

**FILED**  
JUN 05 2010  
CLERK OF THE SUPREME COURT  
STATE OF WASHINGTON  
*AK*

No. 84501-8

CLERK

BY RONALD N. CHRISTENSEN

10 JUN -9 PM 3:59

RECEIVED  
SUPREME COURT  
STATE OF WASHINGTON

THE SUPREME COURT  
OF THE  
STATE OF WASHINGTON

---

JOHN E. DIEHL, and  
ADVOCATES FOR RESPONSIBLE DEVELOPMENT

and

WWGMHB et al, Respondents

---

*Answer to petition for Review*  
SHAW FAMILY LLC ~~REPLY BRIEF~~

---

Stephen Whitehouse, WSBA #6818  
Attorney at Law  
P.O. Box 1273  
Shelton, WA 98584  
Telephone: 360-426-5885  
Fax: 360-426-6429  
Attorney for Shaw Family LLC

**ORIGINAL**

## TABLE OF CONTENTS

### TABLE OF AUTHORITIES

<b>I.</b>	<b>INTRODUCTION .....</b>	<b>1-2</b>
<b>II.</b>	<b>ISSUES.....</b>	<b>2</b>
<b>III.</b>	<b>DISCUSSION .....</b>	<b>2-12</b>
	<b>A. Mr. Diehl Does Not Have Standing .....</b>	<b>2-5</b>
	<b>B. Mr. Diehl Cannot Legally Represent ARD .....</b>	<b>5-8</b>
	<b>C. The Court of Appeals Properly Awarded Sanctions Against Mr. Diehl .....</b>	<b>8-11</b>
	<b>D. The Court Should Award Further Sanctions Against Mr. Diehl Pursuant to RAP 18.9(1) .....</b>	<b>11</b>
<b>VI.</b>	<b>CONCLUSION .....</b>	<b>11</b>

## TABLE OF AUTHORITIES

### CASES

<u>Akers v. Sinclair</u> , 37 Wash.2d 693, 226 P.2d 225 (1951) . . . . .	4
<u>Perkins v. CTX Mortgage Company</u> , 137 Wash.2d 93, 969 P.2d 93 (1999) . . . . .	9
<u>State v. Hunt</u> , 75 Wash.App. 795, 880 P.2d 96 (1994), rev. denied 125 Wash.2d 1009 . . . . .	6
<u>WSBA v. Great Western</u> , 91 Wn.2d 48, at 56, 586 P.2d 870 (1978) . .	6
<u>WSBA v. WAR</u> , 41 Wash.2d 697, 54, 251 P.2d 619 (1952) . . . . .	9

### STATUTES

RCW 2.48.180 . . . . .	8
RCW 34.05.530 . . . . .	3, 5, 7
RCW 36.70A.280 . . . . .	3, 4, 5
RCW 36.93.160 . . . . .	3
RCW 90.14.190 . . . . .	3

### RULES & REGULATIONS

WAC 242-02-110 . . . . .	5
RAP 18.9(A) . . . . .	1, 2, 8, 9, 11
GR 24 . . . . .	5

**OTHER AUTHORITY**

*Friends v. King County*, CPSGMHB Cause No. 94-3-0003 . . . . . 4

## **I. INTRODUCTION**

In late 2006, the Mason County Commission was considering a request for a rezone by the Shaw Family (which is not a part of this appeal – see 38671-2-II), and two unrelated critical areas regulations amendments, which is the subject of this appeal. By letter faxed to Mason County the morning of the hearing, Advocates for Responsible Development (ARD), objected to these proposals. See Exhibit A. All were approved.

ARD and John Diehl appealed all of the adverse determinations of the Mason County Commission to the Western Washington Growth Management Hearings Board (the “Board”). The Board determined Mr. Diehl did not have standing. This decision was affirmed by the Superior Court.

The Superior Court also determined that John Diehl could not represent ARD after seven court appearances involving five substantive hearings (See Exhibit B for a compilation of the hearings). The motion to exclude Diehl’s representation was brought by the Shaw Family. Mr. Diehl kept challenging the courts decision by repackaging his motions. During the last two hearings, which had to occur in Lewis County, he did not even appear before the court. The Superior Court finally awarded sanctions against Mr. Diehl.

