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Jun 03, 2015, 10:16 am  
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Case No. 91348-0

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**SUPREME COURT OF THE STATE OF WASHINGTON**

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Donald R. Earl (Appellant)

v.

XYZPrinting, Inc. (Respondent)

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**APPELLANT'S REPLY BRIEF**

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Donald R. Earl (pro se)  
3090 Discovery Road  
Port Townsend, WA 98368  
(360) 379-6604



ORIGINAL

Comm  
6-3-15

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*ISSUE 2: The trial court's administrative practices following the filing of an affidavit of prejudice violated the Plaintiff's civil rights.....* 3

*ISSUE 3: The judgment is void because no judge was present and sitting at the hearing on summary judgment. ....* 4

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1. **I. INTRODUCTION**

2. At the most fundamental level, this lawsuit arises on the fact that  
3. XYZPrinting, Inc.'s printers are controlled by a defective, proprietary  
4. software program that will not allow its printers to print solid models. This  
5. is a fact supported by substantial evidence. This is a fact that is undisputed  
6. in the court below or on appeal. It is a fact on which XYZPrinting, Inc. has  
7. never offered any admissible evidence by way of affidavit or otherwise to  
8. refute. It is a fact that XYZPrinting, Inc. has ignored at every opportunity  
9. is has been given to present evidence, or even argument, in rebuttal. The  
10. record also shows, as supported by substantial evidence, that  
11. XYZPrinting, Inc.'s warranty practices constitute at least six per se  
12. violations of the Magnusson Moss Warranty Act.

13. XYZPrinting, Inc.'s response brief is frivolous on its face. Rather  
14. than respond to the issues presented for review, XYZPrinting, Inc. instead  
15. offers argument on issues that are the product of opposing counsel's  
16. imagination. If it was XYZPrinting, Inc.'s intent to present its own issues  
17. for consideration by this Court, it should have filed a cross appeal.

18. XYZPrinting, Inc. falsely claims Mr. Earl refused to settle this  
19. matter. On the contrary, the record shows Mr. Earl spent three fruitless  
20. weeks, during which time a total of 26 email messages were exchanged, in  
21. an effort to resolve this matter without spending a single cent on litigation.  
22. Mr. Earl explained the defect in six different emails. These emails, which

1 are a part of the record, show Mr. Earl's increasing frustration with  
2 XYZPrinting, Inc.'s pattern of stonewalling tactics where XYZPrinting,  
3 Inc. repeatedly refused to respond to the complained of defect, denied the  
4 existence of the defect, and not once offered to remedy the defect.  
5 XYZPrinting, Inc.'s sole objection in this regard is rooted in its own  
6 misplaced belief that customers harmed by its unfair business practices  
7 will not pursue litigation. Mr. Earl made every conceivable effort to warn  
8 XYZPrinting, Inc. of the consequences of refusing to comply with laws  
9 intended to protect consumers from unfair business practices. Now,  
10 XYZPrinting, Inc. asks for sympathy on finding its scofflaw approach to  
11 dealing with its customers does, indeed, have consequences.

## 12 II. REPLY

13 *ISSUE 1: The trial court erred in considering the Defendant's motion*  
14 *for an award of actual attorney fees after the expiration of the filing*  
15 *deadlines of CR 54(d) and RCW 4.84.185 and the error violated the*  
*Plaintiff's civil rights.*

16 XYZPrinting, Inc.'s response to Issue 1 is frivolous on its face.  
17 XYZPrinting, Inc. does not offer any argument on the issue presented for  
18 review, which asks this Court to resolve conflicting Court of Appeals  
19 decisions related to CR 54(d). Instead, XYZPrinting, Inc. materially  
20 misrepresents a Division I case, *Bevan v. Meyers*, 183 Wn. App. 177  
21 (2014), which is entirely inapposite to the instant case. In *Bevan v.*  
22 *Meyers*, Bevan filed special motions to strike under the anti-SLAPP

1 statute, RCW 4.24.525(2). The trial court granted the motion and Bevan  
2 moved to set costs and fees two months later. Unlike the order granting  
3 summary judgment in the instant case, the order granting the motion in  
4 *Bevan* was NOT a final judgment in the case. In that case, Division I  
5 stated in relevant part, "*Bevan expressly moved the court for costs,*  
6 *attorney fees, and statutory penalties when she filed her special motion to*  
7 *strike on August 30, 2012. This claim was entered during the pretrial*  
8 *phases of the case, well before entry of judgment in the matter.*"

9           Opposing counsel's unsupported protestations to the contrary,  
10 there are conflicting decisions at the Court of Appeals level which should  
11 be resolved by this Court. As XYZPrinting, Inc. fails to offer any relevant  
12 authority or argument responsive to Issue 1, the issue should be viewed as  
13 unopposed.

