Hatch, which said that an identified lady threw a stack of what appeared to be papers into the roadway toward Lynn Moser.\* (*\*detail CP, p. 161*) My repeated statements that Mr. Hatch was writing her pleadings, including the motion to dismiss, for her, were never denied. *All, CP, 91*. I mention CR 11 violations on Ms. Moser's part and say her motion to dismiss needs to be heard with a cross-motion for CR 11 sanctions. I already had the research on CR 11 motions done. *All, CP, 121* Superior Court Judge Steven Mura said he will only hear the issue of insufficiency of service\* (*\*detail, CP, 162*) and continued the hearing to 12/4/09, next available Friday. On

11/26, Thanksgiving morning, Defendant Hatch came onto the disputed property just behind my deeded property with his 3-foot bar\*(\**detail, CP, 156*) chain-saw and climbing gear. To prevent irreparable harm from clear-cutting, I took away his saw when he put it down and came towards me. Mr. Hatch called the police saying I stole his saw and hit him with a shovel. I was arrested and taken to jail. *All, but details, CP, 122, 123.* I have consistently maintained the saw was confiscated in defense of property and that I didn't hit him. *CP, 156, 123.* Before the police arrived, Hatch's friend, Mr. Banel, came to serve me AH papers for Ms. Moser.\*  
<sup>157</sup>*CP,* The next morning, in a phone hearing with only the State represented, Judge Mura found PC for one offense (never specifically saying which one) and went along with the prosecutor's suggestion to set my bail at \$5,000, though I had no record or FTA's. Her justification was that I was personally familiar to her from representing myself. <sup>155; 162-163</sup>*\*All, CP, 156-157* On 11/28, Ms. Moser and Mr. Hatch came into my back yard. Hatch started up his chain-saw near the big tree on my deeded property. I have just come out of jail the previous day and couldn't face the danger of going right back for trying to protect my property this time, especially since I had to defend against a motion to dismiss. After the tree fell, I got near enough to get a good view of Hatch cutting up my tree into rounds as Ms. Moser kept her own camera on me. I felt safe enough to film from a

distance - she couldn't accuse me of something not shown in her footage.

*CP, 156* That was the first and as far as I could tell, only tree cut down Thanksgiving weekend once the saw was returned to Hatch. There was no time to draft a CR 11 motion. *All, CP, 123* At the 12/4 hearing for dismissal, Ms. Moser's counsel, Mr. Banel says that driving by a car and throwing paperwork at defendants doesn't constitute proper service. I cite United Pacific Ins. v. Discount Co. and say documents would've been handed over if not for obvious avoidance. Judge Mura responds, "I can give you a case, it's not identical" and shares one of his earlier trial decisions on service on a non- evasive deputy auditor. He characterizes the 10/8/09 event as tossing it [Complaint] at a person driving down the street, and it lands in the street, because they're driving away, "It's not personal service." He offers suggestions on getting evasive defendants served by mail or publication (*All, CP, 113-115; 87-89*) and dismisses the action against Def. Moser w/o prejudice for insufficiency of service of process. When I quote CR 12(b), Judge Mura responds, "Read (b). You're not reading (b). I know. I'm very familiar with what CR 12(b) says." *CP, 116*

Ms. Moser gets re-served by having documents placed on her lap before a lengthy hearing on 12/9, where her petition for an AH order against me is denied despite Mr. Banel's aggressive advocacy. The denial precludes Moser from recovering his fees from me. *CP, 118, 157*. The order of

dismissal is entered on 12/18/09. I re-file the action against Ms. Moser as soon as I walk out of the courtroom, joining her to the other 2 defendants under the same case # as an indispensable party, who held paper title to the subject property. *All, CP, 57-58* On 12/17/09, I file an Intent to Seek Reconsideration, explaining I seek reconsideration of the dismissal to be able to seek reconsideration of the verbal denial of the TRO [that would've restrained the clear-cutting] and address Ms. Moser's misconduct prior to 12/4, as well as to make use of the controversy being narrowed down to very few factual allegations by the volume of materials Judge Mura already considered. I conclude that allowing a fair chance to resolve the misunderstandings is more just and efficient than having to start over. *All, CP, 118-119* On the morning of 12/18, for the first time, the State requests an NCO against me for both Hatch and Moser, which is granted without inquiry and despite the fact that it is they who come to my backyard to clear-cut. Before 9:00 am next morning, Hatch commands the biggest clear-cutting operation on the disputed property to date. The clear-cut now includes the entire disputed property, as well as edges of my and my neighbors' deeded properties and damages my neighbors' fences and guesthouse roof. I cannot even approach to document the damage for fear of immediate arrest, with which I am threatened on the face of the NCO. *All, CP, 158-159* On 12/28/09, I file a motion for reconsideration,

supported by a sworn transcription of the 12/4 hearing as recorded by me in plain view of the participants. I don't see how the official transcript can be prepared in time. *CP, 111, 45-47, 89* The accuracy of the transcription has never been disputed. *CP, 100-101, 88* The motion for reconsideration cites irregularity, error in law/ contrary to law, under CR 59. It contains these points: 1. the personal service statute doesn't require physical contact between documents and the defendant; 2. Judge Mura countered and negated a valid precedent with one of his own decisions, essentially defending Ms. Moser against an argument that the author of her motion and reply, or her attorney, failed to defend against; 3. evidence was considered in light most favorable to Ms. Moser, where impartiality was required; 4. defense of insufficiency of service has to be made before the Answer (CR 12(b)). Ms. Moser signed the motion to dismiss a day after an Answer that was already about 10 days late, after opposing the case on its merits. *All, CP, 108-110*. Mr. Banel responds to United Pac for the first time on 1/6, where he says trial court properly found and agreed:

“attempting service as someone is driving by in their car is insufficient and not the same as a defendant that opens the door of his homes and refuses to except service. Thus, Plaintiff's argument that United Pac controls here is without merit...” *CP, 102*

He doesn't cite any case-law in support of his position, nor does he cite any case-law or address one already cited since, as of now. *CP, 99-106, the rest of CP and all of RP*. Mr. Banel goes on to say,"

Beginning with her attack on the trier of fact...she makes an accusation of irregularity... without providing any salient facts or argument or citing any law."

He states that my CR 12 argument "cites events unconnected to the 12/4 hearing and should be disregarded"

He protests my filing "additional Summons and Complaints subsequent to the dismissal", objecting to my motion for reconsideration as it is "clearly an attempt by the Plaintiff to have a matter that was already decided reheard". He ends with a request for \$1600 for defending against "this worthless and meaningless exercise". *All, CP, 106*

I file a reply on 1/15/10, the morning of the hearing, slipping a judge's copy under Christy Martin's [Judge Mura's assistant's] door with the Reply Contents page paper-clipped to the top, as Ms. Martin's door has a sign that says documents may be slid under the door. The judge's copy also included a print out of the United Pac decision. Friday civil hearings begin at 1:30. Earlier, Judge Mura said he studied for the civil motions on Thursday evenings and Friday mornings. He has always read my submissions, even if they were untimely *All, CP, 124, last, 66*. Recognizing Judge Mura would not enjoy my pointing out his mistakes, as well as what his having made those mistakes revealed in the first place, made my job

difficult. *CP, 85-86,124*. I couldn't find the right words for what had to be expressed and get the Reply printed out by the due date under local rule WCCR 77.2(d). *CP, 124* Banel was e-mailed the final draft at 9:05am on 1/15 and the draft w/ all legal arguments and authorities on 1/13 at 4:26 pm. *CP, 124* He was out of town and would be appearing telephonically. *\*CP,160* My Reply refreshes Judge Mura's memory on the undisputed facts around service he found insufficient (*CP, 90-91*) and makes the following main points: my sworn transcription is not made in violation of the privacy act, neither does anyone dispute its accuracy (*All, CP, 87-89, 74*); detailed analysis of United Pac v. Discount shows all relevant elements are present in the Moser case, proving substantial, and therefore, sufficient compliance with the statute. *CP, 91-93* The Reply ends with addressing Judge Mura's psychological reluctance to re-examine his decision, explains why I concluded he was not being impartial, reminds Judge Mura that judges putting the rule of law ahead of their egos is what makes the rule of law possible and ends with some words of wisdom and reconciliation:

I've made enough mistakes and have corrected enough of them to realize that it's leaving your mistakes uncorrected that diminishes your dignity. Undoing them reinforces and expands it. I suspect that Your Honor... has it in him to leave the prejudice to people with small and fearful minds.  
*All, CP, 94-98*

On 1/15, Judge Mura begins by saying he reviewed all the materials we've all submitted and will not take argument. *RP, 3* He says he cannot and will not consider my sworn transcription of the dismissal hearing because it is not an official transcript. He verbally orders it stricken from the record and says, "That takes care of that one issue". He then states:

Reconsideration is granted only if the court made an error of law. And there is no new legal authority being submitted by you, and the motion for reconsideration is not grounded in law or fact. And the motion for reconsideration is denied... And the court is, because there is not a good faith basis for the motion for reconsideration, is going to award Mr. Banel \$750 in attorney's fees in opposing the motion. *All, RP, 9-10*

As Judge Mura makes considerable revisions to Mr. Banel's proposed order, Mr. Banel calls his attention to the last sentence of the order which says Plaintiff is prohibited from filing anymore pleadings in this action until said terms are paid in full to Def. Moser. I object. *RP, 10-11*. Judge Mura replies that my only option at this point is to file an appeal, so there will be no further pleadings filed, this motion ends the litigation in this court unless or until a higher court sends it back. I bring up the joinder and the re-service. Mr. Banel explains:

That was just based on the Plaintiff's previous conduct in this case where she continually filed new summons and complaints even after orders for dismissal are entered in this court, in the same action here. So I just wanted to make sure she doesn't file something else that I have to respond to like I did.

