

65069-10

65069-10

NO. 65069-6-I

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

DISCOVER BANK, ISSUER OF THE DISCOVER CARD,

Respondent,

v.

LESA M. BUTLER and DOE I, and their marital community composed thereof,

Appellants.

BRIEF OF RESPONDENT

APPEAL FROM ISLAND COUNTY SUPERIOR COURT
Honorable Vickie I. Churchill

2010 SEP 28 PM 1:17
FILED
COURT CLERK
JULIA M. HARRIS

BISHOP, WHITE, MARSHALL &
WEIBEL, P.S.
Jeffrey S. Mackie, WSBA #35829
720 Olive Way, Suite 1301
Seattle, WA 98101
(206) 622-5306, ext. 7493
Attorneys for Respondent

Table of Contents

| | | |
|----|--|----|
| A. | Restatement of Issues..... | 1 |
| B. | Restatement of the Case..... | 1 |
| | 1. Statement of Facts..... | 1 |
| | 2. Procedural History..... | 1 |
| C. | Argument..... | 2 |
| | 1. THE TRIAL COURT PROPERLY GRANTED DISCOVER BANK’S MOTION FOR SUMMARY JUDGMENT..... | 2 |
| | A. <u>Ms. Butler raised no genuine issue of material fact in response to Discover Bank’s motion for summary judgment</u> | 3 |
| | 1. There was an enforceable contract between Ms. Butler and Discover Bank | 5 |
| | 2. Ms. Butler agreed to the terms of the cardmember agreement..... | 7 |
| | 3. Ms. Butler never denied using the Discover credit card..... | 10 |
| | 4. There was no billing error on Ms. Butler’s credit card account..... | 10 |

| | | |
|-----|---|----|
| 2.. | THE TRIAL COURT PROPERLY CONSIDERED AND ADMITTED INTO EVIDENCE DISCOVER BANK'S AFFIDAVIT UNDER CR 56(A) AND CR 56(E)..... | 12 |
| A. | <u>The trial court properly considered the affidavit under CR 56(a) and (e).</u> | 12 |
| B. | <u>The affidavit is not hearsay</u> | 14 |
| C. | <u>Federal law does not control the admissibility of the affidavit</u> | 16 |
| 3. | THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN DENYING MS. BUTLER'S MOTION FOR RECONSIDERATION..... | 17 |
| D. | Conclusion..... | 17 |

Table of Authorities

A. Table of Cases

Washington Cases

Ambach v. French, 141 Wn.App. 782, 173 P.3d 941 (2007)..... 3

Champagne v. Thurston County, 163 Wn.2d 69, 178 P.3d 936 (2008)
..... 3

In re Harbert, 85 Wn.2d 719, 538 P.2d 1212 (1975)..... 14

In the Matter of the Parentage of J.M.K., 155 Wn.2d 374, 119 P.3d 840
(2005)..... 3

State v. Lee, 144 Wn.App. 462, 182 P.3d 1008 (2008)..... 12

Turngren v. King County, 104 Wn.2d 293, 705 P.2d 258 (1985)..... 4

Wilcox v. Lexington Eye Institute, 130 Wn.App. 234, 122 P.3d 729 (2005)
..... 17

Other Cases

Citibank South Dakota v. Santoro, 210 Or.App. 344, 150 P.3d 429 (2006)
..... 8, 9

Davis v. Discover Bank, 277 Ga. App. 864, 627 SE 2.d 819 (2006)..... 9

Heiges v. JP Morgan Chase Bank, N.A., 521 F. Supp.2d 641 (N.D. Ohio
2007)..... 9, 10

Taylor v. First North American Nat'l Bank, 325 F. Supp.2d 1304 (M.D.
Ala 2004)..... 9

B. Statutes

Wash. Rev. Code § 5.45.020 (2008)..... 14, 15

C. Rules and Regulations

CR 56(a)..... 12

CR 56(c)..... 2-4

CR 56(e)..... 4, 12-15

A. RESTATEMENT OF ISSUES

1. Did the Trial Court Correctly Grant Discover Bank's Motion for Summary Judgment?

2. Did the Trial Court Correctly Rely On Discover Bank's Affidavit in Support of its Motion for Summary Judgment?

3. Did the Trial Court abuse its discretion in denying Ms. Butler's Motion for Reconsideration?

B. RESTATEMENT OF THE CASE

1. Statement of Facts

The facts in this case are relatively straightforward.

