

No. 72225-5-1

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**COURT OF APPEALS, DIVISION I  
OF THE STATE OF WASHINGTON**

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KARL BENZ and CATHERINE RILEY,

Appellants

v.

JOHN RASHLEIGH, an individual,  
PETER C. OJALA, an individual,  
CARSON LAW GROUP, PS, a Washington corporation,  
and DOES I thru V, inclusive,

Respondents

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STATE OF WASHINGTON  
COURT OF APPEALS, DIVISION I  
CLERK OF COURT

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**APPELLANTS' BRIEF IN REPLY TO RESPONSE OF  
PETER C. OJALA and CARSON LAW GROUP, PS**

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KARL BENZ and  
CATHERINE RILEY  
Appellants pro se

2885 Sanford Ave SW #29339  
Grandville, MI 49418  
(206) 650-9904

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## **I. REPLY TO ISSUES PERTAINING TO ASSIGNMENTS OF ERROR**

Reformulation of the issues by Respondents Peter C. Ojala and Carson Law Group, P.S., a Washington Corporation (Ojala/Carson) in this appellate matter are continued attempts to divert the court from the true facts of the case. Clarification of their 'reformulations' are as follows:

- A. Ojala/Carson Were Not Performing 'Ordinary Legal Services' When They Engaged in Criminal Acts Constituting Deceptive Acts And Practices, for Which They Had An Entrepreneurial Motive.
- B. There Was no Cause of Action in Benz and Riley's Complaint for Perjury, But Rather Civil Action for Deceptive Acts and Practices For Which Ojala/Carson had an Entrepreneurial Motive.
- C. Ojala/Carson Were Not Acting as Witnesses or Parties in the Court Proceeding in the Unrelated Lawsuit. Witness Immunity is Not Absolute.
- D. Ojala/Carson Failed to Overcome the Initial Burden of Providing Uncontroverted Evidence, as Required, That There Was No Genuine Issue of Material Fact; as a Result, Summary Judgment Should Not Have Been Granted.
- E. In as Much As There Exists a Private Right of Action for Deceptive Acts and Practices, Benz and Riley's Claim of Conspiracy Does State a Claim Upon Which Relief Can Be Granted.
- F. The Trial Court Erred When it Incorporated the King County Order Denying Benz and Riley's Motion to Strike Supplemental Proceedings.

- G. The Trial Court Erred in Imposing CR11 Sanctions Against Benz and Riley.
- H. There Is No Showing of ‘Continuous or Ongoing Repetition’ of Frivolous Filings; this Appeal is Not Frivolous; Therefore, Sanctions on This Appeal are Not Warranted Against Benz and Riley.

## **II. REPLY TO FACTUAL BACKGROUND**

### **Reply to Ojala/Carson’s “Town's Public Nuisance Abatement Action”**

Ojala/Carson do not begin their story at the beginning. Prior to their client’s filing of the lawsuit in King County, there are pertinent facts that are required to give the full picture.

Following BNSF Railway’s partial environmental cleanup effort regarding Benz’ property, the historic Skykomish Hotel, located in the Town of Skykomish (the ‘Town’) (Ojala/Carson’s client in the King County Lawsuit), former Mayor, Fred Black, took extraordinary steps to ensure that the Hotel was returned without operational utilities for the purpose of forcing Benz to donate or abandon the Hotel. Black’s aim was demonstrated in three ways: (1) Black invited Benz and Riley to a meeting where he stated the Town’s intent to purchase the Hotel. Benz encouraged the town to follow through and submit a formal written offer. That did not occur. (2) Benz received an invitation from Chris Moore from the Washington Trust for Historic Preservation (the ‘Trust’), believed to be working in conjunction with the Town and King County to meet. At the

meeting, Moore suggested that since the County and Town were never going to allow Benz to use his property, the best thing Benz could do, would be to donate the Hotel to the Trust and take a tax deduction. (3) Riley, as then managing agent for the Hotel, was invited to lunch by Todd Scott from King County Landmarks Commission at which time he suggested the same donation scenario as Moore, with the exception that the County would designate which of its non-profit organizations would receive the donation in exchange for the tax write off.