Judge Mura resolves the issue by saying Banel will be entitled to terms if I file something I'm not entitled to file and striking the prohibition. *All, RP, 11-12* Lastly he says that he cannot consider my 1/15 Reply, saying, "I want the record to reflect I didn't consider anything that was slipped under a door because it wasn't timely and I didn't have time to review it." I ask him how Ms. Moser's not bringing up an affirmative defense before her Answer make my motion not have any grounds in law. I explain that CR 12 requires the defense of insufficiency of service to be brought in or before the Answer, which Ms. Moser had not done. Judge Mura interrupts to say she raised it by motion and she's entitled to do that. I reply that she raised it afterward. Judge Mura settles this issue by saying:

If you think I made an error of law you can go to the Court of Appeals. But I am satisfied with the legality of my rulings. So the motion for reconsideration is denied. *All, RP, 12-13; CP, 124*

Judge Mura's demeanor is consistent with his words, (*CP, 124-125, 66-67*) and I conclude his mind is closed to anything I have to say and that he ordered the sanction for no other reason but anger. *CP, 124-125, 71, 67, 135* A couple minutes after Judge Mura was done with my motion, I rang the buzzer on Christy Martin's door. Not realizing I now had 30 more days, I need to attach the order for sanctions to the notice of appeal. Ms. Martin opened up immediately. I asked her for the copies of the orders.

She got the orders and told me she has to walk upstairs to copy the originals - neither her nor Judge Mura's office has a copy machine. We walk to the clerk's office and Ms. Martin promptly makes copies of exactly what Judge Mura had in his hands a few minutes ago and hands them to me, before the clerk gets them for scanning and entry. I take them without looking at all the pages. *All, 125, 68*. Over the MLK Day weekend, I see that Judge Mura signed Mr. Hatch's discovery order (*CP, 127-128*), but did not sign the order denying reconsideration. Like the signed order, the unsigned order is stamped on 1/15 by the clerk in open court, but not initialed by the clerk that scans the documents into the record. (*All, CP, 129-130 and 125, 73*). On Tuesday, 1/19, towards the end of the business day, I file a Notice of Appeal and slip it under Ms. Martin's door along with a note (*CP, 142, 74*) that went as follows:

Judge Mura had left the order for sanctions unsigned. I don't know what that means and don't want to wander. *All, CP, 73*. The Court of Appeals needs signed orders. Judge Mura will not have a problem signing it if he really is satisfied with the legality of his ruling. If he didn't sign the order because he knows my motion wasn't in bad faith, we need to work out an order that reflects what he really believes. *All, CP, 141-142* If Judge Mura wants this case gone, he can either recuse himself voluntarily or I can move for an order of prejudice. *All, CP, 155*.

Next morning, I happen to see Lynn Moser in line at ex-parte. I figured she wanted to obtain a judgment order without notice to me and appeared to oppose her. When Ms. Moser's turn came, she briskly approached the

bench and held out some documents to the commissioner without saying a word. I had no way of knowing what those documents said. Ms. Moser's attorney was still on vacation. The commissioner tried to figure out what Ms. Moser wanted and I showed her the unsigned order I got from Christy Martin. The commissioner looked up our file and the order wasn't of record. She told Ms. Moser to take it before Judge Mura. *All, CP, 148-149.* I then looked up our file on the Clerk's Office computer. The order for discovery signed on 1/15 was of record; the order for sanctions was not. *All, CP, 142; RP, Vol. II, 14.* Next ex-parte on Fri, 1/22, I returned with a motion for an order of indigency for the costs of the appeal (*CP, 136, 142*) which gives a concise overview of Judge Mura's mistakes to show review is sought in good faith (*CP, 133-135*) and explains:

I have to eject Def. Hatch and Moser out of my backyard; they... show up whenever they please, especially on weekends and holidays, clear-cut, steal my trees, lie to the police and not let me have any peace at home. Mentioning that the order awarding terms remains unsigned as far as I can tell, I also say that Judge Mura hasn't told me my arguments were wrong or why he found [the substance] of my motion in bad faith; I haven't committed misconduct or been disrespectful to him. *CP, 135* I end by saying this expense results from a failure of justice, implying Mura "keeps putting unnecessary obstacles in honest people's way." *All, CP, 136*

Bringing this motion to another commissioner on 1/22, I pointed out that Judge Mura ordered something against me he then wouldn't sign. *CP, 142* After deliberating and taking care of other matters, the commissioner told me to bring it before the issuing judge, Judge Mura. I went right to the clerk's office and asked the clerk to see if Judge Mura ever signed that order, showing her the unsigned copy I got from Christy on 1/15. She looked up the file and said the order was not available to her. *All, CP, 136; RP Vol. II, 14* I have the motion put into Judge Mura's box, expecting him to deny it. *CP, 136* Returning home the evening of 1/22, I found the signed copy in my mailbox and started thinking about reconsideration (*CP, 142 and 143; 136*) though all I could expect from Judge Mura is more fines, regardless of the strength of the argument, in exchange for a chance at completing the record. *CP, 142, 136, 4-5* The signed order had a sticky note signed by Christy Martin attached to the front page. *CP, 73 and 84*

The note said: Judge Mura's failure to sign was merely an oversight, as was mine when I had those in my hands on Friday. *CP, 84*

I found it more likely Judge Mura didn't sign the order at first because his conscience didn't let him. *CP, 74; 142; 125* The envelope was post-marked on 1/21. *CP, 142* On Monday 1/25, the order for sanctions showed up as of record. *CP, 136; RP Vol. II, 14*. Ms. Martin notified me that Judge Mura

had reassigned the case to Judge Snyder in a letter dated and filed 1/25.

With that, she included another letter, signed and dated the same day, saying the motion for indigency was being returned unsigned and unfiled

(*All, CP, 136*) telling me:

...the language in your motion needs to be limited as to why you are entitled to be found indigent, rather than the substance of your appeal.  
*All, CP, 136 and 9*

I re-read RAP 15.2, and wrote her back on 1/29, recognizing she's acting as a spokeswoman for Judge Mura. *All, CP, 137* I explained that my purpose wasn't to embarrass or further aggravate Judge Mura, but to comply with the requirements of the rule<sup>1</sup>. I went on:

...I hope more understanding and not just another round of hurt feelings was the by-product of that [motion]... Do you know when Judge Mura signed the sanctions order? Though he back-dated it, he couldn't have signed it earlier than Tues, because he didn't sign it on Fri. I think we all know the sanctions were uncalled for. It doesn't seem fair or judicially efficient to burden Judge Snyder with reconsideration of something he didn't decide. As much as I doubt Judge Mura wants to see me in his courtroom, there is one more issue to try to resolve. I have some ideas as to why Judge Mura recused himself, but I too can be wrong. Can you ask him?... *All, CP, 9-10; 68 (Note delivered by the under the door method on the morning of 1/29) CP, 155*

Ms. Martin promptly left me a message that she couldn't answer any of those questions and that everything needed to come before Judge Snyder from now on. *CP, p. 69* Ms. Moser did submit her ex-parte judgment to

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<sup>1</sup> See App, p. 4-5 for important correspondence between Ms. Martin and I

Judge Mura and was instructed to note it up and follow court rules. *CP, 12*

On 1/29, I also wrote the COA, requesting an extension to pay the filing fee, and explaining that I now have the remedy of reconsideration before Judge Snyder and that might eliminate the need for review. I promised to notify the COA if the issue gets resolved in trial court. *All, CP, 137* On 2/3/10 I file a motion for reconsideration and to vacate order awarding terms. *CP, 70* Around the same time, I have the updated original motion for indigency put before Judge Snyder, explaining that leaving Mura's rulings uncorrected would encourage more bad faith conduct and leave an appearance that bias is the norm. *All, CP, 136-138* The motion for reconsideration and to vacate raises these grounds under CR 59: irregularity/ abuse of discretion that resulted in an award based on passion or prejudice; no evidence to justify the decision/decision contrary to law. *All, CP, 70-71* I also raise that Judge Mura denied me basic due process on the sanction as well as violated my right to a fair and impartial adjudication based on the law and consistent with the CJC's. *All, CP, 72-73, 79, 70, 82* I also raise the right to revision before final judgment under CR 54(b). *CP, 73* I explain that the RAP's and common law encourage giving the trial court every chance for self-correction. I cite *Barry v. USAA*, missing 3 digits from the middle of the citation, in support of a

trial court decision (here, Judge Mura's denial of reconsideration on service) being permitted to be the subject of another reconsideration. I explain the basis for arguing Judge Mura's order is back-dated (*CP, 73-74, 68-69*) and rebut every reason Judge Mura has given in support of his 1/15 decision – no rule or statute requires reconsiderations in trial court be heard by official transcript only; accuracy never disputed (*All, CP, 74*); enough legal authority cited to and specifically enough in the 12/28 motion for reconsideration (*CP, 75*); label of bad faith not supported by the record, my motion grounded in law and fact, with reasonable inquiry, Mr. Banel makes baseless assertions (*All, CP, 76-78*); no finding of improper purpose or conduct on my part (*CP, 78*); untimeliness of the Reply, which Judge Mura has read, is a harmless error, required to disregard by RCW 4.36.240. *CP, 78-79, 71* I acknowledge the “subversive” statements are unusual, but say they are reasonable and respectful - I had to candidly address the elephant at the dinner table or I would have no reason to expect something to change. *CP, 80-81* I write that after examining Judge Mura's decision, I can only conclude that Judge Mura perceived it as personally offensive and ordered sanctions out of anger (*All, CP, p. 71*), which is a violation of freedom of speech and the CJC's. *CP, 82* I call Mr. Banel's proposed prohibition on further pleadings a display of blatant bad

faith, and in violation of due process and freedom of speech. *CP, p. 81* I conclude that the Court cannot lawfully make express findings of bad faith [on my part] and impose sanctions under these circumstances and remind Judge Snyder of the whole point of the law. *All, CP, 83* In his 2/16 Response, Mr. Banel requests that my motion be denied and award of terms upheld because a second reconsideration without leave of court is clearly prohibited under CR 59(j). In the next sentence he states that subsections 1 and 2 [of (j), that list the types of motions the rule limits] don't apply. He also states I was instructed to seek further relief only in the COA and that my motion was untimely under CR 59(b), claiming the order was entered on 1/15. Besides, Def. Moser contends the 1/15 decision was proper and agrees with it. *All, CP, p. 63-64* Never controverting or even addressing the arguments for the order being backdated (*CP, 62-65, all of RP*), he concludes by saying I've made a mockery of this court with