Ms. Butler opened a credit card account with Discover Bank on or about January 21, 2002. CP 96. After Ms. Butler defaulted on her account, Discover Bank began legal proceedings to collect on the debt. CP 128.

2. Procedural History

Discover Bank filed this action against Ms. Butler on September 23, 2009. CP 177-180. Earlier, on July 16, 2009, Discover Bank had received Ms. Butler's Answer to the summons and complaint served upon her. CP 174-176. Discover Bank filed a motion for summary judgment with the court on October 14, 2009, along with the Affidavit of Robert Adkins in support of summary judgment. CP 169-173, 94-128. Attached

to the Adkins Affidavit was a copy of a signed credit card acceptance form, the cardmember agreement, and account statements from May 19, 2006, to May 31, 2006. CP 94-128.

On November 4, 2009, Ms. Butler filed a response in opposition to Discover Bank's motion. CP 73-91. On January 4, 2010, Ms. Butler filed an additional response to Discover Bank's motion. CP 49-72. On January 6, 2010, Discover Bank filed its reply to Ms. Butler's response. CP 38-48.

On January 11, 2010, the court granted Discover Bank's motion for summary judgment. CP 34-37.

On January 20, 2009, Ms. Butler filed a Motion for Reconsideration with the trial court. CP 12-23. On February 1, 2010, Discover Bank filed a Response in Opposition to Ms. Butler's motion. CP 8-11. The trial court denied Ms. Butler's motion on February 22, 2010. CP 5-6.

Ms. Butler's Notice of Appeal was filed on March 18, 2010. On July 21, 2010, a Verbatim Report of Proceedings was filed with the Court of Appeals

C. ARGUMENT

1. THE TRIAL COURT PROPERLY GRANTED DISCOVER BANK'S MOTION FOR SUMMARY JUDGMENT.

Under CR 56(c), summary judgment is appropriate when "there is

no genuine issue as to any material fact and...the moving party is entitled to a judgment as a matter of law.” CR 56(c). The court should affirm the grant of summary judgment if, from all the evidence, it is clear that reasonable persons could reach but one conclusion. *In the Matter of the Parentage of J.M.K.*, 155 Wn.2d 374, 386, 119 P.3d 840 (2005).

The standard of review on appeal from an order on summary judgment is de novo. *Id.* The appellate court engages in the same inquiry as the trial court. *Id.* In reviewing an order granting summary judgment, the appellate court will consider the evidence in the light most favorable to the nonmoving party. *Champagne v. Thurston County*, 163 Wn.2d 69, 76, 178 P.3d 936 (2008). The Court will only consider the evidence and issues considered by the trial court. *Ambach v. French*, 141 Wn.App. 782, 791, 173 P.3d 941 (2007).

A. Ms. Butler raised no genuine issue of material fact in response to Discover Bank’s motion for summary judgment.

Discover Bank’s motion for summary judgment asked the court to enter judgment on a debt incurred by Ms. Butler on a Discover credit card. CP 169-170. The debt on the credit card was past-due and Discover Bank had demanded payment of the debt. CP 169-170.

The only legal or factual issue known to Discover Bank was the ultimate issue of Ms. Butler’s liability to plaintiff. CP 169-170. In

support of its motion for summary judgment, Discover Bank filed the affidavit of Robert Adkins. CP 94-128. As stated previously, attached to the Adkins Affidavit was a copy of a signed credit card acceptance form, the cardmember agreement, and account statements from May 19, 2006, to May 31, 2006. CP 96-128.

In response to Discover Bank's motion for summary judgment, Ms. Butler never provided any evidence that she did not owe money to Discover Bank. Ms. Butler never provided a sworn affidavit; she simply raised a number of unsupported assertions. Ms. Butler argued that Robert Adkins lacked personal knowledge of the account at issue and erroneously claimed that the final two account statements contained billing errors. CP 52-53.

Under CR 56(c), the defendant "may not rest upon the mere allegations or denials of his pleading," but instead must bring forward evidence setting forth "specific facts showing that there is a genuine issue for trial," or summary judgment "shall be entered against him." CR 56(e). "[C]onclusory allegations, speculative statements or argumentative assertions that unresolved factual matters remain are not sufficient to preclude an order of summary judgment." *Turngren v. King County*, 104 Wn.2d 293, 314, 705 P.2d 258 (1985).

