

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

NO. 45540-4

PERSONAL RESTRAINT PETITION

PAUL ANDREW GEIER

Petitioner's Full Name

If there is not enough room on this form, use the back of these pages or use other paper. Fill out all of the form and other papers you are attaching before you sign this form in front of a notary.

A. STATUS OF PETITIONER

I, PAUL ANDREW GEIER P.O. Box 88600 Steila com WA
(Full name and current address) 98388

FILED
COURT OF APPEALS
DIVISION II
2013 OCT 30 PM 1:13
STATE OF WASHINGTON
BY DEPUTY

Apply for relief from confinement. I am am not now in custody serving a sentence upon ~~conviction of a crime~~. (If not serving a sentence upon conviction of a crime) I am now in custody because of the following type of court order: Civil Commitment under
(Identify type of court order)

RCW 71.09

1. The court in which I was sentenced is: Pierce County Superior Court
2. I was ~~convicted of the crime of:~~ Found to be a SVP under RCW 71.09
3. I was sentenced after (check one) Trial Plea of Guilty on June 14, 2011
Date of Sentence
4. The Judge who imposed sentence was The Honorable Kathryn J. Nelson
5. My lawyer at trial court was Helen Whitener
Name and Address if known

6. I did did not _____ appeal from the decision of the trial court. (If the answer is that I did), I appealed to: WA State Court of Appeals, Div. II
Name of court or courts to which appeal took place

7. My lawyer for my appeal was: Valerie Marushige 23619 55th Pl. S.
Kent, WA 98032
Name and address if known or write "none"

The decision of the appellate court was _____ was not published. (If the answer is that it was published, and I have this information) the decision is published in Apr 9, 2013

8. Since my conviction I have _____ have not asked a court for some relief from my sentence other than I have already written above. (If the answer is that I have asked, the court I asked was _____ . Relief was denied on _____
Name of court

Date of Decision or, if more than one, all dates)

(If you have answered in question 7 that you did ask for relief), the name of your lawyer in the proceedings mentioned in my answer was _____
Name and address if known

9. If the answers to the above questions do not really tell about the proceedings and the courts, judges and attorneys involved in your case, tell about it here: _____

See Memorandum in Support of Personal Restraint Petition

B. GROUNDS FOR RELIEF:

(If I claim more than one reason for relief from confinement, I will attach sheets for each reason separately, in the same way as the first one. The attached sheets should be numbered "First Ground", "Second Ground", "Third Ground", etc). I claim that I have 3 reason(s) for this court to grant me relief from the conviction and sentence described in Part A.

 Ground
(First, Second, etc)

FIRST GROUND

- 1) I should be given a new trial or be released from confinement because:

I received ineffective assistance of Appellant counsel.

- 2) The following facts are important when considering my case:

See MEMORANDUM IN SUPPORT OF PERSONAL RESTRAINT PETITION.

- 3) The following reported court decisions in cases similar to mine show the error I believed happened in my case.

See MEMORANDUM IN SUPPORT OF PERSONAL RESTRAINT PETITION.

- 4) The following statutes and constitutional provisions should be considered by the court.

See MEMORANDUM IN SUPPORT OF PERSONAL RESTRAINT PETITION.

SECOND GROUND

- 1) I should be given a new trial or be released from confinement because:

I was given ineffective assistance of Trial Counsel.

- 2) The following facts are important when considering my case.

See MEMORANDUM IN SUPPORT OF PERSONAL RESTRAINT PETITION.

- 3) The following reported court decisions in cases similar to mine show the error I believed happened in my case.

See MEMORANDUM IN SUPPORT OF PERSONAL RESTRAINT PETITION.

- 4) The following statutes and constitutional provisions should be considered by the court:

See MEMORANDUM IN SUPPORT OF PERSONAL RESTRAINT PETITION.

Third Ground

1. I should be given a new trial or released from confinement because (State legal reasons why you think there was some error made in your case which gives you the right to a new trial or release from confinement): The denial of my right to file a "Statement of additional grounds for Review" violates my 14th Amendment right of "Due Process" AND "Equal Protection under the law"

2. The following facts are important when considering my case. (After each fact statement put the name of the person or persons who know the fact and will support your statement of the fact. If the fact is already in the record of your case, indicate that also) _____

See MEMORANDUM IN SUPPORT OF PERSONAL RESTRAINT PETITION.

3. The following reported court decisions (indicate citations if possible) in cases similar to mine show the error I believed happened in my case. (If none are known, state "None Known". _____

See MEMORANDUM IN SUPPORT OF PERSONAL RESTRAINT PETITION.

4. The following statutes and constitutional provisions should be considered by the court. (If none are now, state, "None Known") See MEMORANDUM IN SUPPORT OF

PERSONAL RESTRAINT PETITION

5. This petition is the best way I know to get the relief I want, and not other way will work as well because: ALL OTHER LEGAL REMEDIES were Foreclosed in Direct Appeal - AND some evidence, not on the record is being presented.

C. STATEMENT OF FINANCES:

If you cannot afford to pay the \$250 filing fee or cannot afford to pay an attorney to help you, fill out this form. If you have enough money for these, do not fill this part of the form. If currently in confinement you will need to attach a copy of your prison finance statement.

1. I do do not ask the court to file this without making me pay the \$250 filing fee because I am so poor and cannot pay the fee.

2. I have \$ _____ in my ~~prison~~ or institution account. N/A

See RCW 10.101.010 (3)(b)-(d)

3. I do do not ask the court to appoint a lawyer for me because I am so poor and cannot afford to pay a lawyer.

4. I am am not employed. My salary or wages amount to \$ _____ a month. My employer is _____
Name and address of employer

5. During the past 12 months I did did not get any money from a business, profession or other form of self-employment. (If I did, it was _____
Type of self-employment
And the total income I received was \$ _____.

6. During the past 12 months I:

Did Did Not Receive any rent payments. If so, the total I received was \$ _____

Did Did Not Receive any interest. If so, the total I received was \$ _____

Did Did Not Receive any dividends. If so, the total I received was \$ _____

Did Did Not Receive any other money. If so the total I received was \$ _____

Do Do Not Have any cash except as said in question 2 of Statement of Finances. If so the total amount of cash I have is \$ _____.

Do Do Not Have any savings or checking accounts. If so, the total amount in all accounts is \$ _____

Do Do Not Own stocks, bonds or notes. If so, their total value is: \$ _____.

7. List all real estate and other property or things of value which belong to you or in which you have an interest. Tell what item or property is worth and how much you owe on it. Do not list household furniture and furnishings and clothing which you or your family need.

Items	Value
N/A	

8. I am am not married. If I am married, my wife or husband's name and address is:

9. All of the persons who need me to support them are listed below:

Name & Address	Relationship	Age
N/A		

10. All the bills I owe are listed here:

Name & Address of Creditor	Amount
N/A	

ORDER OF INDIGENCY, dtd Jun 22, 2011 is enclosed.

D. REQUEST FOR RELIEF:

I want this court to:

Vacate my conviction and give me a new trial

Vacate my conviction and dismiss the criminal charges against me without a new trial

Other: Vacate My Civil Commitment verdict and give me
(Please Specify)
a NEW TRIAL with NEW, competent counsel, Return a NEW JUDGE

* Please attach a copy of your Prison Account Statement - this Petition will not be processed without it. Thank You

E. OATH OF PETITIONER

STATE OF WASHINGTON)
) ss.
COUNTY OF Pierce)

After being first duly sworn, on oath, I depose and say: That I am the petitioner, that I have read the petition, know its contents, and I believe the petition is true.

Paul A. Gies
(Signature Here)

SUBSCRIBED AND SWORN to before me this 21 day of October
2003

Jennifer Tegner
Notary Public in and for the State of Washington
Residing at Pierce County

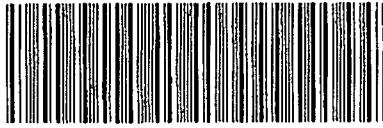
If a notary is not available, explain why none is available and indicate who can be contacted to help you find a Notary: _____

I declare that I have examined this petition and to the best of my knowledge and belief it is true and correct.

DATED This _____ day of _____, 200__.