At the time the Hotel was returned to Benz following the partial environmental remediation work, it had undergone a complete interior rehab (new paint, light fixtures, window treatments, carpets and locks) and had been fully leased, except for that portion used as Benz's long time home on the third floor and Riley's business offices in the east portion of the ground floor retail space. The rental income was slightly more than \$10,000 per month and there was no debt against the Hotel. It had received a new state of the art concrete foundation and was ready to be hooked up to the Town's new wastewater treatment system. The Hotel was and remains a valuable landmarked, historic property.

Benz and Riley saw the two attempts by Moore and Scott as little more than extortion.

When Benz refused to donate the Hotel, the Town, through its legal counsel Ojala/Carson, began a consistent, concerted effort to hammer Benz into submission, starting with a bogus building department hearing designed to lay the cornerstone for the Town's lawsuit, claiming the building was an imminent hazard to public safety and needed to be demolished. In the process, the Town requested and received the court's order allowing the Hotel's demolition.

As events unfolded, it became clear that the Town's effort was not to eliminate a hazard to public safety but to force Benz to donate or abandon his property.

The Town made no effort to either to remediate the supposed safety issues or demolish the building, despite having the order to do so and having posted and recorded a Notice of Demolition. More to the point, the Town encouraged organizations travelling through the area to set up overnight camping directly adjacent to the Hotel thereby subjecting them to the supposed hazards.

It appears this strategy was sold to the Town by the Respondent Carson Law Group (a Corporation) as a program that would quickly bring Benz to heel. But instead, three years have passed. Because Benz and Riley were forced from their home in the Hotel which no longer had operational utilities, the Hotel fell into disrepair, including interior and

exterior damage as a result of being opened to the elements, made worse when local fire district personnel sprayed the building with high pressure hoses for hours in an effort to prevent a fire which had fully engulfed the neighboring Whistling Post Tavern from igniting the Hotel's wood roof and wood framing.

The Hotel, which had been in good condition, ready for occupancy, fully leased and with no debt, was now expected to quickly fall into the lap of the Town and County as the result of deceptive acts of Respondents, but two years had passed since the inception of their plan, and the building was still in Benz's hands only now in a severely deteriorated condition. The Town had become anxious over the failure of Ojala/Carson's plan to deliver the Hotel as promised, placing Ojala/Carson under pressure to turn up the heat, pushing Respondents to commit the deceptive acts and practices as alleged in the complaint in order to appease the Town, retaining their good graces with their client.

Therein lies the driving entrepreneurial force behind their violation of the CPA. Ojala/Carson persuaded a King County commissioner pro tem to look the other way and grant an order for electronic service of orders otherwise requiring personal service, thereby expediting their strategy to bring Benz and Riley to their knees and potentially cause their loss of liberty and freedom by having a bench warrant issued.

Respondents' entrepreneurial motive was to keep their client happy and to keep the attorney's and vendor fees flowing into the business. They were anxious to retain a client who was dissatisfied that the plan they had embarked upon, as laid out by Ojala/Carson, failed to materialize and frustrated that, instead of taking over the Hotel in good condition, fully leased and with no debt or liens against it, they were at that time two years later still paying legal fees in attempting to take over the Hotel that was now in a severely deteriorated condition, after having already run up over \$200,000 in legal bills and the ongoing delay in acquiring the Hotel resulting in its continuing deterioration, greatly diminishing the equity they expected to acquire by stealing the building.

The two lawsuits, one in King County, the other which is the subject of this appeal, are not related as to facts or parties. Benz and Riley, not parties to the King County lawsuit, filed a motion there in an attempt to get the order wrongfully obtained on Respondents' perjured testimony set aside. That is entirely unrelated to seeking justice for civil damages caused personally to Benz and Riley by the deceptive acts and practices of Respondents. Statute required that the separate lawsuit by Benz and Riley, who have never filed any other lawsuit against Respondents or any of them, be filed in the county in which the Defendants, Respondents herein, resided, in the case of Rashleigh, Ojala, or did business, in the case of

Carson Law Group.