14 ***ISSUE 2: The trial court's administrative practices following the filing***  
15 ***of an affidavit of prejudice violated the Plaintiff's civil rights.***

16           XYZPrinting, Inc.'s response to Issue 2 is nonresponsive to issues  
17 presented for review. XYZPrinting, Inc.'s out of context citation to dicta  
18 contained in *Marine Power v. Department of Transportation*, 102 Wn.2d  
19 457 (1984) is frivolous as that case involved issues entirely inapposite to  
20 the instant case. *Marine Power* and the authorities cited in that case  
21 involved complex, multi party litigation, where a party filed an affidavit of  
22 prejudice after being joined to the case late in the proceedings. The

1 “orderly administration of justice” issue in that case was related to  
2 litigation that had already taken place in the case prior to joinder of the  
3 party filing the affidavit of prejudice, not, as is the issue in the instant  
4 case, the process which is due after the affidavit has been filed.

5 The purpose of an affidavit of prejudice is to avoid prejudice,  
6 where the administrative practices in Jefferson County Superior Court  
7 effectively amount to retaliation against any party filing an affidavit of  
8 prejudice. As XYZPrinting, Inc.’s answer fails to provide any pertinent  
9 fact, law or authority responsive to the issues raised in the Appellant’s  
10 Brief, the issues should be treated as unopposed.

11 ***ISSUE 3: The judgment is void because no judge was present and sitting***  
12 ***at the hearing on summary judgment.***

13 Here again, as with every issue raised on review, XYZPrinting,  
14 Inc. simply ignores the issue, facts and authorities presented, offering  
15 frivolous arguments, supported by nothing. This is a case of first  
16 impression. This Court has only considered the application of RCW  
17 2.28.030 in two cases: *In the Matter of the Application for a Writ of*  
18 *Habeas Corpus of Robert Jaime*, 59 Wn.2d 58 (1961), where this Court  
19 considered the application of RCW 2.28.030 in a case where the presiding  
20 judge left office after entering judgment in the case. In that case, the Court  
21 ruled a successor judge had authority to enter orders enforcing the  
22 judgment. In *DGHI Enterprises v. Pacific Cities, Inc.*, 137 Wn.2d 933



1 **ISSUE 4. The trial court erred in denying the Plaintiff's Conditional**  
2 **Motion for Change of Venue and the decision violated the Plaintiff's**  
3 **civil rights.**

4 XYZPrinting, Inc.'s only citation to authority on this issue consists  
5 of a gross misrepresentation of law. Citing *Norman v. Chelan County Pub.*  
6 *Hosp. Dist. No. I*, 100 Wn.2d 633 (1983), Opposing counsel states, "A  
7 Superior Court need not consider motions that are "conditional" or  
8 "abstract." In *Norman*, the parties settled after this Court accepted  
9 review. This Court ruled that because the questions were moot and that no  
10 broad public interest was involved, the appeal should be dismissed. The  
11 case had absolutely nothing to do with conditional motions at the trial  
12 court level. In both this Court and in the court below, XYZPrinting, Inc.'s  
13 opposition to a change of venue is not supported by fact or law.  
14 XYZPrinting, Inc. does not offer a single fact or argument that would  
15 create a basis for denying a change of venue and does not claim or even  
16 imply it would be in any way prejudiced by a change of venue.  
17 XYZPrinting, Inc. does not cite any authority that would form a legal basis  
18 for denying a change of venue.

19 In *State Ex Rel. Nielsen v. Superior Court*, 7 Wn.2d 562 (1941),  
20 citing various authorities with approval, this Court stated as follows:

21 **"A judicial discretion, in practice, is the equitable decision**  
22 **of what is just and proper under the circumstances.** Abuse of  
23 discretion does not mean only the decision of a case by whim or  
24 caprice, arbitrarily or from a bad motive, but it also means that the  
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discretion has not been justly and properly exercised under the circumstances of the case.