(Signature Here)





08-2-08313-1 36670134 CRIND 06-27-11

6/28/2011 11:41:08 11390955



IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR PIERCE COUNTY

In re the Detention of)	No. 08-2-08313-1
PAUL ANDREW GEIER,)	
)	
Respondent.)	ORDER OF INDIGENCY

THIS MATTER having come on regularly before the undersigned judge upon the motion of the respondent for an order authorizing the respondent to seek review at public expense and the Court having considered the records and files herein, now therefore,

IT IS HEREBY ORDERED that the respondent shall be allowed (x) To appeal from the certain order of commitment and every part thereof in the above-entitled cause, entered on 6/14/2011, at public expense to include the following :

- 1.) All filing fees;
- 2.) Attorney fees and the cost of preparation of briefs (including copying costs);
- 3.) Costs of preparation of the statement of facts which shall contain the verbatim report of the following proceedings, all of which are necessary for review:

ORDER OF INDIGENCY

WHITENER RAINEY PS
820 SIXTH AVENUE, SUITE A
TACOMA, WA 98405
(253) 830-2155

<input checked="" type="checkbox"/> Pre-Trial Hearings	Date(s) Judge	8/29/2010; 7/30/2010 <u>Kathryn J. Nelson</u>
<input checked="" type="checkbox"/> Trial (all proceedings except voir dire and opening statements)	Date(s) Judge	5/23/2011 to 6/14/2011 <u>Kathryn J. Nelson</u>
<input type="checkbox"/> Hearing on Post-Trial Motions	Date(s) Judge	_____ _____
<input checked="" type="checkbox"/> Commitment Hearing	Date(s) Judge	6/14/2011 <u>Kathryn J. Nelson</u>
<input checked="" type="checkbox"/> Other	Any other portions of the record that is deemed necessary by appellate counsel	

- 4.) Cost of a copy of the above record for the joint use of respondent's counsel and the Attorney General; and
- 5.) Costs of the preparation of necessary clerk's papers.

IT IS FURTHER ORDERED that counsel on appeal, or his/her representative, is authorized to remove the clerk's file from the Clerk's Office for the purpose of reproducing clerk's papers and designating the record for review.

AND IT IS FURTHER ORDERED that trial counsel is allowed to withdraw and that counsel on appeal be appointed by the Court of Appeals pursuant to RAP 15.2. Payment for expenses of this appointment is authorized under contract with the Office of Public Defense.

Co-respondents, if any, are listed below:

Case Name

Cause Number

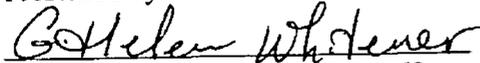
ORDER OF INDIGENCY

WHITENER RAINEY PS
820 SIXTH AVENUE, SUITE A
TACOMA, WA 98405
(253) 830-2155

DONE IN OPEN COURT this 22 day of June, 2011


JUDGE Kathryn J. Nelson

Presented by:


G. Helen Whitener WSBA# 28968
Attorney for the Respondent



ORDER OF INDIGENCY

WHITENER RAINEY PS
820 SIXTH AVENUE, SUITE A
TACOMA, WA 98405
(253) 830-2155

No. _____

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

In re THE PERSONAL RESTRAINT OF:

MR. PAUL ANDREW GEIER,

PETITIONER.

MEMORANDUM IN SUPPORT OF
PERSONAL RESTRAINT PETITION

BRIEF OF PETITIONER

Mr. Paul Andrew Geier
Petitioner, Pro Se

Special Commitment Center
P.O. Box 88600
Steilacoom, WA
98388-9610

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Funk and Wagnalls Standard
Dictionary, 2nd Ed., p.20020

ORAN'S Dictionary of the Law,
4th Ed., p.15520

B. STATEMENT OF THE CASE

On May 15, 2008, the State filed a Petition under RCW 71.09 seeking the involuntary civil commitment of petitioner, Mr. Paul Andrew Geier, as a sexually violent predator. (CP 1-2) On August 29, 2008, the trial court entered a stipulated order finding probable cause and directing the detention and psychological evaluation of Mr. Geier. (CP 117-119) Following a civil commitment trial before the Honorable Kathryn J. Nelson, on June 14, 2011, a jury found that the state proved beyond a reasonable doubt that Mr. Geier is a sexually violent predator, and the court entered an order committing Mr. Geier to a 'secure facility,' the Special Commitment Center (SCC) in the custody of the Department of Social and Health Services. (CP 631-633) Mr. Geier then filed a timely appeal. (CP 634-636) The Court of Appeals, Div. II heard the appeal without oral argument on March 1, 2013 Under COA # 42292-1-II. The Court issued an unpublished opinion/decision on April 9, 2013, a Motion for Reconsideration was denied on May 5, 2013, and the Court of Appeals, Div. II issued its Mandate on August 13, 2013, ending Mr. Geier's Direct Appeal.

a) That counsel's performance fell below an objective standard of reasonableness; and

b) There is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceedings would be different.

These two requirements are the two 'prongs' of what is called the "Strickland Test" for ineffective assistance of counsel. (See Strickland v. Washington, 466 U.S. 668,689, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984)) Also in Strickland, on p.2051-2052 of 104 S.Ct., the U.S. Supreme Court also defined what is ment by the term "reasonable probability." "is a probability sufficient to **undermine confidence in the outcome.**"

Mr. Geier's Appellant Attorney was assigned to him on July 1, 2011. Mr. Geier received his first letter from counsel on July 20,2011- almost 1-month later. Mr. Geier wrote a couple of letters to appellant counsel regarding the ground of Ineffective Assistance of Counsel in her opening brief...she did not do so. She sent-in her opening brief on March 2, 2012. Mr. Geier then wrote her and received a reply on March 14, 2012. In that letter appellant counsel knew of the evidence of ineffective

assistance of trial counsel (by not conducting a **reasonable investigation** of their own expert witness before using the expert at trial.) In this same letter, appellant counsel 'apologized' for the misinformation she gave Mr. Geier regarding his ability to file an **Additional statement on Additional Grounds**

This process is ONLY for criminal procedures, NOT Civil ones. (Letter dtd., Apr. 17, 2012-restating Mr. Geier cannot file a Statement on Additional Grounds.) In a letter dtd., May 9, 2012, Appellant Counsel refused to file an additional brief under R.A.P. 10.1(h)-OTHER BRIEFS to address Mr. Geier's issue of ineffective assistance of trial counsel. The use of an 'additional brief' IS allowed if the opposing party has not filed a response brief AND provision is given to opposing party to respond to that brief. Mr. Geier's Appellant Counsel's refusal to raise the issue of Ineffective Assistance of Trial Counsel and NOT EXPLAIN her reasoning WHY, Left Mr. Geier's issue now FORCLOSED in Direct Appeal What was even worse, Mr. Geier's appellant attorney was given sanction letters and apparently SANCTIONED for being LATE in Filing her OPENING BRIEF (See APPENDIX "C"- Case Events #422921, pgs 6 of 9 through 9 of 9) This shows most clearly the lack of diligence

under the **Washington State RULES OF PROFESSIONAL CONDUCT, RULE 1.3-DILIGENCE**. This plus counsel's refusal to COMMUNICATE her intentions PRIOR to filing her OPENING BRIEF, and NOT advising her client, Mr. Geier on WHY she did NOT include the GROUND of Ineffective Assistance of Trial Counsel shows most clearly, her lack of concern in communicating with Mr .Geier is a violation of the **Rules of Professional Conduct, RULE 1.4-COMMUNICATION**.

The apparent lack of concern for her client's wishes and failing to properly advise him about EACH ISSUE to be raised in an OPENING BRIEF prior to filing such brief, clearly is below ANY objective standard of performance. Appellant Counsel's failure to either put the issue of Ineffective Assistance of Trial Counsel either in her OPENING BRIEF or in an ADDITIONAL BRIEF, and then after telling her client that he could file a STATEMENT ON ADDITIONAL GROUNDS, then later, telling him that he cannot, PREJUDICED Mr. Geier most clearly. Mr. Geier's issue was FORCLOSED by Appellant Counsel's negligence.

What makes this situation even more onerous is that in her letter, dtd., May 9,2012, she stated that she would raise the issues she did not in her OPENING

OPENING BRIEF, that she will do so in her REPLY BRIEF. This action is clearly in violation of R.A.P. 10.7; 10.3(c). Which was noted, moved on, and decided on by the Court of Appeals, Div. II on Aug. 15, 2012. (See APPENDIX "C"- Case Events #422921, p. 3 of 9.) These actions clearly violate the Washington State Rules of Professional Conduct, RULE 1.1-COMPETENCE and RULE 1.3-DILIGENCE and RULE 1.4(a)-(b). These actions by appellant counsel clearly bespeak incompetence or gross, willful negligence

The reason for this statement is simple, the qualifications for Indigent Defense Attorneys is given specifically in State Supreme Court ORDER# 25700-A-1004, STANDARDS FOR INDIGENT DEFENSE, under SECTION 14.2(B)(i)-(ii). There is no conceivable way that counsel did not know that:

- 1) R.A.P. 10.3(c) only allows for replies to State's Response Brief- NOT for raising new grounds; and
- 2) That a Statement on Additional Grounds is ONLY allowed in Criminal Cases (R.A.P. 10.10(a) and NOT in civil SVP cases with a consequence of total confinement like a criminal one; and

- 3) There are 'deadlines' for filing briefs and that missing them could result in consequences from financial (Fines) to a complete FORFEITURE of the appeal. (See R.A.P. 10.2(i).)