### **III. ARGUMENT**

Ojala/Carson's rendition of the 'primary issues' are distorted and are restated for clarification as follows: (1) whether a lawyer's perjured documents made in a court proceeding are subject to a cause of action under the Consumer Protection Act, (2) whether there is a private right of action for damages caused by violation of the CPA, (3) whether a corporation, non-expert non-witness lawyer in a court proceeding has witness immunity for deceptive acts and practices (perjury and conspiracy) against them, and whether a corporation enjoys the benefit of absolute immunity (4) whether and Carson/Ojala provided uncontroverted evidence that there was no genuine issue of material fact, (5) whether there is a cause of action for deceptive acts and practices in violation of the CPA (6) whether another court's order in an unrelated lawsuit between different parties based on different issues constitutes 'uncontroverted evidence' as required to support a finding of no genuine issue of material fact, and (7) whether the court erred in granting sanctions.

**A. Ojala/Carson Were Not Performing 'Ordinary Legal Services' When They Engaged in Dishonest and Unethical Acts Constituting Deceptive Acts And Practices, for Which They Had An Entrepreneurial Motive.**

There is no direct consumer relationship between Benz and Riley on the one hand, and Ojala/Carson or Rashleigh on the other hand and there is no other remedy for the damages caused by Respondents' deceptive acts and practices. As noted in opening brief, Section B.2.e., page 18, no direct consumer relationship is required to proceed on a claim under the CPA.

The acts complained of relate to the entrepreneurial activities of Ojala/Carson and Rashleigh and therefore they are not immune.

Washington courts have recognized that CPA claims may differ from an underlying medical malpractice action if the conduct complained of relates to entrepreneurial activities. *Quimby v. Fine*, 45 Wn. App. 175, 181, 724 P.2d 403 (1986) [...]; see *Wright*, 104 Wn. App. at 485 (**When a doctor's entrepreneurial activities are not "health care" under chapter 7.70 RCW, a plaintiff "should . . . be allowed to bring an independent action . . . alleging that entrepreneurial activities violate the CPA."**). "[T]he learned professions are not immune [. . .] from CPA claims." *Wright*, 104 Wn. App. at 483. (Emphasis added.) *Young v. Savidge*, 155 Wn.App. 806, 230 P.3d 222 (2010) (quoting *Wright v. Jeckle*, 104 Wn. App. 478, 481, 16 P.3d 1268 (2001))

Here, we have a corporation and licensed professionals who are not immune from CPA claims and do not have absolute immunity as discussed herein. Their entrepreneurial activities did not constitute "practicing law" or "attempting service of process" but rather, as discussed above, were dishonest and unethical acts perpetrated for

purposes of retaining their client, the Town of Skykomish. The decision as to whether Ojala/Carson and Rashleigh engaged in entrepreneurial activities is a question of fact for the trial court. Benz and Riley rightfully filed their complaint and the trial court erred in granting summary dismissal of the complaint without a proper hearing of all of the facts and without any discovery having taken place.

"Whether [a defendant] has in fact engaged in entrepreneurial activities which violate the CPA is a question of fact."  
Wright, 104 Wn. App. at 485.

Young, Id.

Criminal acts are not performing legal or related services for a client which places the acts of Ojala/Carson, as well as Rashleigh, outside of any exemption from the CPA, especially in light of their entrepreneurial motive to commit the deceptive acts and practices and the absence of alternative remedy.

RCW 19.86.020 states, "Unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are . . . unlawful." "**The term "trade" as used by the [CPA] includes only the entrepreneurial or commercial aspects of professional services, not the substantive quality of services provided.**" Michael, 165 Wn.2d at 602-03 (quoting Ramos v. Arnold, 141 Wn. App. 11, 20, 169 P.3d 482 (2007)). (Emphasis added.)

The entrepreneurial aspects of medical professionals include "billing and obtaining **and retaining patients**" [...] (Emphasis added.) Michael, 165 Wn.2d at 603.

Young, Id.