**“accusations of prejudice and personal attacks on the trier of fact and filing for reconsideration after reconsideration was denied. And in addition, and w/o considering any of Plaintiff's procedural mistakes, she has not introduced any new evidence... nor has she cited any law in any context meaningful to the proceedings here.”**

He concludes with requesting terms of \$1600 **“pursuant to Plaintiff's abject violations of CR 11 for bringing this second motion for reconsideration in clear violation of CR 59(j) and 59(b).”** *All, CP, 64*

Contending that I have violated numerous elements of CR 11, he states the motion is brought with an improper purpose

**“and does not make any assignment of error of law... it has served little purpose other than to harass and cause unnecessary delay in resolving this matter”. CP, 65**

On 2/17, I deliver a copy of the official transcripts (requested on 1/15\* CP, 142) for the 12/4 and 1/15 hearings to Mr. Banel, which I had recently picked up and provided to Judge Snyder. I gave him Judge’s Copies of the pleadings put before Judge Mura on 1/15 earlier. CP, 160-161 I file a reply on 2/18/10 in which I explain that a trial decision may be the subject of more than one motion for reconsideration under CR 59, since CR 59(j) limitations don’t apply to my motion, supporting the plain language of the rule with Barry v. USAA, and quoting all of the decision summary and analysis on the subject. All, CP, 140-141 I go on to note that Mr. Banel is correct that subsections 1 and 2 don’t apply in this case; the inconvenient reality is that without those subsections, CR 59(j) cannot support his argument. I explain that there is no reason to miss out on correcting the errors and irregularities in trial court, adding:

**“A fair ruling will set an appropriate tone for the rest of this case and the parties will have the choice to focus on substantive issues and use methods that will move the case toward equitable resolution... Judge Mura is also correct in communicating that the 1/15 motion ends the**

litigation in his court. It has, and I got his point. That doesn't negate the propriety of established remedies. *All, CP, 141*

I then point out that Mr. Banel ignores the fact that Judge Mura's order couldn't have been entered on 1/15 and support the point with more evidence on top of Ms. Martin's note. *CP, 141-143* I say that Mr. Banel also ignores my right to revise under CR 54 and to defend against an accusation of bad faith under due process. *CP, 143* I also bring up that I wasn't served with Mr. Banel's Response and proposed order until after 8:40 pm on 2/16. *CP, p. 143* Then I reply to Mr. Banel's accusations:

Defendant fails to support accusations of "abject" CR 11 violations with any meritorious arguments required by CR 11. Mr. Banel continues to insult the Court's intelligence and prey on the presumed psychological vulnerabilities of the judge who will hear this motion.

Continuing, it is highly disrespectful to simply say the judge was right, just claim no new evidence was introduced or law meaningfully cited and expect the judge to forget his training, ignore what's in front of him and just pretend Mr. Banel's self-serving opinion is all there needs to be.

The relevant definition of bad faith I cite is vexatious conduct during the litigation, or the intentional bringing of a frivolous claim or defense with improper motive. (Hiller Corp. v. Port of Port Angeles) *All, CP, 145*

Calling the accusations of harassment and improper purpose unfounded, I say it is the defendants who delay resolving the real issues so they can go on clear-cutting what I have the right to protect; it is I who has to

deal with another case of malicious prosecution; the character of my property is irreparably damaged, so who has been harmed by unnecessary delay, baseless pleadings and vexatious conduct? *All, CP, 145-146*

I assert that Mr. Banel's Response and proposed order is in blatant, but predictable bad faith, consistent with a pattern shown from the very beginning, which confirms that bad faith conduct will continue to damage the court's integrity unless it's stopped. *All, CP, 147* The motion for reconsideration, filed on 2/3 was heard on 2/19/10 by Judge Charles Snyder. Before the matter was called, I was handed an order of indigency for the appeal, signed by Judge Snyder and filed earlier that day, which meant Judge Snyder already decided that I will lose the motion. *\*CP, 161*

I summarize the legal arguments made in my pleadings before the new judge, adding that if I had offended Mura on a human level by saying something culturally inappropriate, he should have talked to me, rather than misuse his position as a judge. Mr. Banel wants to extort an additional 1600; a note from Christy Martin verifies the order was not signed at the 1/15 hearing; I did not see it of record until 1/25 and received it in the mail on 1/22. The motion is barely timely. There hasn't been conduct violating the integrity of the court. *All, RP, Vol. II, 4* Mr. Banel's violations would be best raised in a separate motion so that he has a fair chance to defend (*All, RP, Vol. II, 5-6*), but he has failed to bear the burden

of proof that I had acted in bad faith. As to service, United Pac v. Discount, clarifies delivery occurs at the moment when documents are extended by the server, clearly under circumstances that would allow the defendant to accept those papers, except that the defendant avoids service. Mr. Banel doesn't dispute that point. He doesn't cite any case-law or appears to understand the meaning of this one. All he does is capitalize on the fact that here's this foreign kid writing weird pleadings, and she dares to tell Judge Mura he did something wrong (*All, RP, Vol. II, 6*), but Mr. Banel says, No, he did something right, without citing any valid grounds in law or facts. Him wanting me to be prohibited from exercising my rights to due process and freedom of speech is highly inappropriate. The Court is not a tool for extortion. He cannot get a final judgment under CR 54, and I didn't get proper notice of his judgment, though I don't mind the Court considering his untimely Response; I've been untimely before and don't want to be a hypocrite. *All, RP, Vol. II, 7* Judge Snyder says he doesn't have any questions; he has read all the materials and looked back through the file at the dates and times in the documents. He asks Mr. Banel if there is anything he particularly needs to add to the record. Mr. Banel replies that his Response speaks for itself and would only like to point out this matter was dismissed and dismissal upheld in reconsideration; a second reconsideration is not proper without leave of

court, and asks that my motion be dismissed. *All, RP, Vol. II, 8* Judge Snyder asks me if I remember Judge Mura advising me that my relief would be in the COA. I say, Yes, but I think he was communicating he didn't want to have anything to do with this case. Judge Snyder responds that I'm asking him to look at and overrule another judge and only an appellate court can do that. He can't grant my motion, first, because he cannot just reconsider something another judge has heard. Only that judge can do that. I had my chance and that was denied. *All, RP, Vol. II, 9* As Judge Mura advised me, my relief would be in the COA. He says the second basis is that the motion was untimely - the order was signed by Judge Mura on 1/15, based on the date he writes on it and the clerk's records that it was filed on 1/15 with his signature at the time of filing. I ask, What about the note from Christy Martin? *All, RP, Vol. II, 10, \*CP*, Judge Snyder replied that I've gone as far as I could go; if courts allowed reconsideration upon a reconsideration, there wouldn't be a resolution, and denied both the motion for reconsideration and to vacate. He awarded actual attorney's fees because he says, having been advised by Judge Mura that relief would be at the COA and not Superior Court, and essentially having this issue considered twice, and not having prevailed, the Court would have to find there was no basis in law for the motion.

He asks Mr. Banel if that was the 1600. Mr. Banel says, Yes, and offers to provide a cost bill. *All, RP, Vol. II, 11* Judge Snyder tells him to prepare one with the order and begins to tell him how to word the order. Mr. Banel interrupts him to ask him to sign the proposed order today. *All, RP, Vol. II, 12.* I remind Judge Snyder that the order given to me on the 1/15 had a blank signature page. Judge Snyder interrupts me to say that was because the original goes through the scanning process and isn't available for a few days. *All, RP, Vol. II, 13* I tell him that from the information I had, he didn't sign it. Judge Snyder again directs me to look at the court file and at 1/15 - the order is there, dated 1/15 in Judge Mura's handwriting, with a file stamp of that day, so he can only conclude it was filed on that day. I tell him that as far as the bad faith, I kept looking for the order in the record and didn't see it until 1/25. Judge Snyder responds that timeliness isn't the basis for granting the attorney's fees. *All, RP, Vol. II, 14.* The basis is that they shouldn't have had to respond to this motion at all. It was already decided. There's only one crack at reconsideration. Reminding me of Judge Mura's advice, he goes on:

If you come back to this court with a similar motion means that it's unnecessary, it's inappropriate, and it's not based upon any reasonable or rational basis under the law. *All, RP, Vol. II, 15*

I remind him that CR 59 says which motions cannot be heard; my honest

understanding was the motion wasn't prohibited. He interrupts with:

Once you've done it, you've done it. You've had the reconsideration request, and the decision has been made twice, and since there was no real change, and that's the way it is... [WA] case-law will tell you you have one shot at reconsideration. *All, Vol. II, 14, 15*

I ask him if my citing of Barry v. USAA is still not proof of good faith.