After seeing the evidence presented here, Mr. Geier has clearly shown that his appellant counsel's actions, inactions, and misrepresentations clearly meets BOTH 'prongs' of the "Strickland Test" for general ineffective assistance of appellant counsel.) (here actually willful negligent and incompetent assistance of appellant counsel.)

Now for the more serious egregious action of Appellant Counsel, the refusal to appeal the decision of the Court of Appeals, Div. II to the State Supreme Court using a Petition for Discretionary Review. This refusal by appellant counsel 'Begs' the second question now posed to this court.

- 2) WAS MR. GEIER'S APPELLANT COUNSEL'S REFUSAL TO TAKE MR. GEIER'S APPEAL TO THE STATE SUPREME COURT BY MISREPRESENTING HER APPOINTMENT AS "NOT TO FILING A PETITION FOR DISCRETIONARY REVIEW" constitute "ACTUAL OR CONSTRUCTIVE DENIAL OF THE EFFECTIVE ASSISTANCE OF COUNSEL?"

The evidence presented her will most clearly answer this question as yes. In a letter, dtd., Jan. 28, 2013

(See APPENDIX "A"-Ltr., dtd., Jan 28, 2013) appellant counsel stated that her appointment does not extend to her representing him in appealing to the State Supreme Court. Mr. Geier had a friend write a letter to the Office of Public Defense. (See Ltr., dtd., Sept. 9, 2013) In that letter it was very clearly stated that attorneys under contract with them are NOT FORBIDDEN to appeal to the Washington State Supreme Court, and are, in fact, **contractually obligated** to do so, **when appropriate.** (that is, by CONSULTING WITH their client on the appropriateness of filing such a petition.) Also in that letter, the attorney's name was not stated. Mr. Geier, upon seeing this letter, mailed-out a letter to the Office of Public Defense with the name of his appellant attorney and her WA Bar#. When he received the reply letter (See APPENDIX "A"-Ltr., dtd., Oct. 3, 2013) he was shocked! The letter clearly states **she WAS ALLOWED TO FILE a Petition for Discretionary Review to the State Supreme Court!** This letter, in fact clearly shows that his appellant attorney LIED to him about the extent of her representation.

For Arguendo-- even 'IF', and this is 'stretching' the word if, she were not 'allowed' to appeal to the State Supreme Court, this result is clearly a "constructive denial of the effective assistance of appellant counsel." But this is not the case, here. Counsel LIED and that constitutes "Actual Denial of Effective Assistance of Appellant Counsel." Either way, Mr. Geier's Appeal to the State Supreme Court **was forfeited. (See Roe v. Flores-Ortega, 528 U.S. 470, 120 S.Ct. 1029, 145 L.Ed.2d 985 (2000) on page 1032 of 120 S.Ct., the U.S. Supreme Court stated:**

"Respondent claims that counsel's deficient performance led to forfeiture of his appeal. If that is so, prejudice is presumed."

Here appellant counsel's refusal to appeal to the Washington State Supreme Court by misrepresenting her extent of representation to him is most clearly deficient, if not actual malpractice. Mr. Geier's appeal process to the State Supreme Court was forfeited. He was thusly prejudiced, pure and simple. Also, ANY 'state' impediments' or state-sponsored contracts that prohibit appeals from the Court of Appeals to the State Supreme Court, and thusly produce these kinds of 'denial forfeitures' are also

violations of the Sixth Amendment, and is clearly stated in U.S. v. Cronin, 466 U.S. @659, and n.25, 104 S.Ct. 2046-2047 and n.25. This situation clearly meets BOTH "Prongs" of the "Strickland Test" for ineffective assistance of Appellant Counsel.

Mr. Geier's appellant counsel's action(s), inaction, and willful negligent, disregard for her client as evidenced here, clearly bespeak malpractice and total neglect of her duties as appellant counsel. The tragic, disgusting results and consequences of her action(s) is this: Mr. Geier's appeal was a **botched, miscarriage of justice** that requires some serious remedies.

The only realistic remedies that could even 'cure' this situation are as follows, they are:

- 1) GRANT Mr. Geier a NEW TRIAL, with NEW COMPETANT TRIAL COUNSEL (prefer one who has prevailed in a SVP Civil Commitment trial, with a NEW JUDGE presiding and excluding ALL prior expert testimony). In other word, Mr. Geier's trial procedures must 'START-FROM-"SCRATCH"' and
- 2) If possible, there is enough evidence presented here to initiate formal Disciplinary Proceeding

against Mr. Geier's Appellant Attorney because of
her obvious incompetence and malpractice.

GROUND #2
DID MR. GEIER RECEIVE INEFFECTIVE
ASSISTANCE OF TRIAL COUNSEL?

(BACKGROUND)

The consequences of "ordinary" civil proceedings such as divorces, lawsuits involving finances, material things (real estate, cars, ect.), or contracts pales in comparison to the consequences of a 71.09 SVP Civil Commitment proceeding. 71.09 proceedings involves the indefinite forfeiture of a person's freedom. The courts have stated their deep concern for the severe 'gravity' of such proceedings.

"It is clear that commitment for any purpose constitutes a significant deprivation of liberty that requires Due Process protection." Jones v. U.S., 463 U.S. 354, 103 S.Ct. 3043, 77 L.Ed.2d 694 (1983)-103 S.Ct.@3048. See also Addington v. Texas, 441 U.S. 418,425, 99 S.Ct. 1804,1809, 60 L.Ed.2d 323 (1979); Jackson v. Indiana, 406 U.S. 715, 92 S.Ct. 1845, 32 L.Ed.2d 435(1972); Humphrey v. Cady, 405 U.S. 504, 92 S.Ct. 1048, 31 L.Ed.2d 394(1972; In re Gault, 387 U.S. 1, 87 S.Ct. 1428, 18 L.Ed.2d 527(1967); Specht v. Patterson, 386 U.S. 605, 87 S.Ct. 1209, 18 L.Ed.2d 326(1967)

This indisputable facts of such severe consequences must not be minimized or 'side-stepped,' for the 'convenience of the State.'

It is also an indisputable fact that the 71.09 trial process settles-down to a "Battle of the

Experts." In re Williams, 292 Kan 96, 253 P.3d 327 (2011)-citing p.114 of 292 Kan. Anything that could put doubt in the credibility of the expert witness' testimony will, in fact, destroy that party's case who relied upon that expert, whether the State or the Defendant. This fact is so important that the Washington State Supreme Court issued an ORDER- Court ORDER No. 25700-A-1004- Standards for Indigent Defense. In Section 14.2(N) Sex Offender "Preditor" cases, counsel must have experience with:

ii(d)

1- Mental Health issues, AND
2- Sexual Offenses, AND
(important) 3-EXPERT WITNESSES, AND

ii(e) familiarity with CIVIL RULES

Thus, trial counsel must have knowledge of the use of Expert Witness testimony and the Civil Procedures at trial that are used to attack the credibility of the expert's testimony (See ER 403). The "battle of the experts" is the evidence, if not the sole evidence the jury uses in determining if the person on trial is a Sexually Violent Preditor under RCW 71.09. This fact cannot be overstated, "side-stepped," or "defined away."

- a) WAS MR. GEIER PREJUDICED BY THE REVELATION OF DR. HALON'S "PRIOR BAD ACTS," WHICH WERE COMPLETELY UNKNOWN TO MR. GEIER PRIOR TO HIS CIVIL COMMITMENT TRIAL?

The answer to this question is yes. There are two 'high bars' that a person being subjected to 71.09 procedures has to overcome, they are:

1) The significant **STIGMA** attached to the defendant of first being a convicted sex offender. Potential jurors have been exposed to significant Sex Offender "fear tactics" by both the printed and the broadcast media, examples of such sex offender 'phobia' tactics are:

A) When a crime that is not sexual is committed, the media will make every effort to show that the person IS a convicted sex offender. 'Other' criminals committing the exact same crime are not subjected to their past convictions (to be sensational) anywhere near the extent the convicted sex offender is subjected to. B) Many community members watch repeatedly, sex offender related programs such as "To Catch A Predator," or CSI-SVU. Such programming leads those who watch to believe that ALL Sex Offenders need to be **locked-up for life.**

C) As a result of programs such as FOX's **"America's Most Wanted,** and related 'editorials,' mixed-in with news reports, the majority of potential jury members already firmly believe that Sex Offenders **will re-offend** at a rate of over 80%.