Here, the deceptive acts and practices, as alleged in the complaint, of Ojala/Carson and Rashleigh were solely in the hope of retaining their already tired and exhausted client by gaining control of Benz and Riley via an electronic order to allow service of process otherwise requiring personal service and to obtain a bench warrant.

Here, Ojala/Carson and Rashleigh advertised for sale professional services. Their deceptive acts and practices as alleged in the complaint are sufficient to support a claim on which recovery can be obtained.

There is a question of fact about whether Ojala/Carson and Rashleigh had an entrepreneurial motive when they engaged in dishonest and unethical acts, causing damages to Benz and Riley, and the trial court erred when it granted their summary dismissals.

The deceptive acts and practices of Ojala/Carson and Rashleigh are not categorically excluded from the CPA, especially considering there is no other remedy as in this case. There was no consumer relationship between the parties and one is not required to prevail on a CPA case.

**Bringing a personal injury claim for damages arising from a professional service does not categorically exclude a plaintiff from bringing a Consumer Protection Act claim arising from the same service.** *Quimby v. Fine*, 45 Wn.App. 175, 180, 724 P.2d 403 (1986), review denied, 107 Wn.2d 1032, 1987 WL 503318 (1987).

*Williams v. Lifestyle Lift Holdings, Inc.*, 175 Wn. App. 62, 302 P.3d 523 (2013)

The primary reason that learned professionals are commonly excluded from CPA claims is that there exists another remedy for an injured party to obtain relief, i.e. a malpractice claim. That is not the case here.

In *Ambach*, [...] *Ambach*, 167 Wash.2d at 179 n. 6, 216 P.3d 405. **As stated in Justice Chambers' concurring opinion, the Act holds doctors and other learned professionals "clearly answerable for false or deceptive acts in the entrepreneurial aspects of their practice."** *Ambach*, 167 Wash.2d at 179, 216 P.3d 405 (Chambers, J., concurring), citing *Wright v. Jeckle*, 104 Wn.App. 478, 484-85, 16 P.3d 1268. *review denied*, 144 Wn.2d 1011, 31 P.3d 1185 (2001). *Wright* upheld a Consumer Protection Act claim based on the "advertising, marketing, and sales" of the fen-phen diet drugs. *Wright*, 104 Wash.App. at 480, 16 P.3d 1268. **"Reduced to its essence, the plaintiffs' argument here is that Dr. Jeckle was not practicing medicine. He was in the business of selling diet drugs."** *Wright*, 104 Wash.App. at 485, 16 P.3d 1268. *Williams, Id.*, at 302 P.3d 528]

Carson Law Group, P.S. is a Washington corporation, and as such does not 'perform' professional services. It is in the business of selling professional services as advertised on its website. Ojala and Rashleigh, as agents for Carson Law Group, P.S. are also in the business of selling their services.

Benz and Riley stated a prima facie claim under the CPA against the business entities, and their agents responsible for their deceptive acts and practices.

Scientific Image, it must be remembered, is not a health care provider and therefore not subject to a claim of medical malpractice. **We conclude Williams has stated a prima facie claim under the Consumer Protection Act against the business entities responsible for the marketing of the Lifestyle Lift.** [...] (Emphasis added.)  
Williams, Id., at 302 P.3d 528]

The CPA states in pertinent part:

As used in this chapter: [...]

(2) "Trade" and "commerce" shall include the sale of assets or services, ***and any commerce directly or indirectly affecting the people of the state of Washington.***

(Emphasis added.)

RCW 19.86.010, Definitions

"Trade" and "commerce" includes "any commerce" directly or indirectly affecting the people of the state of Washington". Crimes committed in the performance of service to a client must be considered deceptive for purposes of the CPA, especially by officers of the court, as they undermine justice and the rule of law, threaten civil society and the loss of the consent of the governed, all of which affect the people of the state of Washington.

The actions of Respondents not only constitute "trade" and "commerce" under the CPA, but are the very types of actions for which the legislature continuously expanded the CPA, encouraging private citizens to pursue CPA claims to bring within its grasp every bad actor in the conduct of their business practices, and included a private citizens'

right to recover under the CPA.