Judge Snyder tells me that the way I cited it was incomplete and didn't allow him to look it up, "Besides, in the State of WA you get one crack at it." *All, RP, Vol. II, 15* Despite my CR 54 objection to the award turning into judgment (multiple parties (3 defendants) and insufficient notice), Snyder says he will sign it and that an award of attorney fees is final. I remind Judge Snyder that the action against Ms. Moser has been re-filed since it has not been dismissed on the merits, (*All, suppl. RP, 3*), and request he strike the prohibition. He inserts "re: Defendant Moser" into the prohibition, without adding any findings or making other revisions (*detail, suppl. RP, 3-5*) and tells me I only can't file more pleadings until the terms of 2350 are paid (*All, suppl. RP, 4*). I vow terms wouldn't be paid, an easy vow to keep since I don't have the money to pay them. Banel says he "would like to be able to enforce this". I object. (*All, suppl. RP, 4*) Snyder specifies the prohibition on filing is only re: Moser and that filings re: Moser will be in COA (*suppl. RP, 5*). On March 19, 2010, Mr. Banel filed a cost bill for the 1600, not breaking down the 9.7 hours he claims he

spent (*CP, 61*), never serving me a copy. I found it on the clerk's computer sometime before 5/14. \**CP*, On 3/22/10, I file a motion to vacate for lack of required findings under CR 52(b) (c) (findings and conclusions required by case-law, obedience to which is required by RCW 4.040.10) (*CP, 59*) citing State v. S.H. - courts may not sanction absent an express finding of bad faith; reviewing court will remand for findings. Acknowledging trial court does not wish to address the substance of my motion for reconsideration [heard] on 2/19, I ask only that the judgment be vacated unless findings can be lawfully entered in light of the definition of bad faith – so either enter them or find they cannot be entered. The award of terms and its subject matter can then be meaningfully resolved by the COA in one round. *All, CP, 60* Before noon on 3/29, I serve Mr. Banel with a motion and declaration for default on the re-filed action against Ms. Moser, providing written notice the motion will be heard on 4/9, same day as the motion to vacate for lack of findings. *CP, 29,35,42* The deadline for an Answer has passed on 12/30/09. *CP, 58* Not being able to get to the courthouse that day, (*RP, Vol.II, 27*) I file and note up the motion the morning of the next day, (*CP, 29*), delivering the stamped copies to Mr. Banel same day. On 4/3, Mr. Banel served a notice of unavailability (filed 4/2 and attached to Amended Notice of Appeal), stating he will appear

telephonically on 4/9. *CP, 14* On 4/5, Mr. Banel files Responses to both my motions, beginning the one to the motion to vacate with a request \$1800 in terms. *CP, p.45* He states that despite not paying the \$2350 in terms, as ordered, Plaintiff filed 2 motions, which is why they should be denied. He also requests the same relief [1800] for the motion for default. The only requirement for a judgment he says is applicable is that it be in writing and signed by the judge (*All, CP, 46-47*) - since the 2/19 order is in writing and signed by a judge, the directives contained within are valid and enforceable. Then he asks for \$2200 in terms. *CP, 48* Mr. Banel's proposed order says the court denied the motion because the action against Moser was dismissed and Plaintiff disobeyed the 2/19 order; the court adds 1800 for Moser's costs; Plaintiff is prohibited from filing any more pleadings in this action until all terms are paid in full, or she will be found in contempt. *All, CP, 49* Responding to the motion for default, Mr. Banel, says there was improper notice because the Notice and Motion delivered to him on 3/29 [9 court days notice] was unfiled and wasn't filed until the following day, a day late. Stamped copies and calendar note were delivered on 3/30, 8 court days prior to the hearing. *All, CP, 35, 36* He says, Finally, it is important to note the action was dismissed without prejudice and the dismissal upheld twice. *CP, 36*

Plaintiff is disobeying a court order by filing pleadings. In addition, the motion for default is based on another Summons and Complaint filed in the same case number as the dismissed complaint... The hearing to add Moser as an indispensable party was never held... Plaintiff should have refiled a new action under a new cause number. The Plaintiff needs to be stopped from her disregard of court rules and court orders and her abuse of the court process with her continued improper filings." *All, CP, 37*

Replying to Def. Moser's objection to default and vacation of judgment (filed 4/7), I address Mr. Banel's arguments: proper notice of 9 court days had been given on 3/29, including written notice of the day the motion will be heard; I also called Mr. Banel on the 29th and he said he would appear telephonically. Filing a day late is a harmless error. *All, CP, 29* Dismissal without prejudice means the action can start from the very beginning as if it had never been filed. Dismissal was not upheld twice, reconsideration was denied, denial not being on the merits, and Plaintiff sent to the COA twice. Dismissal and its grounds were not even mentioned by either judge at the reconsideration hearings. As to the prohibition on further pleadings, the Court's authority is not absolute; it is conditional on its orders being lawful. I cite judges' oath of office and the judicial power statute and assert that binding precedent requires findings before sanctioning; findings should not be arbitrary, but follow a binding definition. Instead of addressing these arguments, Mr. Banel wants to force blind obedience to his improperly drafted judgment. Even with findings, the Court cannot violate rights to free speech and due process. *All, CP, 31-32*. I then address

the objections to default<sup>2</sup>. *CP, 33* At the 4/9 hearing I summarize the arguments, telling Judge Snyder that since Mr. Banel's current order doesn't include findings either, the proper remedy right now is to vacate it. *RP, 19* Mr. Banel tells the judge that he spent some time looking at the Plaintiff's motion, and the only requirements that he found were in CR 54 – “written findings entered by a judge, and you met both those requirements” and stresses that I filed pleadings without paying terms; to argue the merits, it's a frivolous pleading because Plaintiff wasn't allowed to bring 2<sup>nd</sup> reconsideration w/o leave of court. Then he says, “I'm hanging my hat” on the prohibition. “It's pretty clear and it's pretty clear what an order means”. *All, RP, 20* I say, “He's just not responding to the case-law.”

Then Judge Snyder explains:

in a motion such as this where the Court imposes terms for somebody having to defend against a motion that is baseless, the Court, I suppose, could say and might be inclined to say, well, this isn't, this isn't a sanction in the same sense that the cases that you cited, which were sanction penalties for some particular bad act, but that they're the terms... Judge Mura informed you that your next set of remedies ...was the court of appeals, and that... this Court would take no further action. You brought a similar motion there based upon essentially the same things that the first one was brought upon, and that came in front of me, and I obviously could not make a decision on a reconsideration of a reconsideration made by another judge, so it was clear to me that the motion was

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<sup>2</sup> See App, p. 6 for summary. Snyder never signed findings that motion was baseless.

groundless; that you had been informed that you were not going to get reconsideration. The court rule, I think, would indicate... any reasonable attorney would have realized they didn't have another shot to do another motion for reconsideration, and having been advised that the court of appeals was your remedy, then to come back to this court while at the same time pursuing an action in the court of appeals, indicates to me that it's a groundless motion. You were advised and should have known, and any reasonable person would have known, that the second motion for reconsideration ...is an action that would be in bad faith, or would be essentially a frivolous action. For that reason, I granted the terms.  
RP 21-23

He says he'll be happy to enter an amended order, so there's a complete record for the COA to look at, but will not change his ruling. *RP Vol II, 23*

When default is addressed, Mr. Banel says that he got the calendar note and the stamped-filed copy of the motion a day late, and wasn't given enough notice. He received the unfiled pleadings except the calendar note on time and looked at the file and realized it was filed and noted a day late. *RP, Vol II, 25* He also argues there are other issues, "once you're dismissed, the next remedy is filing around cause number on another case number." Judge Snyder reminds him the dismissal was w/o prejudice and there was an ongoing action with other defendants, so wouldn't it be allowed to file a new action in the existing case? *RP, 26*. Mr. Banel (who showed up in person) responds:

Well, and I'm not clear on this rule if that's the case. I know there's a court rule that says, it talks about pleadings, and it only mentions—it doesn't say pleadings plural. It just says the summons and complaint must be filed, it doesn't say more than one can be filed with the same, in

the same, and I cannot cite that rule off the top of my head. I would say I believe it's pleadings rule # 7, or #8. It's a pretty boiler plate rule. But again, and it goes back to the issue of not filing any more pleadings. RP 26-27

Judge Snyder interrupts him to say that is a separate issue and allow me to respond. I refer the judge to p. 2 of Mr. Banel's Response where he says unfiled copies of the notice and motion were timely delivered, so there was proper notice and filing a day late didn't prejudice him, it was a harmless error. He's had plenty of time to file a simple Answer. *RP, 27* He's also had plenty of time to research joinder; it's clear enough from the court rules, even a person with no legal training can see the joinder was proper, so it has been a harmless error. *RP, 28* Mr. Banel responds:

And, actually, pleadings, it's pretty much a bright-line rule as far as the issue is not whether or not I received a copy of the summons and complaint, which I acknowledged I did. It's the calendar note was not filed until the 30<sup>th</sup> ...should've been filed on the 29. I mean it's a strict, strictly bright-line rule. It's an untimely motion. If I thought the motion was timely, I would certainly respond to it...It's a harmless error, but again, motions practice, there's a reason they have rules... *RP 28-29*

Judge Snyder responds that lawsuits can be served and filed later, but that doesn't apply to motions, so even though Mr. Banel got a motion, he didn't know when it was going to be heard. I try to remind him, but Judge Snyder interrupts me with (*All, RP, 29*):

...First of all, you didn't file it with the court on time. Had you filed everything on the 30<sup>th</sup>, and served him with the motion, and then only

served the note for docket a day later, I probably would have let you get by with that, because he would have had the motion. It would have been filed. He would have seen it was filed, and he would have known that it was going to go forward. It's a technical point, but... I'm going to deny the motion for default simply because it wasn't timely. It doesn't mean that you can't bring it again, but it's not timely. RP, 30

He allowed the joinder and said he wasn't going to dismiss my complaint,

However, there is still the fact that because of what I consider to be essentially a great deal of unnecessary and inappropriate responses needed on the part of Ms. Moser to the actions that you've taken, because you're trying hard, but you're not doing it appropriately, the fact that the Court set those terms out, and said before you file a further motion you have to pay the terms, is a condition that is going to continue to apply, and so I'm not going to grant your motion for default today. It's not timely, and you haven't met the Court's prior condition to pay the terms... I will not calendar it [further motion for default] if it's filed. If you show with the next motion you've filed that you paid the terms, then the Court will allow that motion to go forward, so that's where I'm going to leave you. RP, 31

Mr. Banel asks for terms of having to respond to today's motions,

...she's filed 2 motions on me, knowing under court order, she's not to file... -- any more pleadings.