D) When potential jurors are found to be repeatedly watching programs outlined in B) and C), the Trial Court Judge will not entertain Motions to **Dismiss such persons for cause** during **Voir Dire** proceedings. Such persons' beliefs/ biases will be very difficult to overcome. Thus, Sex Offenders being subjected to **71.09 SVP trials** will have a very difficult time overcoming those jurors who believe that the defendant is already **guilty** by the fact that the State IS accusing him of being an SVP. (Guilty by the mere fact that the defendant IS a convicted sex offender.)

and finally the second 'high bar' will be the actual **"Battle of the Experts,"** to prove the defendant IS NOT an SVP, despite the 'proof OF Guilt--**beyond a reasonable doubt.**'

When the STIGMA problem and presumption of guilt by those jurors who believe the media's characterization of sex offenders as high recidivists, needing to be

locked-up for life, is then complicated by the trial becoming a "battle of the experts," the 'spotlessness' of an expert's background becomes an issue of supreme importance. If this condition is not met, legal 'character assassination' will render that person's testimony essentially 'null and void,' and the defendant is thusly rendered defenseless, and his defense is essentially eviscerated. Not doing a **reasonable background investigation** of any potential expert witness, and letting the defendant to believe that the expert thusly hired is OK, and his/her's testimony will be credible IS gross negligence, and is not excusable at all.

Mr. Geier's trial attorney should have conducted a **reasonable investigation** prior to hiring an expert/evaluator and then inform Mr. Geier of the results so he can make an **informed decision** as to whether to use that person, or obtain another expert, free of 'problems,' or other issues that could discredit that person's testimony at trial. Mr. Geier was 'broad-sided' at trial. It was only at Mr. Geier's commitment trial that during the AG's questioning of Dr. Halon, that his 'professional problem' in his past was revealed. (See APPENDIX "B" portion of State's Response Brief

COA No. 42292-1-II, pgs 2-3). This revelation at trial produced a prejudice that could not be 'cured' by judicial instruction or overcome by defense's re-direct questioning of Dr. Halon. Mr. Geier's defense at that moment was essentially gone and obliterated. What makes this unexcusable situation worse is that trial counsel learned shortly prior to trial of Dr. Halon's 'professional issue,' and willfully failed to **inform or consult her client, Mr. Geier** prior to his trial. This act of omission is gross negligence, pure and simple. And what was even more damaging to Mr. Geier's defense is that trial counsel, again, without any consultation, relied upon a 'flimsy' Motion in Limine (no prior bad acts by witnesses), moved by the State, and granted by the court. This motion was used by trial counsel to "cover-up" Dr. Halon's probation and fine, and prevent its disclosure to the jury. As such since trial counsel did NOT consult Mr. Geier prior to or at trial about the use of a Motion in Limine, to prevent information about Dr. Halon's 'professional problem(s), so the actions of trial counsel do not comprise "strategy" or "tactic" as stated in State v. Grier, 171 Wn.2d 17, 246 P.3d 1260 (2011). At p.30 of 171 Wn.2d, the State Supreme Court stated:

". . . as well as a nonexhaustive list of 'strategic and tactical' decisions that should be made by defense counsel upon consultation with the defendant."

In short, trial counsel's complete failure to conduct a reasonable investigation, and consult with Mr. Geier resulted in prejudice to Mr. Geier at trial without his knowledge of the problem. See State v. Davis, 300 P.3d 465 (2013). The Court stated that:

"A defendant can overcome this presumption by showing that counsel failed to adequately investigate and prepare for trial."

Because Mr. Geier was 'blindsided' by trial counsel's failure to investigate and to consult with Mr. Geier prior to trial as to Dr. Halon's 'professional issue,' and relying on a 'flimsy' Motion in Limine to prevent disclosure of Dr. Halon's 'professional issue' was by no means any kind of trial tactic or strategy, it was in fact, a 'cover-up' of trial counsel's negligence to properly investigate, consult with Mr. Geier, and to properly prepare for trial. Mr. Geier was severely prejudiced by trial counsel's willful negligence.

b) WAS MR. GEIER'S REPRESENTATION BY TRIAL COUNSEL UNPROFESSIONAL, AND FELL BELOW AN OBJECTIVE (MEASURABLE) STANDARD OF REASONALBENESS?

The answer to this question is clearly yes. Trial counsel's failure to reasonably investigate Dr. Halon's professional background, and informing her client, Mr. Geier prior to using him as Mr. Geier's Sole Evaluator and expert witness clearly violates the Washington State Rules of Professional Conduct, specifically RULE 1.3-DILIGENCE. Diligence is defined as "pursued with painstaking effort"-**Funk and Wagnalls Standard Dictionary, 2nd Ed., p.200** and in **ORAN'S Dictionary of the law, 4th Ed., p.155** as: "carefulness, prudence or doing your duty." this negligence by trial counsel also violates the State Supreme Court's ORDER No. 25700-A-1004, Section 14.2(N)-ii(d)(1)-(3), especially Section 14.2(N)- ii(d)(3). Trial counsel then violated Washington State Rules of Professional Conduct, RULE 1.4(a)(b)-COMMUNICATION, when counsel found out shortly prior to trial of Dr. Halon's 'professional problem(s) (See APPENDIX "C"- E-MAIL, dtd., January 31, 2011) and subsequently did not communicate this information to Mr. Geier. He was thusly prevented from making a reasonable decision

regarding the use of Dr. Halon's testimony at trial. It is very clear that Mr. Geier's trial counsel's complete failure to reasonably investigate Dr. Halon's professional background shows most clearly that trial counsel was not diligent in her trial preparations. And finally, trial counsel's complete failure to communicate with Mr. Geier about Dr. Halon's 'professional issues,' completely denied Mr. Geier the information he needed to make a reasonable decision on the use of Dr. Halon as his sole expert witness. Mr. Geier's trial counsel thusly failed to properly represent him at trial, and that pre-trial negligence as well as trial negligence fell below any "measurable" objective standard of reasonableness.

Since Mr. Geier was prejudiced by being 'blindsided' at trial, by the revelation that Dr. Halon had 'professional sanctions, and Mr. Geier had absolutely no knowledge of this, Mr. Geier's trial became a gross miscarriage of justice,' there was no 'fix,' or curative judicial instruction, or re-direct by trial counsel. Trial counsel's reliance on a Motion in Limine (no prior bad acts) was no defense 'tactic' or 'strategy' at all, because Mr. Geier was NOT informed at all

about Dr. Halon's 'professional sanction,' NOR was Mr. Geier consulted about it when it was discovered shortly prior to trial. Mr. Geier's counsel fell far below ANY 'Standard of objective reasonableness, thus Mr. Geier has clearly met the requirements of the **First 'Prong' of the Strickland "test"** for ineffective assistance of counsel. And because trial counsel did NOT inform Mr. Geier of Dr. Halon's 'professional sanctions' prior to trial, and did NOT consult with him regarding the use of a Motion in Limine to prevent damning evidence that Dr. Halon would not be credible due to his 'professional sanctions,' prejudiced Mr. Geier severely when it was discovered AT TRIAL by the State's AG. This lack of action prejudiced Mr. Geier, severely, and the use of the Motion in Limine, without consulting him first about its use was NO trial tactic or strategy, it was purely a 'cover-up' to trial counsel's lack of diligence in preparing for trial. These actions clearly meet the **Second 'Prong' of the Strickland "test"** for ineffective assistance of trial counsel.

Mr. Geier has clearly shown that the actions or in fact, the negligence of trial counsel's inaction clearly satisfies BOTH 'PRONGS' of the STRICKLAND "Test" for

ineffective assistance of trial counsel, and that the actions that prejudiced Mr. Geier was by **no means, any kind of 'trial tactic or strategy.'**

Mr. Geier had in effect, **negligent representation of trial counsel.** The ONLY appropriate remedy for this egregious violation of the Sixth Amendment right to 'have the assistance of counsel for his defense,' and a fair trial. Thus his stated remedy is: a NEW TRIAL with NEW, COMPETENT Counsel, before a NEW JUDGE.

GROUND 3
WAS MR. GEIER'S DENIAL OF HIS RIGHT
TO FILE A "STATEMENT OF
ADDITIONAL GROUNDS" A VIOLATION OF HIS
DUE PROCESS RIGHT, AND ALSO A
VIOLATION OF HIS EQUAL PROTECTION
OF THE LAW RIGHT UNDER THE
WASHINGTON STATE CONSTITUTION, ART I,
SECTIONS, 3 and 12 and the
FOURTEENTH AMENDMENT OF THE
U.S. CONSTITUTION?