Contrary to Ojala/Carson's assertions, committing perjury and conspiracy cannot be interpreted as 'performing their duties as legal counsel' for their client. Benz and Riley have well established the elements to support an expectation of prevailing on a CPA claim and their complaint should not have been dismissed.

**B. There Was no Cause of Action in Benz and Riley's Complaint for Perjury, But Rather Civil Action for Deceptive Acts and Practices For Which Ojala/Carson Had an Entrepreneurial Motive.**

Many actions constitute 'deceptive acts and practices'.

Criminal acts and practices, such as perjury and conspiracy, committed in the course of attempting to keep a client happy, must be considered entrepreneurial and therefore as deceptive for purposes of CPA protection as intended by the State of Washington.

Criminal actions causing civil damages must have some remedy.

The CPA was designed and then expanded over time to give private citizens an avenue to seek justice for just this type of dishonest and distasteful behavior.

While there is a "general rule" that "in absence of a statute there exists no private cause of action to recover "damages caused by perjury", the CPA was specifically designed for the general public. Dishonest and

unethical behavior must be considered a violation of the CPA.

**C. Ojala and Rashleigh Were Not Acting as Witnesses or Parties in the Court Proceeding in the Unrelated Lawsuit. Witness Immunity is Not Absolute and Does Not Apply to Corporations or Their Agents.**

The long history of expert witness immunity commenced with providing expert witnesses the ability to speak freely in legal proceedings without fear of civil actions for defamation. In the last three hundred and fifty years, absolute immunity has morphed to include just about any type of reprehensible behavior one could imagine, including perjury, based in part on there being other remedies (one of the underpinnings of witness immunity) to civil damages that may result. Ojala/Carson were not acting as 'expert witnesses' and there is no other remedy for the damages caused to Benz and Riley.

Ojala/Carson were not acting as a witness, as when a licensed professional is engaged to provide expert testimony in a lawsuit, when they submitted perjured documents to the Court are not entitled to absolute or any other type of immunity.

Absolute immunity is not blanket immunity to all statements and is generally applied to 'defamatory' statements concerning another. Here, Benz and Riley were not parties to the action in which the deceptive acts occurred, there were no defamatory statements made but rather perjured

testimony that violated professional conduct standards and for which there is no other remedy for the damages caused to Benz and Riley.

[...] **The absolute privilege of witness immunity is well stated by the Restatement (Second) of Torts § 588 (1977):**

A witness is absolutely privileged to publish **defamatory matter** concerning another [...].

**The comments to the Restatement emphasize that the privilege does not provide blanket immunity to all statements,** [...] (Emphasis added).

Deatherage v. Examining Board of Psychology, 134 Wn.2d 131, 135(1997)

The CPA provides for exempted actions and transactions, which do not include perjury or conspiracy committed by bad actors. The regulatory exemption applies only if the regulatory body, in this case Washington State Bar Association ('WSBA'), specifically permits the conduct complained of.

Nothing in this chapter shall apply to actions or transactions otherwise permitted, prohibited or regulated under laws administered by [...] any other regulatory body or officer acting under statutory authority of this state or the United States: [...].

RCW 19.86.170

The conduct of lawyers is overseen by WSBA on behalf of and by authority from the Washington State Supreme Court, otherwise known as a regulatory body. Nowhere in its regulations governing lawyer conduct, is

it specifically permitted to commit perjury or conspiracy although dishonesty is clearly prohibited. Simply violating WSBA's prohibitions against illegal and dishonest behavior is not sufficient to invoke the regulation exception under CPA, there must be a specific permission for the behavior in order to be exempt. Ojala/Carson are not exempt from claims brought under the CPA.

**An industry practice falls within the regulation exception when the activities in question were "authorized by statute and that acting within this authority the agency took overt affirmative actions specifically to permit the actions or transactions."** In re Real Estate Brokerage Antitrust Litigation, 95 Wash.2d 297, 301, 622 P.2d 1185 (1980); accord, Singleton v. Naegeli Reporting Corp., 142 Wash.App. 598, 607-608, 175 P.3d 594 (2008). **Stated another way, the activity in question must be expressly permitted instead of merely being not prohibited.** No administrative code provision approved or authorized the advertising utilized here. Rather, the ad simply did not run afoul of the code's prohibitions.