The Court of Appeals has affirmed that Mr. Diehl does not have

standing and cannot represent ARD. Pursuant to RAP 18.9 (A), the Court awarded further sanctions for filing a frivolous appeal.

## **II. ISSUES**

A. John Diehl did not have standing before the Western Washington Growth Management Hearings Board as he did not participate before the Mason County Commission.

B. John Diehl cannot represent ARD in proceedings before the Superior Court, the Court of Appeals, or this court.

C. The Court of Appeals properly awarded sanctions against John Diehl.

D. This court should award further sanctions against John Diehl pursuant to RAP 18.9(a).

## **III. DISCUSSION**

### **A. MR. DIEHL DOES NOT HAVE STANDING**

On December 19, 2006, the Mason County Commission was to hear and consider the Shaw Family LLC rezone (see 38671-2-II) and various critical areas amendments unrelated to the Shaw matter.

A letter regarding these issues was faxed to a Mason County Planning staff member, Allan Borden, who was asked to present the letter

to the Mason County Commission. See Exhibit A. This letter was faxed on the day of the hearing. It was on letterhead for “Advocates for Responsible Development”, and begins, “In behalf of Advocates for Responsible Development, I am writing to comment on ...”.

Mr. Diehl never appeared at the hearing.

The letter’s apparent purpose was to cloak Mr. Diehl in the authority of an advocacy group. He now seeks to distance himself from his own actions.

Mr. Diehl’s issue is difficult to properly address with proper citation to the record as Mr. Diehl has failed to provide the record from the hearing before the Board, but only the record from the Superior Court as far as can be ascertained from the Corrected Clerk’s Papers.

The issue would appear to be very straightforward.

RCW 36.70A.280(2)(b), for purposes of appeal to the Western Washington Growth Management Hearings Board, gives standing to any person or entity,

“... who has participated orally or in writing before the county ... regarding the matter on which review is being requested ...”.

This statutory language has not been subject to judicial review. Standing is often determined by what the legislature decides it is (see for example RCW 90.14.190 and 36.93.160). RCW 34.05.530, from the

Administrative Procedures Act, gives standing to anyone prejudiced by the agency action.

In this case, the legislature chose to provide standing to those people or entities that actively participated in the process.

When one acts in a representative capacity, as Mr. Diehl elected to do, one is not acting as an individual. It is proper to look at the body of an instrument to make that determination. Akers v. Sinclair, 37 Wash.2d 693, 226 P.2d 225 (1951).

Diehl argues that Friends v. King County, CPSGMHB Cause No. 94-3-0003, supports its position.

In that case Ms. Klacsan appeared before the King County Counsel and signed in as representing the Snoqualmie River Alliance. She actively testified at the hearing. She was also a member of Friends of the Law (FOTL) and did not sign in or identify herself as representing that organization. The sole issue presented to the Board in that case was whether her presence constituted an appearance for FOTL under the version of RCW 36.70A.280, then in effect.

The Board held it was not an appearance and therefore FOTL did not have standing. The issue of whether Ms. Klacsan had standing was not an issue in the case and was, therefore, presumably, not briefed. The record from the King County Council is not discussed and she well could

have addressed herself to them as an individual since she did appear and testify before them.

What is clear from this case is that any comment about her individual standing was gratuitous and dicta. In addition, the decision of the Board also makes it clear one who identifies him or herself in a certain capacity in an appearance will be bound by that representation.

It would seem that since the standing under RCW 36.70A.280 is significantly broader than the standing under the APA, RCW 34.05.530, this court should not broaden that standing even further to include any conceivable rationale that might be asserted.

**B. MR. DIEHL CANNOT LEGALLY REPRESENT ARD**

Mr. Diehl argues that GR 24 authorized him to appear before the Superior Court and this court. GR 24 provides for exceptions to the general rules that laypersons may not practice law. GR 24(b) permits:

“GR 24(b)(3) – Acting as a lay representative authorized by administrative agencies or tribunals.”

Mr. Diehl asserts that once an administrative agency permits an appearance, he can appear throughout. However, he misses the plain fact that an administrative agency does not set the rules for this court or the Superior Court. Rather, WAC 242-02-110 respects this distinction and

limits lay representatives to the "Practice before a board ...".