Mr. Geier wrote his appellant attorney about his being able to file a 'pro se supplemental brief' in his direct appeal. This brief is now called a "Statement of Additional Grounds," (See R.A.P. 10.10). At first, counsel said yes. (See letter dtd., July 20, 2011--APPENDIX "A") In that letter she gave Mr. Geier instructions on filing the brief, including obtaining ALL of the trial transcripts to do this. Then, later, Mr. Geier sent her a letter to obtain the trial transcripts, but in a letter dtd., March 14, 2012, she said that filing a "Statement of Additional Grounds for Review" is only allowed in criminal cases, not 71.09 civil cases. Mr. Geier was thusly foreclosed on his ability to bring to the Appellant Court, issues he thought was important for the Court to review. a "Statement of Additional Grounds for Review" is allowed in criminal proceedings because of the

consequences of a conviction-- loss of liberty through the imposition of **total confinement. (in a State Prison)** Even criminals who are potentially exposed to a 'mere' prison term of 1-year plus 1-day (for 'low-level, unranked felonies) or for those who are convicted of a Class-C felony-even Class-C sex offenses, **(facing a prison-term of UP To 5-Years)** has the right to file a "Statement of Additional Grounds" to aid in his appeal. A person facing the consequence of being committed under RCW 71.09 are far more severe, **the indefinite term of TOTAL CONFINEMENT** in a 'Secure facility,' (the Special Commitment Center, located on McNeil Island. This civil consequence is akin to receiving a criminal sentence of Life in prison, with the possibility of parole. (Serious Class-A Felony) Both the convicted criminal and the civilly committed person are removed from society for the 'protection of the community' from a dangerous person. Because the general aims of criminal and civil incarceration are **similar in that one respect, are different 'classes' of persons similarly situated.** Washington State, recognizing this fact has taken great pains to ensure that a person facing

indefinite terms of total confinement at the S.C.C. receives as much 'Due Proces' protection as does a criminal person facing a prison sentence does. In fact the U.S. Supreme Court applauded the states of Washington and Kansas for doing so. Kansas v. Hendricks, 521 U.S. 346, 117 S.Ct. 2072, 138 L.Ed. 2d 501 (1997)--117 S.Ct. at 2083; Seling v. Young, 531 U.S. 250, 121 S.Ct. 727, 148 L.ED.2d 734 (2001). The court in Seling on p. 734 of 121 S.Ct. stated the similar procedural safeguards as in criminal proceedings. So, the criminal defendant and the SVP defendant are very similarly situated classes of people. Both face total incarceration upon 'conviction,' be it a criminal conviction or a civil one under RCW 71.09. The major difference between these two classes of people, is that an important appellant procedure of being able to file a "Statement of Additional Grounds for Review" under R.A.P. 10.10 is limited to criminal procedures and not RCW 71.09 civil commitment procedure. So, Mr. Geier is alleging that this denial of his ability to file a 'Statement of Additional Grounds for Review" is a violation of both his Due Process right and his equal protection right under both

the Fourteenth Amendment to the U.S. Constitution,
and ART I, Sections 3 and 12 of the Washington State
Constitution. (See In re Fuel Tax or Prorate
Assessment of Nor Pac. Enters., Inc., 129 Wn.App.
556,559, 119 P.3d **889** (2005); In re Detention of
Mines, 165 Wn.App. 112, 266 P.3d 242 (2011) at 121-
123 of 129 Wn.App., quoting Abolafya v. State, 114
Wn.App. 137, 56 P.3d 608 (2002). Because of the denial
of Mr. Geier to submit a "Statement of Additional
Grounds for Review," the issues Mr. Geier believed
the Appeals Court needed to hear was foreclosed in
his Direct Appeal, and the result of that appeal
could have been different. Therefore, Mr. Geier
states that a **major 'Due Process' safeguard,** afforded
criminal appeals, (even ones with very small sentences)
was not available to him, because of the 'civil nature'
of his case, despite the essentially same consequence
being imposed. (total confinement) So, Mr. Geier's
Due Process right under **ART I, Sections 3 and 12**
of the Washington State Constitution as well as the
Fourteenth Amendment of the U.S. Constitution. This
is another reason that Mr. Geier should be GRANTED
a New Trial, and if an appeal becomes necessary,
have the right to file a "Statement of Additional

Grounds for Review" to aid in that appeal.

D. CONCLUSION

For all of the foregoing legal reasons, Mr. Paul Andrew Geier, the Petitioner prayerfully requests this Court GRANT his PERSONAL RESTRAINT PETITION, and GRANTS him his stated RELIEF as stated in PART D of his petition.

This PERSONAL RESTRAINT PETITION is RESPECTFULLY SUBMITTED this ____ Day of _____, 2013.

Mr. PAUL ANDREW GEIER,
Petitioner,
Pro Se

APPENDIX "A"

Letters from Mr. Geier's Appellant Counsel
and
Letters from the Office of Public Defense

**Valerie Marushige
Attorney at Law
23619 55th Place South
Kent, Washington 98032**

March 14, 2012

Paul Andrew Geier
Special Commitment Center
P.O. Box 88600
Steilacoom, Washington 98388

Dear Mr. Geier:

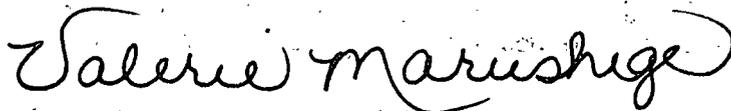
Thank you for your letters acknowledging that you have received a copy of the opening brief. I understand your concern regarding Dr. Halon's background. Unfortunately, when the matter was discussed outside the presence of the jury, it was unclear as to what the e-mail stated. Neither your attorney nor Ms. Barham could remember precisely what the e-mail requested and the judge asked them to provide a copy of the e-mail but it was never provided to the court. Consequently, there was no basis for the judge to determine whether the State acted in bad faith by not disclosing the information they had about Dr. Halon's license revocation. Furthermore, generally, an attorney has a responsibility to conduct a reasonable investigation of their own expert witness before using the expert at trial.

I also need to explain the Statement of Additional Grounds for Review and copies of the transcripts. Unfortunately, a Statement of Additional Grounds for Review is only permitted in criminal cases, not civil commitment cases, and therefore, copies of the transcripts cannot be paid for at public expense. I am sorry for the confusion.

I also wanted to encourage you to focus on your annual review which you are entitled to by law. I am mentioning this because I have heard of a couple of recent cases where detainees have been released based on their annual review, which revealed that they no longer meet the requirements for continued commitment.

At this time, we are waiting for the State to file its response brief. I will send you a copy when I receive it from the State. Thank you for your continued patience throughout this appeal process.

Very truly yours,



Valerie Marushige
Attorney at Law

**Valerie Marushige
Attorney at Law
23619 55th Place South
Kent, Washington 98032**

April 17, 2012

Paul Andrew Geier
Special Commitment Center
P.O. Box 88600
Steilacoom, Washington 98388

Dear Mr. Geier:

There has been a development in your case. The State filed a motion for an extension of time to file its response brief which the Court of Appeals granted. The State's brief is now due on May 21, 2012. I will send you a copy of the brief when I receive it from the State.

I have received several letters from you. At this time, we cannot raise other issues for review because the opening brief has been filed. As I previously explained, unfortunately, you are not allowed to file a Statement of Additional Grounds for Review because your case is a civil matter, not a criminal matter. I apologize for the confusion.

After the State's brief is filed, although it is not required, I always file a reply brief in answer to the State's arguments. I will also send you a copy of the reply brief when it is filed.

In the meantime, thank you for your continued patience throughout this appeal process. I will inform you of any further developments regarding your appeal.

Very truly yours,



Valerie Marushige
Attorney at Law

**Valerie Marushige
Attorney at Law
23619 55th Place South
Kent, Washington 98032**

May 9, 2012

Paul Andrew Geier
Special Commitment Center
P.O. Box 88600
Steilacoom, Washington 98388

Dear Mr. Geier:

I have received your letter requesting that I file a motion pursuant to RAP 10.1(h) for supplemental briefing. Please accept my apologies for the delay in responding, but I have been out of town and consequently have taken longer than usual in following up with all my correspondence.

Unfortunately, RAP 10.1(h) is not for the purpose of moving to file a supplemental brief at this point in the appeal process, but may be useful depending on how the appeal develops. At this time, we must wait for the State to file its response brief. As I have explained, I will then have an opportunity to file a reply brief and file any necessary motions. Please be assured that the issue pertaining to your expert witness will be fully addressed in the reply brief.

I understand that you are anxiously anticipating the resolution of your case, but I would greatly appreciate it if you can continue to exercise your patience throughout this appeal process. I will send you a copy of the State's brief when I receive it and will advise you of any other developments in your case.

Very truly yours,



Valerie Marushige
Attorney at Law

**Valerie Marushige
Attorney at Law
23619 55th Place South
Kent, Washington 98032**

June 14, 2012

Paul Andrew Geier
Special Commitment Center
P.O. Box 88600
Steilacoom, Washington 98388

Dear Mr. Geier:

Please find enclosed a copy of the State's response brief. I am in the process of reviewing the brief, researching the law relied upon by the State, and preparing a reply brief. As I previously explained, a reply brief is not required but will be accepted and considered if one is filed. The Court of Appeals is now proceeding with setting a hearing date to consider your appeal.

I will send you a copy of the reply brief when it is filed, and I will inform you of the hearing date when I receive notification from the Court. Unfortunately, there is no definite timeframe for the Court to set a date.

In the meantime, thank you very much for your understanding and continued patience throughout this appeal process.