It is, of course, somewhat within the discretion of the court whether it will or will not grant a change of venue on the ground of the convenience of witnesses. But *discretion in this regard is never arbitrary. It must, like discretion in other matters, be based on reason.* If it appears from the entire showing that the convenience of witnesses will be promoted by the change, *the court cannot deny it on the ground of discretion without an abuse of discretion. To hold otherwise would be to deny to a party the benefit of the statute.*

What may be for the convenience of witnesses or *what may promote the ends of justice are usually facts which must be proven by competent evidence*, and while there is a certain discretion lodged in the trial court, that *discretion must be exercised in the light of the evidence produced.*" (Emphasis added, internal citations, quote marks and brackets omitted)

No reasonable person viewing the level of abuse that is the defining characteristic of the decisions made in this case could believe Mr. Earl would not be prejudiced if forced to litigate this matter in Jefferson County on remand. An order remanding the case to the trial court for any further proceedings should include a command to immediately transfer the case to King County.

***ISSUE 5: The trial court violated the Plaintiff's due process rights in failing to sanction opposing counsel's egregious misconduct.***

XYZPrinting, Inc.'s response to Issue 5 is little more than a continuation of the type of dishonesty, lack of candor and professional misconduct that has been the defining characteristic of opposing counsel's tactics in this case. As with every other frivolous response in the

1 Defendant's brief, XYZPrinting, Inc. evades the issues raised, fails to cite  
2 any on point authority in any way pertinent to the issues presented and is  
3 on its face inherently frivolous. RPC 3.1 states, in relevant part, that "[a]  
4 lawyer shall not bring or defend a proceeding, or assert or controvert an  
5 issue therein, unless there is a basis in law and fact for doing so that is not  
6 frivolous"

7 A frivolous position is one that a lawyer of ordinary competence  
8 would recognize as lacking in merit. RESTATEMENT (THIRD) OF THE  
9 LAW GOVERNING LA WYERS § 110 cmt. d (2000).

10 RPC 8.4(c) and (d) state, "It is professional misconduct for a  
11 lawyer to: . . . (c) engage in conduct involving dishonesty, fraud, deceit or  
12 misrepresentation; [or] (d) engage in conduct that is prejudicial to the  
13 administration of justice." The intent of RPC 8.4( c) is to protect the public  
14 from lawyers who manifest dishonesty, fraud, deceit, or misrepresentation.  
15 (See: *In re Disciplinary Proceeding Against Cramer*, 168 Wn.2d 220, 232,  
16 225 P.3d 881 (2010)).

17 Contrary to opposing counsel's assertion the only example of  
18 misconduct raised on review is related to the unsigned Memorandum  
19 Opinion, Mr. Earl's opening brief refers to several dozen examples of  
20 false statements of fact and law made by opposing counsel in the court  
21 below. Opposing counsel now claims the superior court found no basis for  
22 sanctions, where no such finding appears anywhere in the record. The

1 record shows that not only were numerous statements made by opposing  
2 counsel verifiably false, at no time has opposing counsel contested the  
3 falsity of the examples identified.

4 In this Court's conclusion in *Discipline of Dornay*, 160 Wn.2d 671  
5 (2007), the Court stated, "One of the key obligations of an attorney is to  
6 maintain the highest standards of ethical conduct. *Above all, the hallmark*  
7 *of an attorney's ethical conduct is to be truthful to the tribunal,*  
8 especially under oath, when an attorney's own sworn testimony is *material*  
9 *to the outcome of an official proceeding.*" (Emphasis added)

10 In *Iverson v. Marine Bancorporation*, 83 Wn.2d 163 (1973), this  
11 Court stated, "Const. art. 4, § 1 and § 30, vests the judicial power in the  
12 Supreme Court, Court of Appeals and superior courts of this state. Upon  
13 creation, these courts assumed certain powers and duties... These duties  
14 include, among others, the fair and impartial administration of justice and  
15 the duty to see that justice is done in the cases that come before the court."