Walker v. Wenatchee Valley Truck & Auto Outlet, Inc., 229 P.3d 871, 155 Wash.App. 199 (2010)

Rules of Professional Conduct ('RPC') governing lawyers conduct clearly defines that dishonesty is not an acceptable behavior.

In the course of representing a client a lawyer shall not knowingly: (a) make a false statement of material fact or law to a third person;

RPC 4.1, Truthfulness in Statements to Others

#### MISCONDUCT

It is professional misconduct for a lawyer to:

(a) violate or attempt to violate the Rules of Professional Conduct, [...];

(b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

(i) commit any act involving moral turpitude, **or corruption, [...] conviction thereof in a criminal proceeding shall not be a condition precedent to disciplinary action, nor shall acquittal or dismissal thereof preclude the commencement of a disciplinary proceeding;**

RPC 8.4, Misconduct

Even if Ojala is considered to be shielded by absolute immunity, violating professional ethics, in this case committing deceptive acts and practices, nullifying the regulatory body exemption of the CPA erases any witness immunity he might have enjoyed especially in light of the fact there is no other remedy for the damages caused to Benz and Riley. In addition, in *Bruce v. Byrne*, it was ruled that because a health care professional's conduct is governed by another law, witness immunity did not apply especially given that no other remedy was available for the professional violations.

We noted that discipline of health care professionals is governed by the Uniform Disciplinary Act, chapter 18.130 RCW, and concluded that the act's language and purpose authorize initiation of disciplinary proceedings when an expert witness's conduct is unprofessional. *Deatherage*, 134 Wn.2d at 139-40. **Witness immunity did not apply, given its historic contours and given that “[u]nderlying the doctrine of absolute immunity is the concept of an alternate if not adequate remedy” and no alternate remedy was available**

**for the alleged professional violations at issue.** *Id.* at 141 (emphasis omitted) (quoting *Twelker v. Shannon & Wilson, Inc.*, 88 Wn.2d 473, 477, 564 P.2d 1131 (1977)).

**Bruce v. Byrne-Stevens & Associates Engineers, Inc.**, 113 Wn.2d 123, 776 P.2d 666 (1989)

The Washington Supreme Court has ruled that corporate entities that are not subject to licensure of regulating bodies are not granted immunity. Carson Law Group, P.S., a Washington corporation, cannot be viewed as an 'expert witness' subject to the protection of absolute immunity. It is a separate and distinct entity not able to be a licensed professional subject to giving expert testimony. Absolute immunity does not apply to Carson.

In *State v. Tacoma-Pierce County Multiple Listing Service (Tacoma-Pierce County MLS)*, [...], 95 Wn.2d 280, 286, 622 P.2d 1190 (1980). **There, the Supreme Court found that because chapter 18.85 RCW "may, for the commission of certain acts, have a license suspended, revoked or denied (RCW 18.85.230), this does not apply to a multiple listing association but only to individual license holders."** [...]  
*Tacoma-Pierce County MLS*, 95 Wn.2d at 287.

Recently in *Stephens v. Omni Insurance Company, Division One* held that an insurance company was not exempted from the CPA under RCW 19.86.170 because it failed to show that any regulatory agency specifically permitted its collection method. *Stephens v. Omni Ins. Co.*, 138 Wn. App. 151, 173, 159 P.3d 10 (2007). It stated that **"[t]he most that can be said is that no regulatory entity has prohibited it."** *Stephens*, 138 Wn. App. at 173, accord *Blaylock v. First Am. Title Ins. Co.*, 504 F. Supp. 2d 1091, 1104 (W.D. Wash. 2007) [...]