Ms. Butler's unsworn affidavit contained no evidence setting forth specific facts showing there was a genuine issue for trial. Her conclusory and argumentative assertions did not raise an issue of fact, especially considering the overwhelming evidence filed by Discover in support of its claim. Ms. Butler's assertions were unsupported by law and failed to raise an issue of fact. Summary judgment was proper in all respects.

Ms. Butler also argued in her response that the declaration of Jeffrey S. Mackie, attorney for Discover Bank, was inadmissible because "a party cannot be both witness and counsel in the same cause." CP 49-50. Ms. Butler's argument fails for the glaring reason that Mr. Mackie's declaration was filed for the limited purpose of supporting Discover Bank's request for reasonable attorney fees. CP 92-93.

1. There was an enforceable contract between Ms. Butler and Discover Bank.

A valid contract requires an objective manifestation of mutual assent. *Keystone Land & Dev. Co. v. Xerox Corp.*, 152 Wn.2d 171, 177-78, 94 P.3d 945 (2004). "Generally, manifestations of mutual assent will be expressed by an offer and acceptance." *Id.* at 178. A determination of mutual assent is normally a question of fact that is reviewed under a substantial evidence standard. *Id.* However, "this determination of fact may be determined as a question of law where reasonable minds could not

differ.” *Id.*

Referencing *Discover Bank v. Bridges*, 154 Wn.App. 722, 226 P.3d 191 (2010), Ms. Butler argues that Discover Bank never “produced anything other than an alleged copy of a contract and the same kind of generic billings as described in the Bridges’ case.” BA 12. This is not true. Attached to the Adkins Affidavit is a “Pre-Approved Discover Platinum Card Acceptance Form” signed by Lesa Butler. CP 96. The language under the signature line reads in pertinent part, “I understand that my credit line will be set after you have reviewed my financial information.” CP 96. In addition to financial information, the Acceptance Form also contains identifying information regarding Ms. Butler and Danny L. Watts. CP 96. Ms. Butler has never denied signing the Acceptance Form.

In *Discover Bank v. Ray*, 139 Wn.App. 723, 725, 162 P.3d 1131 (2007), Discover Bank brought an action for monies due against a cardholder. In finding there was an enforceable contract between Discover Bank and Mr. Ray, the Court stated,

“The offeror is the master of the offer. Therefore, the offeror may propose acceptance by conduct, and the buyer may accept by performing those acts proposed by the offeror.” *Id.* at 727. (citations omitted.).

In the present case, there was clearly an enforceable contract between Ms. Butler and Discover Bank. Discover Bank offered a line of credit to Ms. Butler and she accepted by signing and returning the “Pre-Approved Discover Platinum Card Acceptance Form” and then using her credit card. The *Bridges* case, *supra*, which Ms. Butler relies on, is distinguishable. In *Bridges*, the Court found that Discover Bank’s pleadings disclosed no evidence, such as a signed agreement or cancelled checks, to indicate that the Bridges mutually assented to the contract. *Bridges* at 728. Unlike *Bridges*, in the present case, Discover Bank provided a signed Acceptance Form whereby Ms. Butler agreed to the line of credit extended to her; thus creating an enforceable contract.

2. Ms. Butler agreed to the terms of the cardmember agreement.

As with most credit card issuers, the terms and conditions of the cardmember agreement in the present case are accepted when a person uses the credit card or fails to cancel the account within the given time. The cardmember agreement states in pertinent part, “Your Acceptance of this Agreement. The use of your Account or a Card by you or an Authorized User, or your failure to cancel your Account within 30 days after receiving a Card, means you accept this Agreement....” CP 99.

Here, Ms. Butler accepted the terms of the cardmember agreement when she did not cancel the Account and used the Discover Card. CP 95.