16 While this Court has typically only considered attorney misconduct  
17 in the context of disciplinary proceedings, those cases frequently  
18 recognize the prejudicial impact of such conduct on the administration of  
19 justice. When a trial court abandons its duty to curb misconduct to the  
20 degree demonstrated in the instant case, it rises to the level of being a  
21 constitutional, due process, question of law rather than a simple abuse of  
22 discretion, because the court becomes so heavily influenced by false

1 statements of fact and law that a party's right of access to the courts ceases  
2 to be more than illusory.

3 ***ISSUE 6: Because the trial court's orders imposing sanctions against***  
4 ***Mr. Earl violated Mr. Earl's due process right to notice and an***  
5 ***opportunity to be heard, the sanction orders are void.***

6 At the bottom of page 17, continuing to the top of page 18 of its  
7 response, XYZPrinting, Inc., falsely claims it moved for sanctions in a  
8 number of documents listed. Listed are CP 61, which has "EXHIBIT A"  
9 printed on an otherwise blank page and CP 174, which is the second to last  
10 page of Mr. Earl's Response to Summary Judgment and Cross Motion for  
11 Sanctions. Of the remaining citations to the record listed, vague statements  
12 along the lines of "XYZPrinting requests this court to award it the costs  
13 and fees associated with its response to Mr. Earl's motions to compel and  
14 for sanctions." (CP 253-254) None of these filings include a motion for  
15 sanctions, nor do they contain any factual or legal basis supporting an  
16 award of sanctions. In *State v. Tucker*, 171 Wn.2d 50 (2011) this Court  
17 ruled: "*Under CR 7(b), a motion must state with particularity the relief*  
18 *sought and the grounds for relief.*" XYZPrinting, Inc. has never filed any  
19 motion for sanctions meeting this standard.

20 XYZPrinting, Inc. also falsely asserts the trial court made findings  
21 of bad faith to support an award of sanctions, citing the order prepared by  
22 opposing counsel (CP 482-85), which was signed and filed in violation of

1 CR 54(f). The trial court could not make such findings, as no basis for  
2 making such finds was presented to the trial court, the trial court did not  
3 hear or consider any argument related to sanctions and, made no oral  
4 rulings related to sanctions at the hearing in question.

5 XYZPrinting, Inc. then attempts to mislead this Court through  
6 quoting oral statements made by Judge Melly in the prior hearing, which  
7 are unrelated to the order signed by Judge Olsen. The order signed by  
8 Judge Melly does not contain any factual or legal findings to support a  
9 sanction award. The language in the order prepared by opposing counsel,  
10 and signed by Judge Olsen in violation of CR 54(f), is insufficient to meet  
11 the standards this Court has set in cases such as *Biggs v. Vail*, 124 Wn. 2d  
12 193 (1994), which require the trial court to “*make explicit findings as to*  
13 *which filings violated CR 11, if any, as well as how such pleadings*  
14 *constituted a violation*”. All documents filed by Mr. Earl in this case are  
15 the result of exhaustive due diligence, meticulously supported throughout  
16 by substantial fact, law and binding authority. Under the circumstances, it  
17 is not difficult to explain why opposing counsel is neither able to, nor has  
18 attempted to, articulate any factual or legal basis to support an award of  
19 sanctions and, why no findings of fact or law supporting an award of  
20 sanctions appears in any order signed by the trial court. There is no basis  
21 for sanctions against Mr. Earl.

1 ***ISSUE 7: The trial court acted without legal authority in attempting to***  
2 ***force Mr. Earl to settle his lawsuit and unconstitutionally violated Mr.***  
3 ***Earl's rights to due process, equal protection and access to the courts.***

4 As with all issues presented for review in this case, XYZPrinting,  
5 Inc. again disingenuously attacks straw man issues of its own design, in an  
6 attempt to avoid the issues presented for review. No on point authority  
7 supports XYZPrinting, Inc.'s response, as the issue is not whether or not a  
8 court has authority to encourage settlements, a point which is not in  
9 dispute, but rather whether or not a court has the authority to compel a  
10 settlement under pain of retaliation if a settlement offer is not accepted.

11 As XYZPrinting, Inc.'s answer does not present any argument or  
12 authority responsive to the issue presented for review, and as the  
13 Appellant's opening brief addresses the issue in detail, Mr. Earl would  
14 reply by reference to the opening brief rather than reiterate arguments  
15 already presented for the Court's consideration. XYZPrinting, Inc.'s  
16 failure to provide any meaningful response on this issue should be treated  
17 as an absence of opposition.