Very truly yours,

A handwritten signature in black ink that reads "Valerie Marushige". The signature is written in a cursive, flowing style with a large initial "V" and a long, sweeping underline.

Valerie Marushige
Attorney at Law

Enclosure

**Valerie Marushige
Attorney at Law
23619 55th Place South
Kent, Washington 98032**

January 28, 2013

Paul Andrew Geier
Special Commitment Center
P.O. Box 88600
Steilacoom, Washington 98366

Dear Mr. Geier:

Thank you for your letter. First and foremost, it is best to take one step at a time during this review process rather than speculating about the outcome which we cannot predict.

The Court of Appeals will consider your case on March 1, 2013 and either order a stay pending the Washington Supreme Court decision on the public trial issue or proceed with the appeal and file a written opinion. Depending on what the Court decides, I will advise you further at that time. The Supreme Court's decision, whenever it is filed, will be binding on the Court of Appeals.

Unfortunately, my appointment as appellate counsel does not extend to the Supreme Court. However, as I have explained, we should await the outcome and determine how to best proceed at that point.

I understand that you are anxiously looking forward to a resolution and want to thank you for your continued patience.

Very truly yours,



Valerie Marushige
Attorney at Law



Internet Email: opd@opd.wa.gov

WASHINGTON STATE
OFFICE OF PUBLIC DEFENSE

(360) 586-3164
FAX (360) 586-8165

September 9, 2013

Charles R.P. Urlacher
PO Box 88600
Steilacoom, WA 98388

Dear Mr. Urlacher,

Appellate attorneys on contract with the Washington State Office of Public Defense are not forbidden to appeal Court of Appeals decisions to the Washington Supreme Court. In fact, they are contractually obligated to file petitions for Supreme Court review when appropriate or necessary. However, it is up to the attorney's discretion whether a petition for Supreme Court review is appropriate or necessary.

I would be interested to know the name of the attorney who claimed she was not allowed to file a petition for Supreme Court review. Since I don't know the name, I can't say for sure whether she was an Office of Public Defense contractor.

Sincerely,

Gideon Newmark
Appellate Program Manager



Internet Email: opd@opd.wa.gov

**WASHINGTON STATE
OFFICE OF PUBLIC DEFENSE**

(360) 586-3164
FAX (360) 586-8165

October 3, 2013

Paul A. Geire
PO Box 88600
Steilacoom, WA 98388-9610

Dear Mr. Gaier:

Thank you for your reply to my earlier letter. I am afraid that while Ms. Marushige was allowed to file a petition for discretionary review by the Supreme Court, she was not required to do so under her contract with the State Office of Public Defense (OPD). OPD did not have authority to direct her to file because she was an independent contractor and not an employee. In other words, it was up to her whether a petition was appropriate or necessary. Moreover, Ms. Marushige no longer has a contract with OPD. I wish you luck with your personal restraint petition.

Sincerely,

Gideon Newmark
Appellate Program Manager

APPENDIX "B"

Portion of State's Response Brief in
Mr. Geier's Direct Appeal

Letter, AG's Office, dtd., June 29, 2011
regarding E-Mail, dtd., Jan 31, 2011
regarding Dr. Halon's Disciplinary action.

E-Mail, dtd., Jan 31, 2011 regarding
Dr. Halon's Disciplinary Action (Prior to
Mr. Geier's Commitment trial.

B. Cross-Examination of Geier's Expert on Disciplinary Action Against His License

On direct examination, Dr. Halon, Geier's expert, testified that he's been a licensed psychologist since 1977. 12RP 958. He also testified in detail about his qualifications and credentials as an expert witness. 12RP 958-69.

On cross-examination, Dr. Halon clarified that his psychology license is in the State of California, not Washington. 13RP 1188. The State then questioned Dr. Halon about whether this license had ever been revoked. 13RP 1188-89. Dr. Halon testified that in 1999, he entered into a stipulated settlement with the State of California. 13RP 1189. The disciplinary order revoked his license, but the revocation was stayed. *Id.*² Dr. Halon testified that the stipulated settlement was based on a complaint filed against him by the California Board of Psychology in 1998. *Id.* When the State asked Dr. Halon whether there were four allegations in the complaint, Geier's counsel objected and asked to be heard outside the presence of the jury. *Id.* The State indicated that the question went to his credibility. *Id.* The court then excused the jurors. 13RP 1189-90.

Outside the presence of the jury, Geier's counsel argued that the State's cross-examination violated MIL #13. 13RP 1190-93. The State

² Dr. Halon actually denied that his license was ever revoked. 13RP 1189. He testified that the stay meant his license was not revoked. *Id.*



08-2-08313-1 36705789 LTRATY 07-05-11



Rob McKenna

ATTORNEY GENERAL OF WASHINGTON

800 Fifth Avenue #2000 • Seattle WA 98104-3188

June 29, 2011

The Honorable Kathryn Nelson
 Pierce County Superior Court
 930 Tacoma Ave S, Rm 334
 Tacoma, WA 98402-2108

RE: *In re the Detention of Paul Geier, Respondent*
Pierce County Superior Court No. 08-2-08313-1

FILED
 IN COUNTY CLERK'S OFFICE
 A M JUL 01 2011 P.M.
 PIERCE COUNTY WASHINGTON
 KEVIN STOCK, County Clerk
 BY _____ DEPUTY

Dear Judge Nelson

The parties concluded this sexually violent predator trial on June 14, 2011 after the jury returned a verdict committing Mr. Geier as a sexually violent predator.

During the trial, your honor requested that the parties search for an email that was discussed on the record regarding Mr. Geier's expert, Dr. Robert Halon. (The issue had to do with whether or not Mr. Geier's counsel was aware of the prior disciplinary action involving Dr. Halon's license.) Your honor inquired at one point during the trial whether either party had been able to locate the email. At the time, neither party had been able to locate the email

I recently found the email that the parties discussed on the record. It was located in another Respondent's materials. The email pertains to a different client being represented by counsel, but addresses the information the court inquired about. I have redacted the name of the client for confidentiality and privacy reasons. Because your honor requested that the email be part of the court record for potential appellate purposes, I am forwarding a copy of the email. I am also forwarding a declaration to accompany the email. I am requesting that these materials be filed with the court as part of the record in this case. I have contacted counsel regarding this information and am forwarding this same letter, declaration, and email to counsel

Sincerely,

KRISTIE BARHAM
 Assistant Attorney General, WSBA No 32764
 (206) 389-2004
 kristieb@atg.wa.gov

Enclosure(s)

cc: G. Helen Whitener & Lynn Rainey (w/encl)

ORIGINAL

Barham, Kristie (ATG)

From: Helen Whitener [whitenerh@wrwattorneys.com]
Sent: Monday, January 31, 2011 10:58 AM
To: Barham, Kristie (ATG)
Cc: 'Lynn Rainey'
Subject: [REDACTED]

Kristie, we recently received some information regarding Dr. Halon which will require we request a 2nd expert on this case. We were informed of a 1995 disciplinary action and a recent matter where our client Mr. C [REDACTED] was mentioned in an evaluation Dr. Halon did for one of his other client's. Let me know if you would be objecting to our request and if you are then we will schedule a motion to address this issue.

Thanks,

G. Helen Whitener

WHITENER RAINEY PS
820 Sixth Avenue, Suite A
Tacoma, WA 98405
Office: (253) 830-2155

APPENDIX "C"

Court of Appeals, Div. II
Case Events (Chrono) COA# 422921

CASE EVENTS # 422921

Date	Item	Action	Participant
09/09/2013	Exhibit <i>Comment: Receipt for Exhibits from Pierce County</i>	Received by Court	
08/13/2013	Exhibit <i>Comment: Exhibits 1-5 & 24A return to Pierce County Clerks's Office</i>	Sent by Court	
08/13/2013	Disposed	Status Changed	
08/13/2013	Mandate Service Date: 2013-08-13	Filed	PONZOHA, DAVID
05/20/2013	Letter <i>Comment: Copy of letter to Attorney Valerie Marushige from Attorney General Office regarding motion for reconsideration</i>	Received by Court	BARHAM, KRISTIE
05/10/2013	Order on Motion for Reconsideration Service Date: 2013-05-10 <i>Comment: Order Denying Motion for Reconsideration</i>	Filed	WORSWICK, LISA
04/25/2013	Motion for Reconsideration Motion Status: Decision filed	Filed	Geier, Paul Andrew
04/09/2013	Decision Filed	Status Changed	
04/09/2013	Opinion Service Date: 2013-04-09 Pages: 10 Publishing Status: Unpublished Publishing Decision: Affirmed Opinion Type: Majority Opinion Number: 2013-05793 JUDGE: Van Deren Marywave ROLE: Concurring JUDGE: Penoyar Joel ROLE: Concurring JUDGE: Worswick Lisa ROLE: Authoring	Filed	WORSWICK, LISA
03/01/2013	Heard and awaiting decision	Status Changed	
03/01/2013	Non-Oral Argument Hearing <i>Comment: 2:00 PM Worswick Lisa Van Deren Marywave Penoyar Joel</i>	Scheduled	
02/04/2013	Additional Authorities	Filed	BARHAM,