Courts in other jurisdictions have held that credit card companies are not required to provide a signed credit card agreement in order to prove mutual assent. For instance, in *Citibank South Dakota v. Santoro*, 210 Or. App. 344, 150 P.3d 429 (2006), the Oregon Court of Appeals affirmed summary judgment in favor of the creditor. The card holder contended that there was no evidence of mutual assent because he did not sign the cardmember agreement. The Court disagreed. The Court noted language in the cardmember agreement which was similar to the one at issue here, which provided that the cardmember is bound by the terms of the agreement by use of the card or failure to cancel the account. The Court concluded that Santoro's "conduct" in using the card "constituted mutual assent to the terms of the credit card agreement." Further, as in our case, Citibank submitted a standard copy of the cardmember agreement along with credit card statements and an affidavit showing the balance due. *Id.* at 350. The Court held:

Santoro did not directly contravene that evidence; he merely denied that his account was in default because he did not have an agreement. First, as we have concluded, Santoro is incorrect that he did not have an agreement with Citibank. Second, Santoro's denial of the existence of the agreement does not refute Citibank's assertions that he used the credit card and

incurred the debt, and it therefore does not establish that there is a genuine issue of material fact as to his default. The trial court did not err in granting summary judgment to Citibank. *Id.* at 350 (citations omitted).

The *Santoro* case relied on the case of *Davis v. Discover Bank*, 277 Ga. App. 864, 627 SE 2.d 819 (2006). There, the cardholder argued that Discover had “presented no evidence that Appellant had ever signed an agreement or agreed to be personally obligated to the Bank.” *Id.* at 865. The *Davis* Court held:

Discover need not produce a copy of Davis’s application to establish the existence of a valid credit card debt. “[A] contract was effected in this case when the plaintiff issued its credit card to the defendant to be accepted by [him] in accordance with the terms and conditions therein set forth, or at [his] option to be rejected by [him]. Such rejection need take the form of returning the card, or simply its non-use. The issuance of the card to the defendant amounted to a mere offer on the plaintiff’s part and the contract became entire when defendant retained the card and thereafter made use of it. The card itself constituted the formal and binding contract. *Id.* at 820-21, citing *Read v. Gulf Oil Corp.*, 114 Ga. App. 21, 22, 150 S.E.2d 319 (1966).

The Courts in *Heiges v. JP Morgan Chase Bank, N.A.*, 521 F. Supp.2d 641, 647 (N.D. Ohio 2007) and *Taylor v. First North American Nat’l Bank*, 325 F. Supp.2d 1304, 1313 (M.D. Ala 2004) also held that use of the card constitutes a binding agreement. For instance, in *Heiges*, the Federal District Court held that “Heiges’ argument that he never signed the underlying Agreement misses the relevant point. By simply

using the card, he agreed to be bound by the Agreement and all its terms.” *Heiges*, 521 F. Supp.2d at 647.

Furthermore, as stated earlier, the parties’ Agreement, by its terms, does not require a signature and there is no signature line. The cardmember accepts the terms of the Agreement by using the account. The evidence on the record illustrates that Ms. Butler did so.

3. Ms. Butler never denied using the Discover credit card.

Most significantly, Ms. Butler never denied that she used the Discover card. Ms. Butler merely makes conclusory assertions regarding her liability to Discover.

Ms. Butler’s account was opened in 2002. CP 96. Ms. Butler received over seven years of benefits from the use of her Discover card. Ms. Butler’s conclusory assertions failed to raise any issue of material fact. The trial court properly entered summary judgment against her.

4. There was no billing error on Ms. Butler’s credit card account.

In her response to summary judgment, Ms. Butler argued that “the truth and accuracy of the [billing] records is a genuine issue of material fact that is in dispute.” CP 53. Ms. Butler asserted that the last two account statements presented in Discover’s affidavit “effectively [billed] two payments to be made at once in one month.” CP 53. These two

account statement have closing dates of May 19, 2009, and May 25, 2009, respectively. CP 128. The May 19, 2009, statement calls for a minimum payment of \$1,999.00 due by June 18, 2009. CP 128. The May 31, 2009, statement calls for a minimum payment of \$2,220.00 due by June 25, 2009. The total balance due on both account statements is \$11,041.73. CP 128.

Ms. Butler's argument is without merit. The Cardmember Agreement states "[y]ou are in default if...you fail to comply with the terms of this Agreement, including failing to make a required payment when due [and] exceeding you Account credit line..." CP 102. The Cardmember Agreement further states "[i]f you are in default, we may declare the entire balance on your Account immediately due and payable without notice." CP 102. Ms. Butler's account was clearly in default. Ms. Butler's last payment on the account occurred on November 5, 2009. CP 125. She subsequently failed to make multiple required payments on the account. CP 125-128. In addition, as of November 19, 2009, Ms. Butler exceeded her \$9,400.00 Account credit line. CP 125.