18 ***ISSUE 8: The facts, supported by admissible evidence, and laws***  
19 ***governing the Plaintiff's claims, support granting summary judgment in***  
20 ***the Plaintiff's favor.***

21 In addition to misstating the issue presented for review,  
22 XYZPrinting, Inc.'s response is based on a misapprehension of rule and  
23 law as it relates to review of summary judgment. CR 52(a) provides in  
24 relevant part as follows:  
25  
26

1 "In all actions tried upon the facts without a jury or with an  
2 advisory jury, the court shall find the facts specially and state  
3 separately its conclusions of law. Judgment shall be entered  
4 pursuant to rule 58 and may be entered at the same time as the  
5 entry of the findings of fact and the conclusions of law...

6 (2) Specifically Required. Without in any way limiting the  
7 requirements of subsection (1), findings and conclusions are  
8 required...

9 (5) *Findings of fact and conclusions of law are not necessary...*  
10 On decisions of motions under rule... 56" (Emphasis added)

11 XYZPrinting, Inc. citations to authority are inapposite to orders on  
12 summary judgment, and the arguments presented are disingenuous on their  
13 face. XYZPrinting, Inc. refers to *Lutz v. Longview*, 83 Wn.2d 566, (1974),  
14 where this Court stated in part that "It is not the function of this court to  
15 search the record for possible errors". However, dicta stating a general  
16 principal in *Lutz* is inapplicable to review of summary judgment, which  
17 not only requires an appellate court to search the record, the appellate  
18 court must engage in the same inquiry as the trial court, by way of  
19 examining the same record on which the trial court's decision was based.  
20 Furthermore, summary judgment review is not the "search for error"  
21 described in *Lutz*. It is an examination of the facts, laws and arguments  
22 presented to the trial court in support or opposition to summary judgment.

23 It is well settled law that in "*reviewing an order of summary*  
24 *judgment, an appellate court engages in the same inquiry as the trial*  
25 *court*", *Barnes v. McLendon*, 569 Wn.2d 563 (1996). The plain language  
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1 of CR 52(a), which allows superior courts to enter summary judgments  
2 unsupported by fact or law, as was done in the instant case, precludes the  
3 possibility of an appellant being able to assign error to conclusions of fact  
4 or law which are neither present in the record, nor required to be present in  
5 the record. As cited in the Appellant's opening brief, CR 56(h) only  
6 requires that the documents considered by the trial court on summary  
7 judgment be designated in the order, which was done. RAP 9.12 states in  
8 relevant part that, "*On review of an order granting or denying a motion*  
9 *for summary judgment the appellate court will consider only evidence and*  
10 *issues called to the attention of the trial court.*"

11 Review of summary judgment is de novo (See: *Stokes v. Polley*,  
12 145 Wn.2d 341 (2001)). The "evidence and issues called to the attention  
13 of the trial court" are a matter of record and the record has been  
14 transferred to this Court for consideration. Review of summary judgment  
15 does not require the court to search for errors. Review of summary  
16 judgment requires the court examine the facts of the case, as supported by  
17 substantial evidence.

18 ***ISSUE 9: The trial court violated the Plaintiff's due process right to***  
19 ***pursue discovery prior to entry of summary judgment against him.***

20 As with every other issue presented for review, XYZPrinting, Inc.  
21 fails to address the issue presented, offers unsupported argument that is  
22

1 entirely irrelevant, and seeks to deceive the Court through  
2 misrepresentation of the facts of the case.

3 XYZPrinting, Inc. begins by misrepresenting the nature of Mr.  
4 Earl's motion to produce discovery, and appears to be arguing the merits  
5 of the motion, in spite of the fact the trial court denied the motion without  
6 any comment or consideration of the motion on the merits.

7 XYZPrinting, Inc. goes on to claim Mr. Earl mooted his motion to  
8 produce discovery based on statements made by Mr. Earl, citing the  
9 Clerk's Papers at CP 57-58. CP 57-58 is a certificate of service and  
10 facsimile affidavit filed by XYZPrinting, Inc.