	Service Date: 2013-02-04 Pages: 9 Volumes: 1 Physical Location: e filed		KRISTIE
02/04/2013	Additional Authorities Pages: 13 Volumes: 1 Physical Location: e scan	Filed	BARHAM, KRISTIE
12/19/2012	Set on a calendar	Status Changed	
12/19/2012	Non-Oral Argument Setting Letter	Sent by Court	
12/04/2012	Additional Authorities Pages: 2 Volumes: 1 Physical Location: e scan	Filed	BARHAM, KRISTIE
10/18/2012	Order on Motions Service Date: 2012-10-18 <i>Comment: Amended Order Denying Motion to Modify</i>	Filed	HUNT, J. ROBIN
10/15/2012	Order on Motions Service Date: 2012-10-15 <i>Comment: Order Denying Motion to Modify</i>	Filed	HUNT, J. ROBIN
10/15/2012	Order on Motions Service Date: 2012-10-17	Filed	HUNT, J. ROBIN
10/02/2012	Reply to Response	Filed	MARUSHIGE, VALERIE
09/25/2012	Additional Authorities	Filed	BARHAM, KRISTIE
09/24/2012	Response to motion Physical Location: e filed	Filed	BARHAM, KRISTIE
09/12/2012	Letter <i>Comment: September 12, 2012 Kristie Barham Kent Y. Liu Office of the Attorney General Attorney General's Office Criminal Just 800 5th Ave Ste 2000 800 Fifth Ave Ste 2000 Seattle, WA, 98104-3188 Seattle, WA, 98104- 3188 kristieb@atg.wa.gov kentl@atg.wa.gov Valerie Marushige Attorney at Law 23619 55th Pl S Kent, WA, 98032-3307 ddvburns@aol.com RE: CASE #: 42292-1-II: In Re The Detention of Paul Andrew Geier v AG Counsel:</i>	Sent by Court	PONZOHA, DAVID

	<p><i>On August 30, 2012, a motion to modify a Commissioner's ruling of August 15, 2012 was filed in the above-referenced matter. A panel of judges will consider the motion without oral argument on the next available motion calendar. Any response to the motion should be filed no later than September 24, 2012. A reply, if any, must be filed within seven days after the response has been filed.</i></p> <p><i>If you have any questions, please contact this office.</i></p> <p><i>Very truly yours,</i> <i>David C. Ponzoha</i> <i>Court Clerk</i> <i>DCP:dlm</i></p>		
08/30/2012	<p>Appellants Reply brief</p> <p><i>Comment: See Ruling of 8-15-2012</i></p>	Not filed	MARUSHIGE, VALERIE
08/30/2012	<p>Motion to Modify Ruling</p> <p>Hearing Location: None Motion Status: Decision filed</p>	Filed	MARUSHIGE, VALERIE
08/15/2012	<p>Ruling on Motions</p> <p>Service Date: 2012-08-15</p> <p><i>Comment: Respondent's motion to strike a portion of appellant's reply brief is granted. There is no indication appellant was unable to present an ineffective assistance claim in opening brief if supported by the record. RAP 10.7; 10.3(c). An amended reply brief should be filed within 15 days of the date of this ruling.</i></p>	Filed	BEARSE, AURORA R.
08/07/2012	<p>Motion to Strike</p> <p>Motion Status: Decision filed</p>	Filed	BARHAM, KRISTIE
07/09/2012	<p>Appellants Reply brief</p> <p>Pages: 13 Volumes: 1 Physical Location: e scan</p>	Filed	MARUSHIGE, VALERIE
06/25/2012	<p>Ruling on Motions</p> <p>Service Date: 2012-06-27</p> <p><i>Comment: Appellant is granted an extension of time to and including 07/06/12 to file a Reply Brief.</i></p>	Filed	PONZOHA, DAVID
06/20/2012	<p>Motion to Extend Time to File</p> <p>Motion Status: Decision filed</p>	Filed	MARUSHIGE, VALERIE
06/08/2012	<p>Supplemental Statement of Arrangements</p> <p><i>Comment: See ruling of 5-30-2012 Hearings of 5-24-24(individual voir dire only) Court Reporter Dana Eby</i></p>	Filed	BARHAM, KRISTIE

06/07/2012	Respondents brief	Received by Court	
06/07/2012	Appellants brief	Received by Court	
05/30/2012	Ruling on Motions Service Date: 2012-05-30 <i>Comment: Respondent's motion to supplement the record is granted. Respondent should make arrangements for the filing of the original report of proceedings with this court within 10 days of the date of this ruling.</i>	Filed	BEARSE, AURORA R.
05/29/2012	Screened	Status Changed	
05/29/2012	Check case Information <i>Comment: NOA 2</i>	Information - not filed	
05/21/2012	Ready	Status Changed	
05/21/2012	Respondents brief Pages: 34 Volumes: 1 Physical Location: e scan <i>Comment: @ Division I 5-21-12, @ Division II 5-23-2012</i>	Filed	BARHAM, KRISTIE
05/18/2012	Motion for Supplem Report of Proceedings Motion Status: Decision filed	Filed	BARHAM, KRISTIE
05/17/2012	Exhibit Physical Location: pouch <i>Comment: Petitioner's Exhibit# 1-5, 24A</i>	Received by Court	
05/14/2012	Report of Proceedings Pages: 167 Volumes: 1 Physical Location: e diled <i>Comment: Corrected VRP: Court Reporter Dana Eby: hearing of May 24, 2011</i>	Received by Court	
05/10/2012	Supplemental Clerk's Papers Pages: 69 Volumes: 1 Physical Location: e filed <i>Comment: 643-712</i>	Received by Court	BARHAM, KRISTIE
04/27/2012	Supplemental Designation of Clerk's Papers	Filed	BARHAM, KRISTIE
04/18/2012	Report of Proceedings Pages: 182 Volumes: 2	Received by Court	Eby, Dana

	Physical Location: e filed <i>Comment: Hearings of 5-24-25-2011: Court Reporter Dana Eby</i>		
04/17/2012	Filing of VRP by Crt Reporter <i>Comment: Hearings of May 24-25, 2011</i>	Filed	Eby, Dana
04/11/2012	Ruling on Motions Service Date: 2012-04-11 <i>Comment: Respondent is granted an extension of time to and including 05/21/12 to file the Respondent's Brief. In view of the length of this extension, the court will not grant respondent any further continuances for filing its brief absent a showing of compelling circumstances. The court notes that respondent has not filed a motion to supplement the report of proceedings. See RAP 9.10.</i>	Filed	PONZOHA, DAVID
04/04/2012	Motion to Extend Time to File Motion Status: Decision filed	Filed	BARHAM, KRISTIE
03/05/2012	Appellants brief Pages: 17 Volumes: 1 Physical Location: e scan	Filed	MARUSHIGE, VALERIE
02/10/2012	Ruling on Motions Service Date: 2012-02-10	Filed	PONZOHA, DAVID
02/06/2012	Motion to Extend Time to File Motion Status: Decision filed	Filed	MARUSHIGE, VALERIE
12/22/2011	Ruling on Motions Service Date: 2011-12-22 <i>Comment: Appellant is granted an extension of time to and including 02/06/12 to file the Appellant's Opening Brief. In view of the length of this extension, the court will not grant appellant any further continuances for filing the opening brief absent a showing of compelling circumstances.</i>	Filed	PONZOHA, DAVID
12/19/2011	Motion to Extend Time to File Motion Status: Decision filed	Filed	MARUSHIGE, VALERIE
11/04/2011	Report of Proceedings Service Date: 2011-11-04 Pages: 1702 Volumes: 16 Physical Location: e filed <i>Comment: 5-27-08, 8-29-08, 7-30-10, 5-23-26,31-2011, 6-1-2,6-9,13-14-2011 *****e filed 16 volumes*****11-3-2011</i>	Received by Court	Eby, Dana

