

68375-6

68375-6

NO. 68375-6-I

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

SCOTT D. ENT, a married man,

Appellant,

v.

WASHINGTON STATE CRIMINAL JUSTICE TRAINING
COMMISSION,

Respondent.

REPLY BRIEF OF APPELLANT

KENNETH W. CHADWICK, WSBA #33509
SCHULTHEIS TABLER WALLACE, PLLC
Attorneys for Appellant Scott D. Ent
56 C Street N.W.
Post Office Box 876
Ephrata, WA 98823
(509) 754-5264

2012 JUL 15 PM 1:55
COURT OF APPEALS
STATE OF WASHINGTON
DIVISION I

TABLE OF CONTENTS

I. INTRODUCTION..... 1

II. ARGUMENT/AUTHORITIES 1

A. NOTWITHSTANDING RESPONDENT’S ARGUMENT TO THE CONTRARY, RCW 43.101.390 IS AMBIGUOUS..... 1

B. THE “ACT RELATING TO CERTIFICATION OF PEACE OFFICERS,” IN WHICH RCW 43.101.390 IS CONTAINED, SOLELY AND SPECIFICALLY ADDRESSES POLICE CERTIFICATION AND DECERTIFICATION AND RCW 43.101.390 MUST BE READ IN THAT CONTEXT 3

C. RESPONDENT MISAPPREHENDS APPELLANT’S USE OF HYPOTHETICAL TESTS OF RESPONDENT’S PROPOSED CONSTRUCTION OF RCW 43.101.390..... 4

D. THE COURT SHOULD REJECT RESPONDENT’S STRAW MAN ATTACK ON APPELLANT’S NON-EXISTENT PUBLIC POLICY ARGUMENT 5

III. CONCLUSION 6

TABLE OF AUTHORITIES

Cases

<i>City of Seattle v. State Dept. of Labor and Industries</i> , 136 Wn.2d 693, 965 P.2d 619 (1998).....	4
<i>Codd v. Stevens Pass, Inc.</i> , 45 Wn.App. 393, 725 P.2d 1008 (1986).....	2
<i>Delagrave v. Employment Sec. Dept. of the State of Washington</i> , 127 Wn.APP 596, 111 P.3d 879 (2005)	2
<i>Michaels v. CH2M Hill, Inc.</i> , 171 Wn.2d 587, 257 P.3d 532 (2011)	4
<i>Morris v. Blaker</i> , 118 Wash.2d 133, 821 P.2d 482 (1992).....	5
<i>Whatcom County v. City of Bellingham</i> , 128 Wn.2d 537, 909 P.2d 1303 (1996).....	4

Statutes

RCW 43.101.080(7).....	2, 3
------------------------	------

Other Authorities

2001 Wash. Legis. Serv. Ch. 167 (H.B. 1062) (West)	3
2001 Wash. Legis. Serv. Ch. 167 (H.B. 1062)(West)	3
BLACK’S LAW DICTIONARY, 1312 (6 th ed. 1990)	2

Rules

CR 12(c).....	5, 6, 7
---------------	---------

I. INTRODUCTION

Respondent ignores the core statutory construction issue involved in this matter: RCW 43.101.390 must be read in context of the entire 2001 “ACT Relating to certification of peace officers, amending RCW 43.101.010.” Instead, Respondent avoids placing the immunity provision in proper context and asks the Court to broadly construe its scope beyond the purpose of the ACT and provide Respondent blanket tort immunity. Moreover, when faced with the absurd results that would flow from its proposed construction of RCW 43.101.390, Respondent misapprehends Appellant’s proper use of hypothetical tests of its position and inexplicably claims Appellant’s argument is wrongly based in public policy.

In short, Respondent has presented nothing to allow this Court to avoid finding RCW 43.101.390 was intended specifically to provide narrow, purposeful immunity to those involved in administering Respondent’s peace officer certification and decertification regime rather than provide the blanket tort liability Respondent asserts.

II. ARGUMENT/AUTHORITIES

A. NOTWITHSTANDING RESPONDENT’S ARGUMENT TO THE CONTRARY, RCW 43.101.390 IS AMBIGUOUS

As explained in Appellant’s Brief, Respondent cannot be both

legally responsible for its training activities **and** be immune from responsibility for that training. That is simply illogical and creates ambiguity in reading RCW 43.101.080(7) with RCW 43.101.390. Brief of Appellant at p. 7. But in attempting to avoid the ambiguity, Respondent, without authority, simply morphs its conceded and assumed “legal responsibility” into a grant of “permissive powers.” Respondent’s Brief at p. 9. The Court should reject this misdirection.