I ask to respond and Judge Snyder says he will

grant terms [actual costs and fees] for the costs of today too, because I think Ms. Pekisheva knew what the Court's ruling was previously, and it was set forth in the order that the Court signed. All, RP 32

I get a word in when I can and remind Judge Snyder Mr. Banel received written notice of the day the motion is to be heard on the 29th, though it wasn't an official calendar note, and that we had spoken about this on the 29<sup>th</sup>. RP, 32 Judge Snyder responds,

“the fact he was aware doesn’t meet the requirement of the law, you file it within that same period of time, so there’s inadequate notice... Those would be the Court’s rulings.” *RP*, 33

On 4/21/10, Mr. Banel files a cost bill for \$4,537 (*CP*, 23), including the round trip plane ticket, car rental, fuel, parking, and 10 hours travel time at the rate of \$165/hr for a trip to Bellingham from LA. The total attorney time he claims he spent on the motions to vacate and for default was 23.8 hours. *CP*, 23-27 The hearing to have this awarded was noted up for 5/7. Sometime after 4/21, I look up the file on the clerk’s office computer and find both cost bills. After I find the 2<sup>nd</sup> cost bill, I see Mr. Banel taking a shortcut through my yard at least once. I approached him and say, “Lynn [Moser]’s not paying you, is she?” He looked really uncomfortable and kept on walking. *CP*, 161-162 I attach Mr. Banel’s proposed orders, with comments, to the Amended Notice of Appeal, filed in Whatcom on 4/28 in compliance with COA ruling accepting review under RAP 2.2(3) in mid-April. Mr. Banel finds out Judge Snyder would not be available on 5/7 and reschedules the hearing. He notices the Amended Notice of Appeal includes his proposed orders and serves me on 4/30 at a defense interview with Lynn Moser who will testify at my criminal trial. *RP*, 37, *CP*, 162

Beginning on 5/11 we exchange e-mails<sup>3</sup>. I write:

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<sup>3</sup> See App, p. 7-8 for full text.

Your proposed judgment is both baseless and brought with an improper purpose in the true sense of those theories. Even a prejudiced judge may find it beyond their usual tendencies not to acknowledge a litigation abuse that blatant. I offered to talk to you and maybe resolve something informally. You've given me no indication you were interested in addressing this issue.

The least severe sanction to get the point of CR 11 across would be for you to pay for the costs of my appeal. I wouldn't have to appeal if your baseless pleadings haven't been granted when there was no legal basis to grant them. Lynn wouldn't have thought of what you did.

And it really isn't my fault she is not paying you. If I can't afford an attorney, I don't hire one. You're not going to get any money out of me; so if [you] want to help Lynn for free, go for it, just don't fool yourself into thinking this is financially worthwhile. CP, 6-7

Mr. Banel responds:

...you e-mailed me an 8 page response revisiting and arguing against what the judge already ruled on during the 4/9 hearing. I'm reasonably confident that what you'll find out at this Friday's presentation hearing is that the matter was decided already on 4/9 and no more argument on the merits will be heard. That said, if you want to sign both proposed orders as is, fine let's do it with enough time before the end of the court day Thursday 5/13... And if you have some language you want included in either or both of my proposed orders, please submit it to me as soon as possible and I will take a look at it, but again with enough time to have Friday's hearing stricken if we come to some agreement. And also at the 4/9 hearing I was asked to provide a cost bill, which I did, and which I served on you almost two weeks ago. And as far as I am concerned, it is self-explanatory. Now, if you have an offer of settlement you want to make, I will consider it.

I write the final e-mail:

The Amended Order needs findings of whether or not I conducted reasonable inquiry into the motion heard on 2/19, as well as how the judgment represents a least severe sanction necessary to uphold the purpose of CR 11. The amount needs to be specified as what was actually and reasonably expended as a direct result of

sanctionable conduct. These are the case-law requirements. I don't accept your proposed judgment; let's have Snyder go on the record as to what he decides and why. *All, CP, 6*

On 5/11, I e-mail Mr. Banel the Objection to Def. Moser's Outrageous Proposed Interlocutory Judgment Order, filing the document at 4:05 same day and delivering him stamped copies with a revised ending that addressed Judge Snyder. *CP, 14, 7* I argue the expenditure of Banel's time and money is self-imposed and a blatant litigation abuse, in light of his written notice he will appear on 4/9 telephonically. Nothing in the law entitles him to recover what he requested. There was no finding my motions violated CR 11 and they didn't. Nor is there any evidence Ms. Moser has spent any money. *CP, 14* I then chastise Judge Snyder:

Judge Snyder is correct in noticing that there was "a great deal of unnecessary and inappropriate responses on the part of Ms. Moser". Why something unnecessary and inappropriate would be needed and why Judge Snyder would blame and punish me for my opponent's unnecessary and inappropriate responses makes sense only in the context of prejudice. Prejudice has its own logic. That is why impartiality is required for the legal process to remain rational.

Continuing a pattern of fixating on rewarding litigation abuses and punishing the victim of those abuses is a sure way to destroy what is left of the dignity of this court. The law allows only what is reasonably expended on clearly defined sanctionable conduct. The case-law is consistent that the point of all sanctions is to keep the legal system accessible and responsible.

Using sanctions as a mechanism of escaping uncomfortable issues and in the process, depriving people of access to justice in

their local court is precisely the opposite of the intent behind sanctions. An attorney requesting that the concept of sanctions be abused in this way is violating the Rules of Professional Conduct. A judge allowing this kind of abuse is violating due process and the Canons of Judicial Conduct. I challenge anyone to show me a legal basis for why it would be otherwise.

Judge Snyder did not take his oath to reward Mr. Banel for figuring out ways to spend as many hours as he can on failing to provide competent representation to his client. It is Mr. Banel's own negligence that has put Ms. Moser in danger of default and having her judgment vacated. CP, 15-16

I go on to quote the purpose and requirements of sanctioning in Biggs v.

Vail quoting Bryant v. Joseph Tree, (*CP, 16-17*) and continue chastising

both Mr. Banel and the judge:

I had to resolve the findings issue and save everyone another go-around in the Court of Appeals because Mr. Banel had failed in his obligation to produce an order that complies with legal requirements...

Judge Snyder said that entering findings to produce a complete record makes sense. The Court has not found the Motion to Vacate groundless and in bad faith. If Mr. Banel conducted reasonable inquiry, he would not spend billable hours on what is unnecessary and baseless.

On 4/9, Judge Snyder told me, "Had you filed everything on the 30<sup>th</sup>, and served him with the motion, and then only served the note for docket a day later, I probably would have let you get by with that, because he would have had the motion. It would have been filed. He would have seen it was filed, and he would have known that it was going to go forward." That is exactly what happened... yet Judge Snyder did not let me get by with a harmless error the statute requires him to disregard... using technical pretexts to avoid the issues is not what the rules are there for... CR 11 does not authorize freezing a legal action until fees are paid, or permanently

depriving a party unable to pay those fees from resolving their action locally for the same obvious constitutional reasons that Judge Mura could not find in him to overlook. The only way to stretch the prohibition into anything remotely resembling some sort of rationality is to use the flexibility allowed a judge under the inherent power statute. That again leads to the uncomfortable, but indispensable to civil society, limitation of only being able to enforce lawful orders according to law. And exercising any kind of inherent powers is only allowed after explicit findings...

Being ordered to pay \$2350 is a significant punishment, higher than the fines in many criminal convictions. To say that it is not a sanction requires another resorting to the peculiar un-logic of prejudice. By contrast, the logic of Black's Law Dictionary defines sanctions as a "penalty or a coercive measure that results from failure to comply with a law, rule or order." (8th edition). No reasonable person would insist that having to pay terms (attorney fees) is not a sanction. ALL, CP, 20<sup>4</sup>

At the 5/14 hearing to enter the judgment, Mr. Banel vigorously objects to my wanting to record the hearing and spills his glass of water ~~on his order~~.

RP, 34 His argument begins w/ the prohibition, followed by saying:

"she's essentially trying to get it reconsidered. I'm just asking, where does it end? I didn't reply because... I didn't want to spend my client's resources responding to something that shouldn't have been filed, and by the way, have you had a chance to look at the last page of the 5/11 pleading, making statements that basically casing aspersions on the fairness of the court and I think that—RP, 35-36

Here Judge Snyder interrupts him to say he read it, but will not take it into account -- because it wasn't timely. Mr. Banel goes on:

...Since terms don't seem to help here, maybe contempt is the proper remedy for her. Maybe she needs to cool off somewhere locked up in jail, or perhaps even have a mental health evaluation,

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<sup>4</sup> See Appendix, p. 8 for the relevant end of the quote

because this just—I'm totally baffled why she keeps on filing documents when she knows she's disobeying a court order when she does it. RP, 36

Judge Snyder neither interrupts nor says anything else on contempt. He signs the Amended Order [for 2/19] and grants everything but the travel costs, saying he can't authorize them. RP, 46-47

### **Argument**

*Summary: Untenable reasons/grounds and manifestly unreasonable decisions.*

*Failure to take undisputed evidence into consideration; wrong legal standard – erroneous view of the law. CR 11; CR 12;54;59; Rogerson Hiller Corp. v. Port of Port Angeles; Biggs v. Vail; Bryant v. Joseph Tree*

*Irrelevant assumptions/statements not supported by the record; supported ones under correct standard (not based in law or fact; no reasonable attorney would take the action) used to make an unreasonable determination; not a single element of CR 11 violations or bad faith conduct supported by the record. No finding of misconduct/ vexatious conduct (procedural bad faith) or anything in the record to support such a finding or to support a finding of substantive bad faith (baseless w/ improper motive) as defined by Rog. Hiller. Sanctions are reserved for egregious conduct. By definition cannot be in bad faith without improper purpose/ malice/ misconduct (Black's Law Dictionary).*

*Snyder punishes for not following Mura's legal advice/ predictions of no future filings in trial court and for asking him to rule contrary to Mura; signs proposed findings on the Motion to Vacate he did not make in his verbal rulings without explanation; awards fees without requiring reasoned legal arguments or obedience to law from Mr. Banel; without inquiring how much, if anything, was actually expended or considering inconsistencies between work done and hours in cost bills and misrepresentations/ misconduct by the "victim's" counsel.*

An exercise of judicial discretion is a composite of, among other things, conclusions drawn from objective criteria. State ex rel. Carroll v. Junker.<sup>\*</sup> Judicial discretion means a sound judgment which is not exercised arbitrarily, but with regard to what is right and equitable under the circumstances and the law, and which is directed by the reasoning conscience of the judge to a just result. T.S. v. Boy Scouts of Am. quoting State ex rel. Clark v. Hogan.