Regardless, the courts have made it clear he may not appear on behalf of others. State v. Hunt, 75 Wash.App. 795, 880 P.2d 96 (1994), rev. denied, 125 Wash.2d 1009, WSBA v. Great Western, 91 Wn.2d 48, at 56, 586 P.2d 870 (1978).

Mr. Diehl argues he should be able to appear as a member of ARD. He points out there are distinctions between unincorporated associates and corporations. This is certainly true. There are distinctions between corporations, partnerships, limited liability companies, and the panoply of organizations allowed by the legislature.

It is not significant what an unincorporated association is not. It is significant was it is. They are recognized thirty-three times in the Revised Code of Washington where their character as an entity is recognized.

A general search of the case law shows they sue and are sued on a regular basis. They are fully recognized in their own right. In fact, that was Mr. Diehl's purpose in advancing their name before the Mason County Commission, to distinguish the organization as such and to cloak their position in the authority of such a collective body.

Mr. Diehl made that choice. He chose not to advance himself personally before the Commission but to advance the interests of the collective ARD. He did not act as an individual before the Commission.

He did not act as a member of ARD before the Commission. He acted as a representative of ARD. In that light, Mr. Diehl never appeared before the Commission. ARD did.

His sole role before the WWGMHB was as a “representative” of ARD. He was not allowed to appear before them personally. BCP 288-294, 799, 806.

Mr. Diehl also raised the issue of intervention below, citing the Administrative Procedures Act, RCW Chapter 34.05 et. seq., and CR 24, but does not raise the issue here.

Mr. Diehl raises the issue of due process. While he cites to some general language in cases, he cites to no authority which supports the proposition that due process requires that a layperson be entitled to represent other people. That is the crux of this matter. Mr. Diehl was free to appear himself and represent himself. Nothing prevented that except for his own desire to cloak his activities as being that of an advocacy group. Before the Mason County Commission and before the Board, he choose to act as a representative of other people.

Mr. Diehl’s argument, if accepted, would open a pandora’s box to lay people representing anyone, at any time, in any forum.

Consequently, once it was determined that Mr. Diehl did not have participant standing, the issue here would seem to be a foregone

conclusion.

What is disturbing is that while Mr. Diehl was making this argument before the Superior Court and Court of Appeals, he also submitted substantive argument in both forums on behalf of ARD, totally ignoring that his acts were a violation of RCW 2.48.180.

It should be noted that Diehl asserts he nor ARD can afford counsel. Other than this bare assertion, there is not one fact presented in any proceeding in this matter which even begins to establish that assertion as a fact.

**C. THE COURT OF APPEALS PROPERLY AWARDED SANCTIONS AGAINST MR. DIEHL**

John Diehl was told by the Mason County Superior Court that he could not represent ARD before that court. Despite that, he filed an appeal on behalf of himself and ARD, challenging this holding and the issue of standing. He had a right to raise these issues on appeal in his own capacity. Until such time as he was authorized to represent ARD, it was illegal and inappropriate for him to file any pleadings on behalf of ARD.

He has not cited to one case that even begins to suggest he could represent ARD.

RAP 18.9(2), provides that sanctions may be awarded for filing a

frivolous appeal.

ARD/Diehl appear to rely on the holding in Perkins v. CTX Mortgage Company, 137 Wash.2d 93, 969 P.2d 93 (1999), indicating the court herein, under a due process theory, should consider a balancing of interests and allow Mr. Diehl to represent ARD.

This argument is not untypical of prior arguments which have been made throughout this case and which may have served as the thinking if the Court of Appeals invoking RAP.

While that case involves a balancing of the public interest, the context of that case is so far afield from the present case it is not at all applicable. Perkins, supra. addresses to what extent lay persons may involve themselves with standardized legal forms for which their company is a party. The context is the "... mere clerical entry of data ...", Perkins, supra. at p. 104, where they "... do not exercise any legal discretion ...", Perkins, supra. at p. 102.

The primary facts to be considered is "the nature and character of services needed". Perkins, supra. at p. 101, quoting WSBA v. WAR, 41 Wash.2d 697, 54, 251 P.2d 619 (1952).

What ARD/Diehl fail to acknowledge is the central focus of Perkins, supra. and prior cases, that what is strictly prohibited is the lay representation of other persons that involves the exercise of legal

discretion (see Perkins, at p. 102).