11 Among other considerations, this deception or the part of  
12 XYZPrinting, Inc. evades the issue by misrepresenting the context of the  
13 issue, which is the right of a party to pursue discovery prior to entry of  
14 summary judgment against that party. Mr. Earl's statements regarding  
15 discovery were contained in his Cross Motion for Summary Judgment,  
16 where Mr. Earl stated as follows:

17 "It is the Plaintiff's Claim 3 on which the Plaintiff anticipated  
18 obtaining discovery prior to moving for summary judgment.  
19 However, in light of the fact the Nicholson Declaration at Exhibit  
20 A admits to providing consumers with used printers under at least  
21 some circumstances and, the fact the Plaintiff is in possession of  
evidence showing the Defendant's software is universally  
defective, the Plaintiff will pursue summary judgment on Claim 3  
at this time and pursue further discovery if Court deems it



1 to support abandoning binding precedent or so much as a single authority  
2 in support of such argument.

3 ***ISSUE 10: In failing to comply with the notice requirement of CR 54(f),***  
4 ***the trial court violated Mr. Earl's right to due process and the***  
5 ***improperly entered orders are void.***

6 As is the well established pattern of misconduct by opposing  
7 counsel, when opposing counsel finds the truth is no aid, opposing counsel  
8 resorts to dishonesty.

9 At the top of page 27 of XYZPrinting, Inc.'s response brief,  
10 opposing counsel states as follows:

11 "Here, Judge Melly dictated the terms of the summary judgment  
12 order at the summary judgment hearing and asked for presentation  
13 of that order. VR November 10, 2014, 24. Mr. Earl was in open  
14 court during the entry of the summary judgment verdict of  
15 findings. Counsel for XYZprinting provided the order requested to  
16 Judge Melly and Judge Melly signed the order on the same day the  
17 hearing was held, November 10, 2014. Id.; CP 487-88. Mr. Earl's  
18 argument that the summary judgment order is void is wrong  
19 because he was in open court when the findings were stated to the  
20 parties."

21 Opposing counsel's contention Mr. Earl was present in court when  
22 the order was presented and signed is materially and indisputably false as  
23 the record shows opposing counsel was not present in court to present the  
24 proposed order and, Judge Melly was not present in court to sign or enter  
25 the order. In fact, the record shows the order was not filed until two days  
26 after the hearing, on November 12, 2015, which was the first time Mr.

1 Earl saw the order, when a copy was forwarded to him by email, by the  
2 Clallam County Court Administrator.

3 In *DGHI Enters. v. Pacific Cities, Inc.*, 137 Wn. 2d 933 (1999),  
4 this Court cited *Eilers Music House v. French*, 100 Wash. 552, 554, 171  
5 P.2d 527 (1918) with approval, including the following quote at footnote  
6 68:

7 "While a custom has grown almost into settled practice for the  
8 attorneys to present findings, conclusions, and judgment for the  
9 signature of the judge . . . it is the statutory duty of the judge  
10 himself to perform these functions." This Court affirmed that the  
11 requirement that findings be "prepared and signed" is "for the  
12 protection of the court and parties." *Western Dry Goods Co. v.*  
13 *Hamilton*, 86 Wash. 478, 480, 150 R 1171 (1915). The  
14 requirement, it said, "gives an opportunity to place upon the record  
15 its view of the facts and the law in definite written form,  
16 sufficiently at large that there may be no mistake. To parties it  
17 furnishes the means of having their causes reviewed in many  
18 instances without great expense." *Id.* (quoting *Bard v. Kleeb*, 1  
19 Wash. 370, 25 P. 467, 27 P. 273 (1890))."

20 ***ISSUE 11: Judge Melly violated Mr. Earl's Article IV, Section 20***  
21 ***right to a decision within 90 days.***

22 In XYZPrinting, Inc.'s response, opposing counsel grossly  
23 misrepresents the nature of this Court's decision in *State ex rel. Lynch v.*  
24 *Pettijohn*, 34 Wn.2d 437 (1949). Not only was that case distinguishable  
25 from the instant case because the decision was based on a statutory  
26 provision that provided for informal proceedings, to the extent some  
27 citations are applicable to the instant case, they directly refute opposing

1 counsel's arguments. In *Lynch*, this Court cited precedent with approval  
2 as follows:

3 "the court may make rulings and pronouncements and may make  
4 orders and give directions, but before any of them can become the  
5 basis of an appeal to this court they must be put into the form of a  
6 formal written order or judgment *and be signed by the judge* and  
entered by the clerk of the court, unless some statute may provide  
otherwise" (Emphasis added)