Judge Mura's explanation of his decision on 1/15:

The motion for reconsideration... is not grounded in law or fact. There is no case-law authority that you have submitted in support of your request that I reconsider my ruling... Reconsideration is granted only if the court made an error of law. And there is no new legal authority being submitted by you, and the motion for reconsideration is not grounded in law or fact. And the motion for reconsideration is denied... And the court is, because there is not a good faith basis for the motion... going to award Mr. Banel \$750 in attorney's fees in opposing the motion. *RP, 9-10*

Judge Mura's decision on the motion for reconsideration was assembled on untenable grounds for untenable reasons, producing a ruling outside of acceptable choices given the facts and the law. That is a clear abuse of discretion under both untenable and manifestly unreasonable standards, as defined in Mayer v. Sto Industries<sup>\*</sup> and State v. Rundquist.<sup>\*</sup> *79 Wn App 786 905 P 2d (1995)*

The piecing together of the abuse of discretion began with refusing to consider the sworn transcription of the 12/4 dismissal hearing because it wasn't an official transcript. The move severed the facts, which showed errors in law, from the motion that argued those errors were made, so Judge Mura could then say "that takes care of that one issue"- the motion is now not grounded in fact. There is no legal authority requiring official transcripts for reconsiderations in trial court. Refusing to take admissible, credible, undisputed facts into consideration, when the record shows no

\* 79 Wn. 2d 12, 26, 482 P 2d 775 (1971)

sign he disbelieves them, then punishing for in compliance with rule provisions that don't exist is clearly untenable.<sup>3</sup> Like any other motion, a motion under CR 59 can be supported by an affidavit. No one had grounds to dispute the accuracy of the transcription or that Ms. Moser would have been served in the normal way if not for her obvious avoidance, which meant delivery had occurred within the meaning of the personal service statute<sup>4</sup>. Judge Mura not only never says anything to show he disbelieved Ms. Moser was clearly and irresponsibly evading service, and even retaliating for it, the suggestions he makes (for safely serving evasive defendants), and his simplification of the event<sup>5</sup> show he did believe my witnesses and I. But, it was convenient to ignore the whole truth to be able to produce a result he wanted to produce.

Neither had anyone disputed Judge Mura improperly negated a binding precedent, at first by saying it involved abode service, as if it mattered that the door of the residence slammed for the purpose of evading had a different chemical composition than a truck window rolled up near the residence for the purpose of evading. Then Judge Mura's further negated the precedent with his earlier trial decision, where the only similarity was

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<sup>3</sup> Court cannot construe a rule contrary to its plain statement. *State v. Raper*

<sup>4</sup> *United Pac. Ins. Co. v. Discount.*

<sup>5</sup> factually incorrect by omission of the fact that papers were thrown because Ms. Moser would not allow them through her truck window as she drove away, not by adoption of Banel's unsupported statement that the server drove by and threw papers. CP, 115

the outcome Judge Mura wanted. *CP, 115* Nor did anyone dispute Ms. Moser failed to comply with the CR 12(b) requirement to bring her motion to dismiss before filing the Answer to prevent her claim of insufficient service from being waived under CR 12(h)(1)(B). Judge Mura never made that ground for reconsideration disappear. He responded to it by saying:

If you think I made an error of law you can go to the Court of Appeals. But I am satisfied with the legality of my rulings. So the motion for reconsideration is denied. RP, 13

He first justifies his conclusion of not being grounded in law, once he removes the obstacle of having to acknowledge the facts, is that I haven't submitted case-law in support of reconsideration. Perhaps correcting himself, or buttressing his case, now that I had the "not buying your BS" look on my face (*CP, 68*), he says reconsideration can be requested, however, it is granted only when the court made an error in law; he completes the conclusion by saying there is no new legal authority submitted - the motion is not grounded in law or fact, which means it doesn't have a good faith basis. The legal reasoning is thoroughly untenable. First, bad faith conduct has a mandatory component of misconduct/ improper purpose<sup>6</sup>. Baselessness alone, even if it was there, is not enough. Bad faith is synonymous with improper purpose of

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<sup>6</sup> vexatious conduct during the litigation, or the intentional bringing of a frivolous claim or defense with improper motive. (Hiller Corp. v. Port of Port Angeles)

harassment, delay and needless expense in the context of CR 11 as well.<sup>7</sup>

Both judges make the same reversible error. Nothing in the record indicates Judge Mura or Judge Snyder even thought my purpose was something other than to correct an injustice. What is even more untenable is that nothing in the record supports baseless filings on my part. The 12/28 motion (*CP,107-110*) cited specific grounds under CR 59<sup>8</sup>, and reasoned that the plain language of RCW 4.28.020(15) doesn't support statutory requirements weren't followed when serving Moser; delivery not defined requiring physical contact between documents and defendant, leaving it open to be interpreted in a decision that documents need not be placed in the evasive defendant's hand by the Appeals court in 1976<sup>9</sup>, which Judge Mura negated, inappropriately arguing Ms. Moser's case from the bench. The motion also cited CR 12(b). The 1/15 Reply included more precise arguments delivery was made, based on detailed legal analysis of *United Pac* (which built on *Thayer v. Edmonds*), and the subject of substantial compliance w/ the personal service statute, referring to 2 new cases as well as the *Black's Law Dictionary* to show Judge Mura couldn't just say, "See, it has to be granted under the law". *CP, 91-93, 97*

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<sup>7</sup> *15A WAPRAC (Handbook of Civil Procedure)*; 8.6 –*CR 11 Standards-Bad faith filings*

<sup>8</sup> which alone would be enough if any of the grounds were supported convincingly

<sup>9</sup> I didn't name the precedent but referred to the list of evidence in support, including my Response, which cited *United Pac* w/ pertinent part of decision; it couldn't be taken to refer to some other case-law, being the only case-law I cited.

The Reply came with an attention grabbing table of contents and a print-out of United Pac. Since Judge Mura began by saying he read all the materials we've all submitted (*RP, 3*) and didn't even try to negate the Reply on the merits, whether legal or psychological, it is reasonable to infer he found it convincing, and had to make it go away to be able to make up reasons why the substance of my motion was not based in law. The same goes for the facts on which the motion was based – if Judge Mura thought I was wrongly accusing him of ignoring law and fact to argue Ms. Moser's case for her, he would've said why my facts are faulty, instead of throwing them out. Nothing in the record indicates Judge Mura needed new authorities to be convinced his decisions aren't precedents, and that he shouldn't ignore the facts or manifest prejudice. He has been a judge for a long time and knows the law, or at least, the letter of the law. His reaction to my cornering him into facing he made a mistake, clear to the point of being comical in our exchanges on CR 12(b), indicates he wouldn't change his commitment to abide by his mistake. I try to good-naturedly address this topic in the “subversive” 1/15 Reply:

I'm not going to be insensitive and over-argue the obvious, (are trial court decisions more authoritative than precedents and where is that law that says judges can't help out their former classmates from the bench?), however Mr. Banel seems to count on you putting your ego ahead of the rule of law the most. *CP, 94*

Reading the transcript of his decision in sequence, Judge Mura's saying the motion is baseless because new authority hasn't been submitted, when examined in context and in light of the facts and the law and then his parting statement he's satisfied with the legality of [all] his rulings, reveals he wants newly discovered evidence and new legal theories - he would only reconsider something he has not already considered. He allowed another glimpse into his reasoning when he said:

I'm going to change the order. It says the court denied, well, there should be a previous order saying denied. So I will say, The court denies. *RP, 10*

The previous order he's talking about is the order granting dismissal on 12/18. Whatever it was I wanted re-decided, the request has been denied before I made it. He doesn't grant reconsideration because he doesn't admit to making errors in law. And that seems to be the true basis of his statement, very untenable grounds and reasons on which to exercise judicial discretion. I can infer the Reply had to go away because it made its mark, as naïve as the hope expressed in it was. The untimeliness of the Reply was a harmless error, within the meaning of RCW 4.36.240. The draft Banel received 4.5 hours late<sup>10</sup>, by e-mail since he was out of town, contained all the legal authorities and arguments and was enough to allow

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<sup>10</sup> I had e-mailed Mr. Banel the draft with all the legal arguments and authorities on 1/13 at 4:26 pm; the almost final draft on 1/14 at 5:11 pm and the final version, containing the section where I personally address Judge Mura, at 9:05 am on 1/15. The affidavit of service was filed and submitted with the Reply. *All, CP, 124*

him to prepare for argument, if Judge Mura had allowed one. I wasn't able to have it finished by noon of 1/13 because it was a real challenge to reach Judge Mura on issues I already knew were sensitive. The late parts of the Reply addressed Judge Mura on issues Banel wouldn't have to argue. Nothing in the record shows Mr. Banel was prejudiced by it being filed late, especially since argument wasn't allowed. Judge Mura has said that he studies for the civil motions on Thursday evenings and Fri mornings (*CP, 124*) and the calendar was light that day (*CP, 67*). The Reply contents made considering the Reply more efficient. Substantial evidence supports that Judge Mura's first statement that he read all the materials, (*RP, 3*) made when he wasn't justifying an unreasonably harsh decision to someone who's been through hell recently and wasn't convinced, is the truthful one. His truthfulness would not be disputed if not for the glaringly strategic moves he makes to justify an unwarranted sanction. He also began addressing the reconsideration by saying he reviewed the materials submitted (*RP, 9*). If he wasn't strategizing and really hadn't had time to look at a 12 page Reply before the matter came on, he would've notified the parties he didn't read it right from the start, so they know it will not contribute to the ruling. He also had a tightness/strain in his voice, especially when addressing reconsideration and looked deeply angry from the time I saw him enter the courtroom. From having observed many

hearings before Judge Mura, and seen what makes him flush, it is unlikely that the statement that it is inappropriate for a judge to argue a party's case from the bench, made in the timely motion, was enough to account for what I was seeing and hearing and being subjected to. *All, CP, 66-67* After he said my motion wasn't in good faith, he began to mention the Reply but then stopped himself and diverted his attention to the order (*RP, 10*), and combined with his demeanor, and in hindsight, now that I know that after making many revisions to the order, he didn't sign it that day, he appeared to not want to mention the Reply just yet. After a break from saying things he must know are wrong, he said he wants the record to reflect he didn't consider the Reply because it was untimely and he didn't have time to review it. *RP, 13*. Even those words could be harmonized to mean he read it, but didn't re-read it or consider it in official capacity. By this time I'm really glaring at him and force the issue of in compliance w/ CR 12(b). All Judge Mura can say is that he is satisfied with the legality of his rulings. *RP, 13* The most untenable part of the decision is that it deprived me of due process and punished me for raising well-grounded, but uncomfortable issues in violating my right to freedom of speech. This decision began the cycle of constitutional violations that reached its peak after Judge Mura disqualified himself and assigned the case to Judge Snyder.