In the present case, the potential for harm has been very real. Mr. Diehl has a judgment against him in Mason County Superior Court for attorney's fees and also has additional sanctions pending in the Court of Appeals as a result of his abuse of the court's processes. Had the Shaw Family choose to pursue the matter, the Shaw Family could insist that the judgment run against all members of ARD who probably have little idea or knowledge of what Mr. Diehl is doing, supposedly on their behalf, or the possible ramifications.

The fact that Mr. Diehl would present Perkins, supra. as being supportive of his position, is reason enough to deny the request and further reason to award additional fees as set forth below.

An additional factor may have played into the court's consideration. While the Shaw Family matter and the ARD/Diehl challenge to the unrelated critical areas regulations were heard together before the WWGMHB, they were separate appeals to the Mason County Superior Court. ARD/Diehl sought to consolidate but that was denied as the two matters were totally unrelated.

The Shaw Family appealed the ultimate determination of the Mason County Superior Court. That appeal has been submitted, argued, and is awaiting a decision. (38671-2-II.) In that matter, ARD/Diehl did not

cross appeal as to the standing/representation issues and therefore the determination that Mr. Diehl did not have standing and could not represent ARD is the law of the case.

ARD/Diehl did appeal the standing/representation issues in the present case dealing with critical areas regulations. The Shaw Family was required to submit briefing to the Court of Appeals as to the foregoing procedural issues even though it has no stake as to the substantive outcome of this appeal.

**D. THE COURT SHOULD AWARD FURTHER  
SANCTIONS AGAINST MR. DIEHL PURSUANT TO  
RAP 18.9(1)**

For the reasons set forth above, pursuant to RAP 18.9(a), the Shaw Family requests an additional award of attorney's fees.

**IV. CONCLUSION**

Mr. Diehl never participated in this matter but sought to enhance his involvement by acting as the spokesman for ARD, with its attendant rights and responsibilities. He should not be permitted a mulligan because his actions now work to his unanticipated disadvantage.

In addition, he has presented no authority to support his position. Finally, he continues to actively represent ARD when he has been told he

cannot. Sanctions pursuant to RAP 18.9 (1), are appropriate.

DATED this 3 day of June, 2010.

  
\_\_\_\_\_  
STEPHEN WHITEHOUSE, WSBA #6818  
Attorney for SHAW FAMILY LLC

12/19/06 0:02:40 Page 2 of 3

Advocates for Responsible Development

678 Portage Road • Shelton WA • 360-426-3709

December 19, 2006

TO: Mason County Commissioners c/o Allan Borden  
FROM: John Dichl  
RE: Proposed Shaw Rezone and Revisions to Resource Ordinance

In behalf of Advocates for Responsible Development, I am writing to comment on (1) the proposed Shaw Rezone of land designated as long-term commercial forest land, creating the potential for a multitude of small inholding parcels; and (2) review and update of the Resource Ordinance, as required by RCW 36.70A.130, including proposed revisions.

1. The Proposed Shaw Rezone (No. 06-08)

We agree with the staff recommendation to deny this request, which would set a dangerous precedent that might unravel the entire fabric of long-term commercially significant forest land (LTCLF land). Although subdivision and residential development would clearly be contrary to the County's plan to concentrate growth in Urban Growth Areas and would pose problems of water supply, stormwater management, and wastewater disposal, the most basic problems are twofold:

A. The site satisfies the criteria for designation as long-term commercial forest land and the applicant has failed to demonstrate that reasonable use of the property as LTCLF land is not possible.

There is no issue that the property in question satisfies the criteria applicable to designation of LTCLF land. The applicant's request for rezoning nearly 98 acres is premised on the higher financial return he may anticipate from rezoning, not on any evidence that reasonable use of the property as LTCLF land is not possible. Because the applicant has failed to show that such reasonable use is not possible, he has failed to satisfy a necessary condition for granting a rezone, stated as Policy RE-205.C in the Mason County Comprehensive Plan.