“Responsibility” is not defined in RCW 43.101, making resort to BLACK’S LAW DICTIONARY appropriate. *See Delagrave v. Employment Sec. Dept. of the State of Washington*, 127 Wn.APP 596, 611, 111 P.3d 879 (2005), *citing Codd v. Stevens Pass, Inc.*, 45 Wn.App. 393, 399, 725 P.2d 1008 (1986). BLACK’S LAW DICTIONARY, 1312 (6th ed. 1990), defines responsibility to mean being answerable for an obligation and having to answer for acts done and to repair or otherwise make restitution to injured parties:

Responsibility. The state of *being answerable for an obligation*, and includes judgment, skill, ability and capacity [citation omitted]. The *obligation to answer for an act done, and to repair or otherwise make restitution for any injury* it may have caused. *See also* Liability; Responsible. (emphasis added).

Given this definition, RCW 43.101.080(7), which pre-dated RCW 43.101.390, specifically imposed legal responsibility on Respondent,

including an obligation to answer for its acts and make restitution to injured parties, such as Appellant. Thus, notwithstanding Respondent's argument otherwise, there is ambiguity between RCW 43.101.080(7) and RCW 43.101.390, as Respondent cannot be *both* liable and immune from liability for injuring Appellant. And accordingly, this Court must construe RCW 43.101.390 to provide its intended narrow, purposeful immunity to those involved in administering Respondent's peace officer certification and decertification regime.

B. THE "ACT RELATING TO CERTIFICATION OF PEACE OFFICERS," IN WHICH RCW 43.101.390 IS CONTAINED, SOLELY AND SPECIFICALLY ADDRESSES POLICE CERTIFICATION AND DECERTIFICATION AND RCW 43.101.390 MUST BE READ IN THAT CONTEXT

It is undeniable RCW 43.101.390 was one of 12 "New Sections" in the 2001 "*Act Relating to certification of peace officers*, amending RCW 43.101.010; adding new sections to chapter 43.101 RCW; and providing an effective date." "Chapter 167 H.B. No. 1062 *Law Enforcement Officers—Certification*," (emphasis added), 2001 Wash. Legis. Serv. Ch. 167 (H.B. 1062) (West) (hereinafter referred to as the "Act") (CP 33-38, 48-56). And it is further undeniable the sole focus of the Act was to install a needed peace officer certification regime and nothing else. Nevertheless, Respondent ignores these undeniable facts and claims RCW

43.101.390 provides it blanket tort immunity.

But this Court must read RCW 43.101.390 so as to give effect to the legislative intent determined within the context of the entire statute. *See City of Seattle v. State Dept. of Labor and Industries*, 136 Wn.2d 693, 698, 965 P.2d 619 (1998), quoting *Whatcom County v. City of Bellingham*, 128 Wn.2d 537, 546, 909 P.2d 1303 (1996). And when read in that context, the only reasonable construction is RCW 43.101.390 was intended to provide narrow, purposeful immunity to those involved in administering Respondent's peace officer certification and decertification regime and nothing more. This construction is further supported by the requirement statutory grants of immunity in derogation of common law, such as RCW 43.101.390, must be narrowly construed. *Michaels v. CH2M Hill, Inc.*, 171 Wn.2d 587, 600, 257 P.3d 532 (2011).

In short, when read in its proper context, RCW 43.101.390 does not provide blanket tort immunity to allow Respondent to escape liability for injuring Appellant.

C. RESPONDENT MISAPPREHENDS APPELLANT'S USE OF HYPOTHETICAL TESTS OF RESPONDENT'S PROPOSED CONSTRUCTION OF RCW 43.101.390

When interpreting a statute, the Court must avoid unlikely, absurd, or strained results. *Morris v. Blaker*, 118 Wash.2d 133, 143, 821 P.2d 482

(1992). It is in this context Appellant provides the hypothetical tests to Respondent's proposed construction of RCW 43.101.390. Brief of Appellant, p. 16-17. Accordingly, the court should disregard Respondent's assertion the hypothetical tests somehow run afoul of a court's analysis in reviewing dismissal under CR 12(c).

In this case, Respondent's CR 12(c) motion to dismiss focused on, as does its response in this appeal, its asserted blanket tort immunity under RCW 43.101.390. As such, using hypothetical facts to test whether Respondent's proposed construction of RCW 43.101.390 is sustainable is consistent with assuring this Court does not construe the statute so as to have absurd results.