Conclusion

I respectfully request the Court to reverse the 4 orders to which error is assigned, take the steps the Court finds appropriate to discourage and prevent deliberate abuse of discretion and other bad faith conduct when the quiet title action is returned to be adjudicated in trial court and take any other action the Court finds to be in the interest of justice.

Please note that the action was re-filed under an Amended Complaint.

Dated this 8th day of November, 2010

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Luba Pekisheva", written over a horizontal line.

Luba Pekisheva, Appellant

## APPENDIX

### 1. Pertinent excerpts of authorities, cases in the order cited in the argument :

A trial court's decision rests on untenable grounds or is based on untenable reasons if it relies on unsupported facts or applies the wrong legal standard. The decision is manifestly unreasonable if the court, despite applying the correct legal standard to the supported facts, adopts a view that no reasonable person would take. *Mayer v. Sto Industries*, 156, Wn. 2d 677 (2006)

The court has acted on untenable grounds if its factual findings are unsupported by the record; the court has acted for untenable reasons if it has used an incorrect standard, or the facts do not meet the requirements of the correct standard; the court has acted unreasonably if its decision is outside the range of acceptable choices given the facts and the legal standard. *State v. Rundquist* 79 Wn. App. 786, 905 P. 2d 922 (1995)

When the language of a rule is clear, a court cannot construe it contrary to its plain statement." *State v. Raper*, 47 Wn. App. 530, 536, 736 P.2d 680

*Rogerson Hiller Corp. v. Port of Port Angeles*, 96 Wn. App. 918, 982 P.2d 131 (1999), at 927 defining substantive bad faith:

Bringing a frivolous claim is not enough, there must be evidence of an "intentionally frivolous [claim] brought for the purpose of harassment." See *Pearsall-Stipek*, 136 Wn.2d at 266-67. Because there was no finding of improper motive, the trial court abused its discretion in awarding fees. Quoting *Pearsall-Stipek*, 136 Wn.2d at 267.

*Biggs v. Vail*, 124 Wn.2d 193, 876 P.2d 448 (1994), quoting *Bryant v. Joseph Tree, Inc.*, 119 Wn.2d 210, 829 P.2d 1099 (1992)

...we must keep in mind that "the purpose behind CR 11 is to deter baseless filings and to curb abuses of the judicial system". *Bryant*, at 219. CR 11 is not meant to act as a fee shifting mechanism, but rather as a deterrent to frivolous pleadings. *Bryant*, at 220.

Courts should employ an objective standard in evaluating an attorney's conduct, and the appropriate level of pre-filing investigation is to be tested by "inquiring what was reasonable to believe at the time the pleading, motion or legal memorandum was submitted". *Bryant*, at 220.

**In deciding upon a sanction, the trial court should impose the least severe sanction necessary to carry out the purpose of the rule.**

It is clear from the record that the trial court's primary goal in entering these sanctions was to compensate Vail, whereas *Bryant* makes clear that CR 11 sanctions should be limited to the minimum necessary, and should not be used as a fee-shifting mechanism. *Bryant*, at 220, 225.

...We share the federal court's concern that sanctions be reserved for egregious conduct and not be viewed as simply another weapon in a litigator's arsenal.

Finally, in imposing CR 11 sanctions, it is incumbent upon the court to specify the sanctionable conduct in its order. **The court must make a finding that either the claim is not grounded in fact or law and the attorney or party failed to make a reasonable inquiry into the law or facts**, or the paper was filed for an improper purpose. CR 11. See also Bryant, at 219-20. In this case, there were no such findings.

Accordingly, we must remand this case once again to the trial court to: (1) make explicit findings as to which filings violated CR 11, if any, as well as how such pleadings constituted a violation and (2) impose an appropriate sanction for any such violation, which may include the amount of Vail's attorney fees incurred in responding specifically to the sanctionable conduct.

Barry v. USAA: A trial decision may be the subject of more than one motion for reconsideration under CR 59

1] Nothing in CR 59 leads this court to declare a one-reconsideration limit for trial court decisions. The rule specifically limits certain motions in CR 59(j). There the rule declares that if a motion for reconsideration is made and heard before the entry of judgment, no further motion may be made for a new trial, for reopening judgment, to alter or amend the judgment, or to amend the findings "without leave of court first obtained for good cause shown." CR 59 (j). Ms. Barry's motion for reconsideration does not come under any of the above classifications.

State v. S.H. 102 Wn. App. 468, 8 P.3d 1058 (Div. 1, 2000)

Every court has the inherent authority to assess litigation expenses against an attorney for litigation conduct undertaken in bad faith

A court may not invoke its inherent authority to sanction an attorney for inappropriate or improper litigation conduct absent an express finding by the court that the conduct was undertaken in bad faith. Bad faith is demonstrated by, among other circumstances, a delay or disruption in litigation.

A court appropriately exercises its inherent authority to sanction an attorney for inappropriate or improper litigation conduct if the conduct affects the integrity of the court and, if left unchecked, would encourage future abuses.

When a trial court, in the exercise of its inherent authority, has sanctioned an attorney for inappropriate or improper litigation conduct, but the sanction is unsupported by an express finding that the attorney's conduct was in bad faith, the proper remedy is remand of the case for entry of an express finding. The reviewing court may not itself deduce bad faith from the facts of the case if the court that ordered the sanction has failed to make an express finding.

MacDonald v. Korum Ford, 80 Wn. App. 877, 912 P.2d 1052 (1996).

In determining the reasonableness of attorney fees granted for a violation of CR 11, a court must consider whether fees and expenses could have been avoided or were self-imposed by the moving party.

... To avoid being swayed by the benefit of hindsight, the trial court should impose sanctions only when it is " 'patently clear that a claim has absolutely no chance of success.' "

Statutes in numerical order:

Oath of office: Every judge swears an oath that “he will support the Constitution of the United States and the Constitution of the state of Washington, and will faithfully and impartially discharge the duties of judge to the best of his ability”. RCW 2.08.080

Judicial powers: Every judicial officer has power -- (1) To preserve and enforce order in his immediate presence and in the proceedings before him, when he is engaged in the performance of a duty imposed upon him by law. (2) To compel obedience to his lawful orders as provided by law. RCW 2.28.060

Harmless error disregarded: The court shall, in every stage of the action, disregard any error or defect in pleadings or proceedings which shall not affect the substantial rights of the adverse party, and no judgment shall be reversed or affected by reason of such error or defect. RCW 4.36.240

Record excerpts:

Ms. Martin notified me that Judge Mura had reassigned the case to Judge Snyder in a letter dated and filed 1/25. With that, she included another letter, signed and dated the same day, saying the motion for indigency was being returned unsigned and unfiled (*All, CP, 136*) telling me:

...the language in your motion needs to be limited as to why you are entitled to be found indigent, rather than the substance of your appeal. *All, CP, 136 and 9*

I re-read RAP 15.2, and wrote her back on 1/29, recognizing she’s acting as a spokeswoman for Judge Mura. *All, CP, 137* I explained that my purpose wasn’t to embarrass or further aggravate Judge Mura, but to comply with the requirements of the rule. I went on:

My intended audience was the ex-parte commissioner, though I knew Judge Mura might come across it and find the subject matter sensitive. I hope more understanding and not just another round of hurt feelings was the by-product of that... Do you know when Judge Mura signed the sanctions order? Though he back-dated it, he couldn’t have signed it earlier than Tues, because he didn’t sign it on Fri. I think we all know the sanctions were uncalled for. It doesn’t seem fair or judicially efficient to burden Judge Snyder with reconsideration of something he didn’t decide. As much as I doubt Judge Mura wants to see me in his courtroom, there is one more issue to try to resolve. I have some ideas as to why Judge Mura recused himself, but I too can be wrong. Can you ask him the official reason because I might have to explain? If there’s an unofficial reason, I’ll be grateful to know. *All, CP, 9-10; 68 (Note delivered by the under the door method on the morning of 1/29) CP, 155*

Ms. Martin promptly left me a message that she couldn’t answer any of those questions and that everything needed to come before Judge Snyder from now on. *CP, p. 69* That afternoon I e-mail Ms. Martin telling her:

I hope whatever has so personally offended Judge Mura hasn't offended you. I have never experienced anything remotely unfair, unethical, or prejudiced from you and I haven't taken that for granted... It looks like Judge Mura might be tempted to throw a water pitcher at my head if I ever show up in his courtroom, so there will be no honorable closure, and the motion for reconsideration will have to be brought before Judge Snyder... I wish I knew exactly what was behind Judge Mura's reaction, but that's another question you're not allowed to answer... Let me know if I'm wrong on any of these.

I also request that she transfer the file of judge's copies, including my objection to Ms. Moser trying to get a judgment behind my back. 18 min. later, Ms. Martin e-mails me back, addressing the issue of the file and saying,

"Ms. Moser has been instructed that what she submitted needs to be noted up and go through the normal course of things as outlined by court rules. All future motions in this matter will be heard by Judge Snyder."(end of e-mail) *All, CP, 12*

Mura characterizes the 10/8/09 event in this manner:

Personal service means, it means different things, but when a person is in an automobile, and you're attempting to do personal service, or the process server is, and they're driving down the street, and it's tossed at 'em, and it lands in the street, because they're driving away. Uh. It's not personal service...

On 1/15 Judge Mura resolves the issue by striking the prohibition, explaining:

Well, if she files something and she's not entitled to do that filing, you will be entitled to terms. If she files something and she is entitled to do it, then you're not going to be entitled to terms. *All, RP, 11-12*

I end the indigency motion by saying this expense results from a failure of justice that needs to be checked and balanced by a higher court.