**These cases all support the same proposition that unless a regulatory agency takes overt and affirmative actions to specifically permit actions and transactions within its**

**authority, then such actions and transactions do not qualify as exemptions under the CPA.**

Singleton v. Naegeli Reporting Corp., 175 P.3d 594, 142 Wash.App. 598, 2008

**D. Ojala/Carson Failed to Overcome the Initial Burden of Providing Uncontroverted Evidence, as Required, That There Was No Genuine Issue of Material Fact; as a Result, Benz and Riley Were Not Required to Demonstrate Their Genuine Issue of Material Fact.**

Laws governing summary judgment are clear. The initial burden is on the moving party to show by uncontroverted evidence that there was no genuine issue of material fact. Ojala/Carson failed to provide such 'uncontroverted evidence' thereby negating the necessity of Benz and Riley to demonstrate their genuine issue of material fact.

Additionally, genuine issue of material fact exists when reasonable minds could reach different conclusions. Michael v. Mosquera-Lacy, 165 Wn.2d 595, 601, 200 P.3d 695 (2009).

Here, it was material that based on the perjured documents submitted under oath sufficiently persuaded a commissioner pro tem to look the other way and grant an order for electronic service of process for orders otherwise requiring personal service and Carson corporation is not immune.

**E. In as Much As There Exists a Private Right of Action for Deceptive Acts and Practices, Benz and Riley's Claim of Conspiracy Does State a Claim Upon Which Relief Can Be Granted.**

Conspiracy is difficult to prove since entering into a contract for same would be unwise. It is during the discovery process where additional information and 'evidence' is obtained to further substantiate a plaintiff's claims for conspiracy.

Here, there is significant evidence which, to the ordinary person, would give rise to the belief that Rashleigh, Ojala/Carson did in fact commit conspiracy.

There is the suspicious Affidavit; there are the facts that Ojala/Carson had a need; that all Respondents have over time changed the wording throughout various documents in describing their deceptive acts and practices; the fact that Ojala/Carson prepared Rashleigh's Affidavit; the fact that Rashleigh has a familial relationship with Ojala/Carson; that Ojala/Carson selected this family member to attempt this particular service order; and finally that Ojala denies previously knowing Rashleigh or having ever used his services. All this reeks of conspiracy.

Any doubts as to the conspiracy or the related deceptive act of perjury must be resolved in favor of Benz and Riley.

Under CR 12(b)(6) it must be beyond doubt that the claimant can prove no set of facts in support of their claims. The court must take the factual allegations as true and resolve any ambiguities or doubts regarding

the sufficiency of the claim in favor of Benz and Riley, as set forth in Appellants' opening brief.

It appears clear that, in as much as Ojala/Carson had to obtain their order for electronic service, they prepared the Affidavit for Rashleigh who then executed it to provide the cover that Ojala/Carson needed and which worked in persuading a King County commissioner pro tem to grant the order.

The actual and 'hypothetical facts' as laid out in the complaint and subsequent pleadings are that Ojala/Carson just happened to use a purportedly unknown and previously unused process server on a very complex case, a process server who just so happens to be a relative of, and lives with, another employee of Carson Law Group; Ojala/Carson prepared the Affidavit which Mr. Rashleigh signed when typically, such Affidavit is generated by the process server and submitted to the customer; Rashleigh failed to include his process server's registration information on the Affidavit, a further violation of RCW 18.180.030.

**F. The Trial Court Erred When it Incorporated King County Order Denying Benz and Riley's Motion to Strike Supplemental Proceedings.**

The King County order incorporated by Judge Okrent below was

on Benz and Riley's motion in the unrelated lawsuit to strike supplemental proceedings as a result of Ojala/Carson having obtained their order for electronic service of process based on the perjured documents of Ojala and Rashleigh, not Benz and Riley's CR 60 motion to vacate judgment, currently pending appeal in this court.

The additional materials and order were accepted in error by Judge Okrent because the materials did not constitute the uncontroverted evidence that there was no genuine issue as to material facts on which Benz and Riley could recover.

Ojala/Carson's discussion of Benz and Riley's waiver of defenses to service of process is irrelevant. The stipulation was entered into after Ojala/Carson, along with Rashleigh, had already engaged in the deceptive acts and practices that violated the CPA and damaged Benz and Riley.