Notably, Respondent does not deny that applying its proposed construction of RCW 43.101.390 to the hypothetical facts leads to absurd results.

D. THE COURT SHOULD REJECT RESPONDENT'S STRAW MAN ATTACK ON APPELLANT'S NON-EXISTENT PUBLIC POLICY ARGUMENT

Inexplicably, Respondent spends considerable effort contending this Court should reject Appellant's argument "RCW 43.101.390 contravenes public policy," Respondent's Brief, p. 15, arguing "objections on public policy grounds are not permitted." Respondent's Brief, p. 17-19.

The Court should summarily reject this Straw Man argument, as Appellant makes no public policy arguments.

It appears, though, where Respondent could not refute the absurd results of its proposal that RCW 43.101.390 provides blanket tort immunity, it simply changed the subject, created a Straw Man, and then slayed it. The Court should reject this obfuscation.

III. CONCLUSION

Respondent's contention RCW 43.101.390 provides it blanket immunity from tort liability is simply errant, as was the trial court's acceptance of Respondent's position and dismissing Appellant's lawsuit under CR 12(c).

If Respondent's contention was accepted, (1) there would remain an unresolved internal conflict in RCW Chapter 43.101, as Respondent would illogically be both legally responsible for its training activities and be immune from any legal responsibility for its training; (2) the legislature's intention to provide narrow immunity to promote its purpose in creating a sounder, more consistent process for police departments to employ and re-employ peace officers would be expanded well beyond the scope needed to forward that purpose; and (3) we would be left with unreasonable, absurd results flowing from an improper construction of

RCW 43.101.390.

Accordingly, Appellant respectfully requests this Court reject Respondent's proposed construction of RCW 43.101.390, reverse the trial court's decision to dismiss Appellant's lawsuit under CR 12(c), and remand this matter to the trial court to allow Appellant an opportunity to recover for the significant, permanent injuries caused him by Respondent.

DATED this 13th day of July, 2012.

SCHULTHEIS TABLER WALLACE, PLLC



By: _____
Kenneth W. Chadwick, WSBA 33509
Attorney for Appellant Ent
56 C Street N.W.
P. O. Box 876
Ephrata, WA 98823
Phone: 509-754-5264

1 Kenneth W. Chadwick, WSBA #33509
2 SCHULTHEIS TABLER WALLACE, PLLC
3 56 C Street N.W.
4 P.O. Box 876
5 Ephrata, Washington 98823
6 (509) 754-5264
7 **Attorneys for Appellant, Ent**

8 COURT OF APPEALS, DIVISION I
9 OF THE STATE OF WASHINGTON

10 SCOTT D. ENT, a married man,
11 Appellant,

No. 68375-6

12 v.

AFFIDAVIT OF MAILING

13 WASHINGTON STATE CRIMINAL
14 JUSTICE TRAINING COMMISSION,
15 Respondent

16
17 STATE OF WASHINGTON)
18) ss.
19 COUNTY OF GRANT)

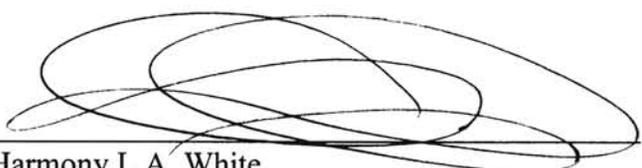
20 THE UNDERSIGNED being first duly sworn, on oath, deposes and states:

21 That on the 13, day of July 2012, affiant deposited in the mails of the United States of
22 America, first class mail, a properly stamped and addressed envelope, containing a copy of the
23 Reply Brief of Appellant dated July 13, 2012, to:

24 Mr. Jon R. Morrone
25 Assistant Attorney General
26 800 Fifth Avenue, Ste. 2000
27 Seattle, WA 98104

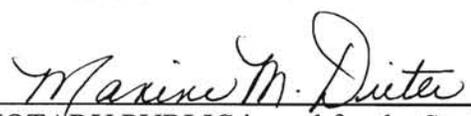
COURT OF APPEALS, DIVISION I
STATE OF WASHINGTON
2012 JUL 15 PM 1:57

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28


Harmony L.A. White

SUBSCRIBED AND SWORN to before me on this 13th day of July 2012.

MAXINE M. DIETER
NOTARY PUBLIC
STATE OF WASHINGTON
COMMISSION EXPIRES
AUGUST 15, 2015


NOTARY PUBLIC in and for the State of
Washington, residing at Ephrata, WA
My commission expires: 08/15/2015