"It is not efficient on the system to not work according to its purpose, and instead, keep putting unnecessary obstacles in honest people's way." *All, CP, 136*

Ms. Martin notified me that Judge Mura had reassigned the case to Judge Snyder in a letter dated and filed 1/25. With that, she included another letter, signed and dated the same day, returning my motion for indigency unsigned and unfiled. *All, CP, 136* Ms. Martin referred me to Judge Mura's previous denial of indigency [for another appeal] made because of a ruling to dismiss. She wrote it was up to me to move in the reassigned dept,

but in any event the language in your motion needs to be limited as to why you are entitled to be found indigent, rather than the substance of your appeal. *All, CP, 136 and 9*

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"Ms. Moser has been instructed that what she submitted needs to be noted up and go through the normal course of things as outlined by court rules. All future motions in this matter will be heard by Judge Snyder."(end of e-mail) *All, CP, 12*

On 1/29, I also wrote the COA, requesting an extension to pay the filing fee, and explaining that I now have the remedy of reconsideration before Judge Snyder and that might eliminate the need

for review. I promised to notify the COA if the issue gets resolved in trial court and to bring the motion for indigency before Judge Snyder as soon as I could. All, CP, 137

I have the updated original motion for indigency put before Judge Snyder. Now I explain my motivation to him: I don't think leaving an appearance that bad faith conduct is encouraged by the Court and that bias is the norm would further the interests of justice. Leaving these rulings uncorrected would probably encourage Mr. Hatch and Ms. Moser to keep pulling more dirty tricks because they successfully disrupt litigation and allow them to keep clear-cutting my property. All, CP, 136-138

I end the Reply for the 2/19 hearing with, "It's about time to return to the law, put the drama to rest and begin resolving this lawsuit on the merits." CP, 147

I then address the objections to default: the motion for default is for the re-filed action, not the dismissed one. Leave of court is not required under CR 19 and 20. Ms. Moser is an indispensable party. No factual basis to assert Ms. Moser's joinder under the same case number was improper. The action has been properly re-filed and re-served, leaving Ms. Moser with an obligation to respond accordingly. All, CP, 33 I conclude with:

By now, the Court has had a chance to see which side has shown a pattern of conduct that disregards the law and damages the Court's integrity. Mr. Banel has never shown any basis in law and fact to support his accusations that my motions are wrongful or somehow an abuse of process that need to be stopped. Without that basis, no authority to grant terms exists. Once the findings are properly resolved, the Court of Appeals will address the sensitive issues so this Court doesn't have to deal with them on remand. CP, 33-34

Judge Snyder on 4/9:

Well, in a motion such as this where the Court imposes terms for somebody having to defend against a motion that is baseless, the Court, I suppose, could say and might be inclined to say, well, this isn't, this isn't a sanction in the same sense that the cases that you cited, which were sanction penalties for some particular bad act, but that they're the terms, the cost of having to defend this that's been brought before the Court; that that cost be put upon you rather than upon them. My feeling, and I think I -- I don't have a copy of the transcript of the hearing from that date, but my recollection is that I made it fairly clear that you were -- Judge Mura informed you that your next set of remedies from the time you had your request for reconsideration denied in his court, that that next remedy was the court of appeals, and that there was -- he did -- that this Court would take no further action. You brought a similar motion there based upon essentially the same things that the first one was brought upon, and that came in front of me, and I obviously could not make a decision on a reconsideration of a reconsideration made by another judge, so it was clear to me that the motion was groundless; that you had been informed that you were not going to get reconsideration. The court rule, I think, would indicate as you noted any reasonable attorney; any reasonable attorney would have realized they didn't

have another shot to do another motion for reconsideration, and having been advised that the court of appeals was your remedy, then to come back to this court while at the same time pursuing an action in the court of appeals, indicates to me that it's a groundless motion. You were advised and should have known, and any reasonable person would have known, that the second motion for reconsideration and the fact that Mr. Banel had to respond to that, and his client had to respond to that and pay him for that, is an action that would be in bad faith, or would be essentially a frivolous action. For that reason, I granted the terms. RP, 21-23

From: luba pekisheva To: rfbanel  
Sent: Wed, May 12, 2010 11:44 am  
Subject: litigation abuse

Richard-

I hope you've reviewed my objection to your proposed judgment order by now. I left a stamped copy ...for you yesterday. I changed the ending, but all the legal authority and arguments against there being a legal basis for your judgment are the same as in the draft I e-mailed you before noon.

Your proposed judgment is both baseless and brought with an improper purpose in the true sense of those theories. Even a prejudiced judge may find it beyond their usual tendencies not to acknowledge a litigation abuse that blatant. I offered to talk to you and maybe resolve something informally. You've given me no indication you were interested in addressing this issue.

The least severe sanction to get the point of CR 11 across would be for you to pay for the costs of my appeal. I wouldn't have to appeal if your baseless pleadings haven't been granted when there was no legal basis to grant them. Lynn wouldn't have thought of what you did.

And it really isn't my fault she is not paying you. If I can't afford an attorney, I don't hire one. You're not going to get any money out of me; so if [you] want to help Lynn for free, go for it, just don't fool yourself into thinking this is financially worthwhile. *Luba*

**From:** "rfbanel To: pekisheva **Sent:** Wed, May 12, 2010 4:58:54 PM  
**Subject:** Re: litigation abuse

You've had my proposed orders for almost two weeks, and the first peep I heard from you was late on Monday night 5/10. Then late Tuesday morning you e-mailed me an 8 page response revisiting and arguing against what the judge already ruled on during the 4/9 hearing. I'm reasonably confident that what you'll find out at this Friday's presentation hearing is that the matter was decided already on 4/9 and no more argument on the merits will be heard. That said, if you want to sign both proposed orders as is, fine let's do it with enough time before the end of the court day Thursday 5/13 so I will have enough time to notify the court to have Friday's presentation hearing stricken. And if you have some language you want included in either or

both of my proposed orders, please submit it to me as soon as possible and I will take a look at it, but again with enough time to have Friday's hearing stricken if we come to some agreement. And also at the 4/9 hearing I was asked to provide a cost bill, which I did, and which I served on you almost two weeks ago. And as far as I am concerned, it is self-explanatory. Now, if you have an offer of settlement you want to make, I will consider it. *Richard Banel PLLC*

Re: litigation abuse To: rfbanel

The Amended Order needs findings of whether or not I conducted reasonable inquiry into the motion heard on 2/19, as well as how the judgment represents a least severe sanction necessary to uphold the purpose of CR 11. The amount needs to be specified as what was actually and reasonably expended as a direct result of sanctionable conduct. These are the case-law requirements. I don't accept your proposed judgment; let's have Snyder go on the record as to what he decides and why. *All, CP, 6-7*

The end of Objection to Moser's Outrageous Judgment:

And let's not overlook that the default motion was brought in the new, re-filed action, which was not ordered frozen until the end of the hearing on 4/9. So Judge Snyder promised to punish me for 1. doing something he did not prohibit (in violation of the Constitution) until much later after it was done (motion for default) and 2. doing something he acknowledged made sense (trying to get the findings issue resolved and prevent an unnecessary return to the COA). Now, Judge Snyder knows that I've noticed, and it is his choice whether or not to follow thru on a promise to abuse his discretion.

This is a bizarre situation where the court has been encouraging and rewarding litigation abuses, instead of deterring them, which, predictably, led to more brazen abuses. Instead of demonstrating what responding to sanctionable conduct has actually cost his client, Mr. Banel apparently asks for what he would like to see me lose. At first he wanted 1800, then 2200, then 4,537. He may still want more. He may always want more and appeal to the predictable knee-jerk reaction that has so far given him exactly what he has asked for. A favored party needs no legal basis; the prejudiced judge can be counted on to find the excuse he's looking for. CP 21

The anger and complaining to the judge whenever I "file motions on him", as well as the absence of evidence that Ms. Moser has ever paid for or has even been billed for any of Mr. Banel's billable hours reveal that he is not being paid for his dedication to her clear-cutting project. An attorney who's being paid appreciates having opportunity to do work. I don't blame Ms. Moser. The quality of Mr. Banel's work is not worth paying for. What's unconscionable here is that Mr. Banel resorts to money-making shenanigans undertaken in blatant bad faith to apparently induce her to pay him some of what she expects to get from me.

Whether or not to continue to allow prejudice to cloud his judgment and reward unconscionable behavior is Judge Snyder's choice. How I respond to whatever he does is my choice. Judge Mura and Judge Snyder have "shown me". I am no longer shocked when a Superior Court judge covers up acting contrary to law with statements that are false or don't make sense. I no longer presume that the rule of law will be put ahead of the rule of ego. It is obvious that I no longer expect fairness from Judge Snyder. It should be obvious to Judge Snyder that I don't have an attorney available to me, what is available to me is my mind. I will continue to notice what's going on. No amount of punishment can change that. CP, 21-22

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COURT OF APPEALS, DIVISION 1

Whatcom County Superior Court

LUBA PEKISHEVA,  
Petitioner,  
vs.  
LYNN J. MOSER,  
Respondent

Case No. 64832-2-1  
Whatcom Superior #09 2 02664  
Affidavit of Service -  
Appellant's Brief; verbatim  
report of proceedings, Vol.

2010 NOV 12 11:10 AM 10:22

FILED  
COURT OF APPEALS, DIV. 1  
STATE OF WASHINGTON

I, Luba Pekisheva, swear that the following is true and correct:

- 1. I am over 18, competent <sup>LD (server couldn't make it)</sup> and ~~not a party to this action.~~
- 2. On November ~~10~~th, 2010 at around 5 am <sup>(pm)</sup>, I hand delivered a true copy of: Appellant's Brief; supplemental transcript, to Richard Banel at #691 1225 E. Sunset Dr, Ste. 145, Bellingham, WA 98226.
- 3. At <sup>~</sup>5 am <sup>(pm)</sup> the same day, I mailed a true copy of the above documents, except the verbatim report, postage paid, to Christian Hatch at PO Box 188, Acme, WA 98220.

I swear that the foregoing is true and correct to the best of my knowledge under the penalty of perjury of the laws of the State of Washington.

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Dated this 19<sup>th</sup> day of November, 2010

A handwritten signature in cursive script, appearing to read "Anita Petrich", is written over a horizontal line.