11/03/2011	Filing of VRP by Crt Reporter <i>Comment: 16 volumes: hearings of 5-27-08, 8-29-08, 7-30-10, 5-23-26,31-2011, 6-1-2,6-9,13-14-2011</i>	Filed	Eby, Dana
11/03/2011	Record Ready	Status Changed	
08/31/2011	Clerk's Papers Pages: 650 Volumes: 1 Physical Location: e-filed	Received by Court	MARUSHIGE, VALERIE
08/16/2011	Statement of Arrangements <i>Comment: \$300.00 sanction due 8-25-2011, original due date 8-1-2011 Attorney for appellant ordered transcription from court reporter Dana Eby; hearings of 5-27-08, 8-29-08, 7-30-10, 5-23-26,31-2011, 6-1-2,6-9,13-14-2011</i>	Filed	MARUSHIGE, VALERIE
08/16/2011	Designation of Clerks Papers Service Date: 2011-08-16 <i>Comment: \$300.00 sanction due 8-25-2011, original due date 8-1-2011</i>	Filed	MARUSHIGE, VALERIE
08/10/2011	Letter of Sanctions Service Date: 2011-08-10 <i>Comment: \$300.00 sanction due 8-25-2011, original due date 8-1-2011 August 10, 2011 Valerie Marushige Kristie Barham Attorney at Law Kent Y Liu 23619 55th Pl S Office of the Attorney General Kent, WA, 98032-3307 800 5th Ave Ste 2000 ddvburns@aol.com Seattle, WA 98104-3188 RE: CASE #: 42292-1-II: In Re The Detention of Paul Andrew Grier v AG Case Manager: Debbie Valeria Marushige: Our records indicate that the above-referenced appeal has not been timely perfected due to your failure to file the statement of arrangements and designation of clerks papers, due August 1, 2011. Accordingly, a sanction of \$300.00 will be imposed against you unless the item indicated above is filed with this court on or before fifteen days from the date of this letter. If you do not file the item referred to above on or before the aforementioned date, a check for the amount of the sanction, payable to the State of Washington, will be due. Once a sanction becomes due, no further filings will be accepted until that sanction is paid in full. Further, this appeal is scheduled for other and further sanctions for want of prosecution pursuant to a motion by the clerk. The motion will be considered, without oral argument, if the document is not filed by August 29, 2011. The</i>	Sent by Court	MARUSHIGE, VALERIE

	<p>clerk's motion for further sanctions will be stricken if the defect in perfection is cured prior to that date. Please note, however, that striking the clerk's motion will not release you from the payment of the sanction imposed on August 25, 2011, unless perfection of this appeal occurs on or before that date.</p> <p>Very truly yours, David C. Ponzoha Court Clerk DCP:dIm</p>		
08/10/2011	<p>Court's Mot for Sanct for Fail to file Calendar Type: Clerk's Motion Calendar Hearing Official: Schmidt, Eric B.</p> <p>Hearing Date: 08/31/2011 Hearing Location: None Motion Status: Stricken / Vacated</p>	Filed	PONZOHA, DAVID
08/10/2011	<p>Letter of Sanctions Service Date: 2011-08-10 <i>Comment: \$300.00 sanction due 8-25-2011, original due date 8-1-2011 August 10, 2011</i> Valerie Marushige Kristie Barham Attorney at Law Kent Y Liu 23619 55th Pl S Office of the Attorney General Kent, WA, 98032-3307 800 5th Ave Ste 2000 ddvburns@aol.com Seattle, WA 98104-3188 RE: CASE #: 42292-1-II: In Re The Detention of Paul Andrew Grier v AG Case Manager: Debbie Valeria Marushige: Our records indicate that the above-referenced appeal has not been timely perfected due to your failure to file the statement of arrangements and designation of clerks papers, due August 1, 2011. Accordingly, a sanction of \$300.00 will be imposed against you unless the item indicated above is filed with this court on or before fifteen days from the date of this letter. If you do not file the item referred to above on or before the aforementioned date, a check for the amount of the sanction, payable to the State of Washington, will be due. Once a sanction becomes due, no further filings will be accepted until that sanction is paid in full. Further, this appeal is scheduled for other and further sanctions for want of prosecution pursuant to a motion by the clerk. The motion will be considered, without oral argument, if the document is not filed by August 29, 2011. The clerk's motion for further sanctions will be stricken if the defect in perfection is cured prior to that date. Please note, however, that striking the clerk's motion will not release you from the payment of the sanction imposed on August 25, 2011, unless perfection of this appeal occurs on</p>	Sent by Court	MARUSHIGE, VALERIE

	<p>or before that date. Very truly yours, David C. Ponzoha Court Clerk DCP:dln</p>		
08/10/2011	<p>Court's Mot for Sanct for Fail to file Calendar Type: Clerk's Motion Calendar Hearing Official: Schmidt, Eric B. Hearing Date: 08/31/2011 Hearing Location: None Motion Status: Stricken / Vacated</p>	Filed	PONZOHA, DAVID
07/05/2011	<p>Perfection Letter Service Date: 2011-07-05 <i>Comment:</i> July 5, 2011 Kristie Barham Kent Y. Liu Office of the Attorney General Attorney General's Office Criminal Just 800 5th Ave Ste 2000 800 Fifth Ave Ste 2000 Seattle, WA, 98104-3188 Seattle, WA, 98104-3188 kristieb@atg.wa.gov kysl@comcast.net Valerie Marushige Attorney at Law 23619 55th Pl S Kent, WA, 98032-3307 ddvburns@aol.com RE: CASE #: 42292-1-II: In Re The Detention of Paul Andrew Grier v AG Court of Appeals No. 42292-1-II: (USE THIS NUMBER ON ALL FILINGS) Pierce County No. 08-2-08313-1 Case Manager: Debbie THIS WILL BE THE ONLY NOTICE THAT YOU WILL RECEIVE CONCERNING DUE DATES. A DOCUMENT FILED PRIOR TO OR AFTER ITS DUE DATE MAY AFFECT ALL SUBSEQUENT DUE DATES. THE PARTIES ARE RESPONSIBLE FOR DETERMINING ADJUSTED DUE DATES BY REVIEWING THE APPROPRIATE RULES OF APPELLATE PROCEDURE. Counsel: We have received a Notice of Appeal filed June 22, 2011. The time periods for compliance with the Rules of Appellate Procedure are as follows: 1. The designation of clerks papers should be filed with the trial court by August 1, 2011. A copy of the designation should be served and must be filed with the appellate court. RAP 9.6 (a). 2. The statement of arrangements should be filed in this court by August 1, 2011 and a copy served on all parties and all named court reporters. The statement should include the name of each court reporter, the hearing dates, and the trial court judge. Revised RAP 9.2(a). If counsel does not</p>	Sent by Court	PONZOHA, DAVID

intend to file a verbatim report of proceedings, counsel should so notify this court, in writing, by that date. RAP 9.2(a).
Appeal No. 42292-1-II
 3. *The verbatim report of proceedings must be filed with the trial court clerk within 60 days after the statement of arrangements is filed. Revised RAP 9.5(a).*
 4. *Appellant's opening brief, accompanied by proof of service, should be filed in this court 45 days after the filing of the report of proceedings with the trial court clerk. RAP 10.2(a) & (h). Pursuant to RAP 10.2(a), if the record on review does not include a report of proceedings, the brief of appellant should be filed within 45 days after the party seeking review has filed the designation of clerks papers and exhibits at the trial court.*
 5. *Respondent's opening brief, accompanied by proof of service, should be filed in this court 30 days after service of the appellant's brief to all parties. RAP 10.2(b) or (c). In the Court of Appeals, Division Two, a party may file a Motion on the Merits in lieu of the respondent's brief. The motion is due, however, the same date as the respondent's brief. If the motion is denied, respondent's brief is due 30 days after the date of the order. See RAP 18.14 for motion procedure.*
 6. *A reply brief, if any, is due 30 days after service of respondent's brief. RAP 10.2(d). Failure to timely file the brief will result in the brief being placed in the case file without action. The court will give it whatever consideration it wishes. Counsel's failure to timely comply with the rules of Appellate Procedure may result in the imposition of sanctions pursuant to RAP 18.9. any request for an extension of time must be made by way of written motion and affidavit showing good cause accompanied by proof of service. The request for additional time should specify a definite date. The granting of an extension request will change all subsequent due dates.*
Very truly yours,
David C. Ponzoha,
Court Clerk
DCP:dml
cc: Pierce County Clerk

07/01/2011	Indigent Defense Counsel Assigned Service Date: 2011-07-01	Filed	
06/28/2011	Case Received and Pending	Status Changed	
06/22/2011	Order of Indigency in Superior Court Service Date: 2011-06-22	Filed	
06/22/2011	Notice of Appeal	Filed	
06/22/2011	Affidavit of Service	Filed	

C E R T I F I C A T E O F M A I L I N G

I, PAUL GEIER certify that on 25 Day of 2013,
2013, I caused to be placed in the mails of the United States,
first class postage pre-paid, 2-copies of the following
documents, they are:

2-copies of: PERSONAL RESTRAINT PETITION

2-Copies of: MEMORANDUM IN SUPPORT OF PERSONAL RESTRAINT PETITION

These documents are addressed to:

Court Clerk,
Washingtons State Court of Appeals, Division II
950 Broadway, Suite 300
Tacoma, WA
98402-4454

Paul A. Geier

PAUL ANDREW GEIER,
Petitioner, Pro Se

Special Commitment Center
P.O. Box 88600
Steilacoom, WA
98388

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DIVISION II
2013 OCT 30 PM 1:12
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