Because she exceeded the account credit line and failed to make required payments, the account was in default under the terms of the Cardmember Agreement. Even though it elected not to do so, Discover Bank had the right under the Cardmember Agreement to declare the entire

balance of \$11,041.73 due and payable without notice. Instead, the account statements only asked for partial payment of the account balance. As such, Ms. Butler's assertion that she was erroneously billed fails to raise a genuine issue of fact.

2.. THE TRIAL COURT PROPERLY CONSIDERED AND ADMITTED INTO EVIDENCE DISCOVER BANK'S AFFIDAVIT UNDER CR 56(A) AND CR 56(E).

This Court reviews a trial court's decision on the admissibility of evidence in a summary judgment proceeding de novo. *State v. Lee*, 144 Wn.App. 462, 466, 182 P.3d 1008 (2008). In the present case, the trial court properly considered Discover Bank's affidavit under the requirements of CR 56(a) and CR 56(e).

A. The trial court properly considered the affidavit under CR 56(a) and (e).

Under CR 56(a), a party seeking summary judgment may move, "with or without supporting affidavits for a summary judgment in his favor as to all or any part thereof." CR 56(a). In the present case, Discover Bank filed with the court the Affidavit of Robert Adkins. CP 94-128.

Ms. Butler argues that the trial court erred in allowing into evidence the Adkins Affidavit. B.A. 5-8. Ms. Butler goes on to argue that

the affidavit of Robert Adkins is inadmissible because it is “not sworn testimony by a witness with first hand knowledge.” BA 5.

Ms. Butler’s argument is without merit. Discover Bank’s affidavit clearly meets the requirements of CR 56(e). CR 56(e) provides in part that,

Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith.

Here, Robert Adkins states that his sworn statement is made “on the basis of [his] personal knowledge.” CP 94.

Ms. Butler further argues that Robert Adkins lacked personal knowledge to support his affidavits because he is an employee of DFS Services LLC and not Discover Bank. BA 5-8. This argument is also without merit. Robert Adkins clearly states in his affidavit that DFS Services LLC is the servicing agent of Discover Bank. CP 94. Furthermore, Mr. Adkins states that he is responsible for “managing and overseeing Discover accounts that have resulted in contested litigation.” CP 94. Mr. Adkins also states that his affidavit is made “on the basis of [his] personal knowledge and a review of the records maintained by Discover with respect to the account at issue.” CP 94.

B. The affidavit is not hearsay.

Finally, Ms. Butler makes the conclusory argument that Discover Bank's affidavits are hearsay. BA 5-8. As stated earlier, under CR 56(e), supporting affidavits "shall set forth such facts as would be admissible in evidence...." CR 56(e). Furthermore, a trial judge is presumed to know the rules of evidence and is presumed to have considered only admissible evidence. *In re Harbert*, 85 Wn.2d 719, 729, 538 P.2d 1212 (1975).

Here, the Adkins Affidavit is not hearsay. Under RCW 5.45.020,

A record of an act, condition or event, shall in so far as relevant, be competent evidence if the custodian or other qualified witness testifies to its identity and the mode of its preparation, and if it was made in the regular course of business, at or near the time of the act, condition or event, and if, in the opinion of the court, the sources of information, method and time of preparation were such as to justify its admission.

The Adkins Affidavit is not hearsay. In his affidavit, Mr. Adkins explains that as an Account Manager in the Attorney Placement Department, he is responsible for Discover accounts that have resulted in contested litigation. CP 94. Mr. Adkins states in his affidavit that he makes his certification on the basis of his personal knowledge and a review of Ms. Butler's account records. CP 94. Mr. Adkins further declares that such records are maintained in the regular course of business

at or near the time of the events recorded. CP 94. As such, under RCW 5.45.020, the Adkins Declaration, and its attached exhibits are admissible.

In *Discover Bank v. Bridges*, Discover Bank filed a complaint against the defendants seeking payment of a credit card debt. *Discover, supra*, at 724. Discover Bank filed an affidavit in support of summary judgment. *Id.* at 725. The Court of Appeals held that the trial court properly considered the affidavit under CR 56(e) and RCW 5.45.020. *Id.* at 726. The Court noted that the affiant stated in his affidavit that 1) he worked for an affiliate of Discover Bank; 2) he had access to the defendant's account records in the course of his employment; 3) he made his statement on the basis of his personal knowledge and a review of the records under penalty of perjury; and 4) the attached account records were true and correct copies made in the ordinary course of business. *Id.*

Like *Bridges*, the affidavit in the present case is similar. In his affidavit, Mr. Adkins states under penalty of perjury that he works for DFS and that his statement is made on the basis of his personal knowledge and a review of the records. CP 94. Mr. Adkins further states that he is responsible for managing and overseeing Discover Bank accounts that have resulted in contested litigation and that the records attached to his affidavit are true and correct copies. CP 94-95. Mr. Adkins further states that the records are maintained in the regular course of business at or near

the time of the events recorded. CP 94. Like *Bridges*, the Court should find that the trial court did not abuse its discretion in considering the affidavit.