It is illogical to attempt to use a later action (the stipulation) to justify an earlier action (the deceptive acts and practices).

The Trial Court erred in incorporating the King County order and findings in the unrelated lawsuit.

**G. The Trial Court Erred in Imposing CR11 Sanctions Against Benz and Riley.**

Carson/Ojala's creative crafting of their proposed order bears no relationship to the facts of this case. There was no showing by

Ojala/Carson that the Complaint was frivolous and sanctions were not justified.

It should be noted that Ojala/Carson failed to present to the Trial Court within the ten day required period any accounting for any amount of monetary sanctions.

Their complete failure to show frivolousness, and for other reasons presented in Benz and Riley's Briefs, both below and in this appeal, requires that the order of their dismissal must be reversed, including for sanctions.

One erroneous order, creatively crafted by Ojala/Carson does not constitute 'ongoing' or 'repetitive' frivolous filings as they would have the Court believe. The Notice of Appeal in this case included reversal of the sanctions finding specifically and cannot be viewed as substantiating their claim of 'ongoing frivolous filings'.

The arguments contained in Appellants' opening brief and this Reply constitute their argument for reversing the trial court's finding of frivolousness.

Lastly, Benz and Riley's CPA claim presents a conflict between the exemptions allowed under the CPA and what is or should be allowed under the doctrine of absolute immunity, constitution a reasonable

argument in support of an issue of first impression. Sanctions must be reversed.

We hold Dr. Jeckle failed to state any cause of action and affirm the dismissal of his suit. However, because the CPA claim presented a reasonable argument in support of an issue of first impression, we disagree with the trial court that all theories were frivolous and, therefore, reverse the trial court's award of sanctions.

Jeckle v. Crotty, 120 Wn.App. 374, 85 P.3d 931 (2004).

**H. There Is No Showing of ‘Continuous or Ongoing Repetition’ of Frivolous Filings; this Appeal is Not Frivolous; Therefore, Sanctions on This Appeal are Not Warranted Against Benz and Riley.**

As shown, there are debatable issues of fact upon which reasonable minds might differ, and more importantly the question of justice, as well as an issue of first impression, and there is merit as to a reasonable possibility of reversal.

Ojala/Carson state that “despite warnings” (regarding frivolousness), yet there is only one place where the trial court in this case made such a ruling, contained in Ojala/Carson’s creatively crafted proposed order on their motion for dismissal, the subject of this appeal.

Cogent arguments are made herein, for both why Ojala/Carson are not shielded by absolute or any other immunity, and why their deceptive acts must be viewed as violating the CPA.

Ojala/Carson’s use of ‘warnings’ and ‘also warned’ are deceptive

and disingenuous to the Court. There was no showing of frivolousness below and there is no showing here, much less 'ongoing frivolous filings'. An appeal filed for purposes of reversing an erroneous order cannot be viewed as frivolous.

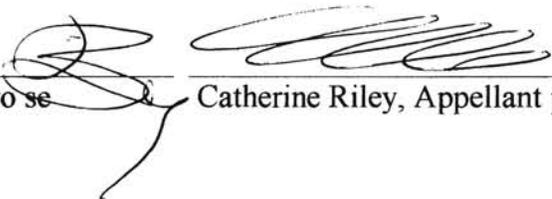
Here, as discussed, Ojala/Carson are not shielded by absolute witness immunity, there is no showing of frivolousness, and their actions must be viewed for what they are, deceptive acts and practices as defined under RCW 19.86. Therefore, Ojala/Carson are not entitled to attorney fees.

#### IV. CONCLUSION

The trial court erred in its order dismissing Benz and Riley's complaint with prejudice, granting summary judgment against Benz and Riley incorporating the unrelated materials, and granting sanctions against Benz and Riley, and should be reversed and this case be remanded for a trial on the merits. The Court should also deny sanctions against Benz and Riley for exercising their rights in filing this appeal.

Respectfully submitted this 26<sup>th</sup> day of January, 2015.

  
Karl Benz, Appellant pro se

  
Catherine Riley, Appellant pro se