7 As noted in the Appellant's opening brief at the bottom of page 17  
8 and at the bottom of page 19, continuing to the top of page 20, Mr. Earl  
9 presented three motions for the trial court's consideration at the hearing  
10 held on February 6, 2015. No written decision was entered by the trial  
11 court to dispose of those motions in spite of the fact that more than 90  
12 days have since past, constituting a second violation of Mr. Earl's Article  
13 IV, Section 20 right to a decision within 90 days

14 Opposing counsel goes on to misrepresent language in a 23 year  
15 old textbook (Freeman on Judgments (5th ed.)) as "precedent", which  
16 even if it were not in conflict with settled law in Washington State, at best  
17 it would be nothing more than persuasive authority, which does not carry  
18 the weight of settled law.

19 As with all of XYZPrinting, Inc.'s responses to the issues raise on  
20 review, the only thing demonstrated is a continuation of opposing  
21 counsel's pattern of frivolous filings, lack of candor to the court and, false  
22 statements of fact and law.

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The Memorandum Opinion expressly states that it was to be filed without signature, which cannot be construed as being anything other than an expression of Judge Melly’s clear intent that the opinion should not be considered a decision on the motion for reconsideration.

**III. REQUEST FOR COSTS AND FEES**

Pursuant to RAP 14.2, RAP 18.1 and RCW 4.84 Mr. Earl requests costs and fees in the event Mr. Earl is the prevailing party. In *Cowiche Canyon Conservance v. Bosley*, 118 Wn. 2d 801, P.2d 549 (1992), citing settled law, this Court stated, “[The] appellate court has inherent jurisdiction to award attorney fees on appeal if statute allows attorney fees at trial... where statute in Consumer Protection Act allows recovery for attorney fees at trial, attorney fees on appeal recoverable.” (Internal citations omitted)

**IV. CONCLUSION**

For the above reasons, the Plaintiff/Appellant, Donald R. Earl, respectfully prays this honorable Court vacate the trial court orders of November 10, 2014 and February 6, 2015 as void, find opposing counsel engaged in sanctionable misconduct and remand for determination of appropriate sanctions, grant the Plaintiff’s summary judgment motion, refer instances of misconduct to the proper associations or committees for

1 further review order an immediate change of venue to King County, award  
2 the Plaintiff costs and fees on appeal, and grant such further or alternate  
3 relief as this Court, in the exercise of its sound discretion, may deem to be  
4 equitable and just.

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Dated: June 3, 2015  
Respectfully submitted by:

s// Donald R. Earl  
Donald R. Earl (pro se)  
3090 Discovery Road  
Port Townsend, WA 98368  
(360) 379-6604

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**CERTIFICATE OF SERVICE**

I, Donald R. Earl, in compliance with RAP 5.4(b), hereby certify that on the 3rd day of June, 2015, pursuant to the parties' mutual agreement to accept service of documents by electronic mail, I sent a copy of "*Appellant's Reply Brief*" addressed to XYZPrinting, Inc.'s counsel of record, Virginia Nicholson, at the following email address:  
vnicolson@schwabe.com

Dated: June 3, 2015  
Respectfully submitted by:

s// Donald R. Earl

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## OFFICE RECEPTIONIST, CLERK

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**From:** OFFICE RECEPTIONIST, CLERK  
**Sent:** Wednesday, June 03, 2015 10:19 AM  
**To:** 'Don Earl'  
**Cc:** Virginia R. Nicholson; Virginia R. Nicholson  
**Subject:** RE: Donald Earl v. XYZprinting, Inc./Supreme Court No. 91348-0

Received 6-3-2015

Supreme Court Clerk's Office

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

**From:** Don Earl [mailto:don-earl@waypoint.com]  
**Sent:** Wednesday, June 03, 2015 10:16 AM  
**To:** OFFICE RECEPTIONIST, CLERK  
**Cc:** Virginia R. Nicholson; Virginia R. Nicholson  
**Subject:** Re: Donald Earl v. XYZprinting, Inc./Supreme Court No. 91348-0

To the Clerk of the Court and to Counsel:

Please see the attached "Appellant's Reply Brief" to be filed on today's date.