C. Federal law does not control the admissibility of the affidavits.

Ms. Butler argues that the trial court should have relied on *In re Vinhnee*, 336 B.R. 437 (2005), in determining the admissibility of the Adkins Affidavit. BA 3. Ms. Butler argued this for the first time in her motion for reconsideration. CP 19-23. In *Vinhnee*, the Ninth Circuit Bankruptcy Appellate Panel held that a lower Federal District Court did not abuse its discretion in refusing to admit into evidence monthly billing statements based on the testimony of the records custodian. *Id.* at 450. The Court's decision was based on an analysis of relevant provisions of the Federal Rules of Evidence.

Federal law interpreting a federal rule is not binding on Washington courts even where the rule is identical to the state rule. *State v. Copeland*, 130 Wn.2d 244, 258, 922 P.2d 1304 (1996). The Washington State Supreme Court is the "final authority insofar as interpretation of this State's rules is concerned, and [it is] free to interpret the rules differently than do the federal courts as long as [it does] not run afoul of federal constitutional prohibitions." *State v. Brown*, 113 Wn.2d

520, 548, 782 P.2d 1013 (1989). In the present case, as described above, the trial court properly considered and admitted into evidence Discover Bank's affidavit. The trial court complied with comprehensive state rules governing the admissibility of such evidence and was not obligated to follow federal case law concerning a federal rule.

3. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN DENYING MS. BUTLER'S MOTION FOR RECONSIDERATION

Motions for reconsideration are reviewed under the abuse of discretion standard. *Wilcox v. Lexington Eye Institute*, 130 Wn.App. 234, 241, 122 P.3d 729 (2005). A trial court abuses its discretion "when its decision is based on untenable grounds or reasons" *Id.* at 241. Here, as explained in detail above, the trial court had tenable grounds for denying Ms. Butler's motion for reconsideration because Ms. Butler failed to raise any issues of fact. To the extent Ms. Butler is also requesting the Court reverse the trial court's denial of her motion for reconsideration, this request should also be denied.

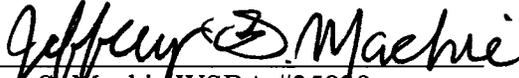
D. CONCLUSION

For the reasons set out above, Discover Bank respectfully requests that the Court affirm the trial court's grant of judgment. Ms. Butler has never disputed that she signed and returned the Acceptance Form, opened the account, incurred charges, and made payments prior to default. Ms.

Butler's conclusory allegations failed to raise a genuine issue of material fact. As such, summary judgment was entirely appropriate and the Court should affirm the trial court's ruling. Finally, to the extent Ms. Butler is also requesting the Court reverse the trial court's denial of her motion for reconsideration, this request should also be denied because there is no evidence that the trial court abused its discretion.

Respectfully submitted this 17th day of September, 2010.

BISHOP, WHITE, MARSHALL & WEIBEL, P.S.


Jeffrey S. Mackie WSBA #35829
720 Olive Way, Suite 1301
Seattle, WA 98101
(206) 622-5306, ext. 7493

CERTIFICATE OF SERVICE

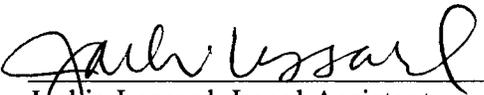
I certify that on September 17, 2010, I mailed to the appellant two copies of this Brief of Respondent via Express Mail to:

Lesa Butler & Doe I
PO Box 58
Greenbank WA 98253-0058

CERTIFICATE OF FILING

I certify that on September 20, 2010, I filed via ABC Messenger the original and one copy of this Brief of Respondent with the Court of Appeals, Division I, at the following address:

Court of Appeals, Division I
600 University St, One Union Square
Seattle, WA 98101-1176


Jackie Lessard, Legal Assistant