A similar issue has been addressed by this state's Supreme Court. In *City of Redmond v. Central Puget Sound Growth Management Hearings Bd.*, 136 Wn. 2d 38, 959 P.2d 1091 (1998), a case involving the designation of agricultural resource lands, the court concluded that neither current use nor landowner intent may be allowed to control whether land is designated as resource land. As the court said, "if land owner intent were the controlling factor, local jurisdictions would be powerless to preserve natural resource lands." The court quoted with approval a law review analysis of the Growth Management Act (Richard L. Settle & Charles G. Gavigan, "The Growth Management Revolution in Washington: Past, Present, and Future," 16 *U. Puget Sound L. Rev.* 867, 907 [1993]: "Natural Resource lands are protected not for the sake of their ecological role but to ensure the viability of the resource-based industries that depend on them. Allowing conversion of resource lands to other uses or allowing incompatible uses nearby impairs the viability of the resource industry."

Exhibit A

EXHIBIT 3

000216

**B. Conversion to inholding lands would directly jeopardize adjoining designated resource lands and indirectly, through precedent, would endanger resource lands throughout the County.**

If the potential for substantial residential development in a rural area designated as I.TCF land is a reason to allow such development, then how will the County ever be able to say "no" to any proposed conversion? The gradual disintegration of I.TCF land in Mason County will inevitably result, for most other owners of such land might also offer as much reason for conversion as the present applicant. When Mason County was originally considering which properties to be designated as I.TCF lands, Simpson Timber Company, owner of about 172,000 acres in this county, noted many conflicts associated with increased numbers of neighboring residents, ranging from illegal dumping to trees blowing over on houses or garages. See letter of June 7, 1996, from Paul Wing, Simpson Land and Forest Management Manager, to Bob Fink of the Dept. of Community Development. It is this incompatibility of residential development and resource lands that requires the County to maintain established blocks of I.TCF land, and not to allow the gradual incursion of residential development, if such resource land, and the industry which it underlies, is to be maintained in this county.

## **2. Review of Critical Areas Regulations**

We support the recommendations of the Department of Fish and Wildlife and the Department of Ecology, but have additional comments not limited to those of these agencies. Although we here make no specific comment on proposed changes to the Flood Damage Prevention Ordinance (FDPO), we are concerned that these are labeled on the County's website as part of the County's critical areas regulations update. Accordingly, we here incorporate by reference our earlier comments on proposed revisions to the FDPO, though we protest that the public has not been alerted to the apparent conflation of the Resource Ordinance and the FDPO, and has not therefore had adequate opportunity to offer comments on the final version of amendments to the FDPO.

The County's procedure in performing the review required by RCW 36.70A.130 has been fundamentally flawed by its failure to gather any data to determine whether the County continues to lose ground in its efforts to protect critical areas, despite the existence of regulations intended to minimize damage from ongoing development. Without a benchmark, without periodic measurement of gains and losses relative to the benchmark, and without even a report of enforcement efforts to ensure compliance with existing regulations, no one can know whether the proposed revisions are adequate even in those few instances when they seem to strengthen existing regulations. Certainly, where so little is known about the ability of existing regulations to prevent continuing losses of the functions and values of critical areas, it is premature for the County to propose a number of weakening amendments. Where impacts are not clearly known, the County should be adopting either a precautionary approach or an adaptive management approach, as required by WAC 365-195-920. The willingness to weaken existing regulations when there is no evidence that even the existing regulations are adequate for their purpose represents a violation of both the Administrative Code prescription and RCW 36.70A.172, which requires inclusion of best available science.

**A. Shoreline buffers should not be reduced based on nonconforming use on adjoining property.**

Without reiterating each comment pertinent to development within 100-foot marine shoreline buffers, we share a concern that the minimal protection offered by the existing ordinance would be substantially reduced by allowing additional nonconforming uses where existing neighboring development intrudes into the buffer. Such existing nonconforming use should be phased out, not expanded by allowing similar use on adjoining property.

The provision for requiring best management practices is panglossian. The County has no ability to enforce such a provision even if it could be agreed, which is dubious in the case of a particular residence, what the homeowner's responsibility ought to be if he were inclined to follow best management practices.

**B. Excessive density bonuses for habitat protection nullify the goal of the bonuses.**

The use of bonuses needs to be tied to measurable benefits, and such benefits need to be measured as part of any on-going adaptive management strategy to allow such bonuses. It is not evident that enough is gained by the density bonuses part of the proposed regulations to warrant their use. In general, if it is not known whether a management device such as the use of density bonuses represents best available science to guide and provide incentives for land use decisions, then it is incumbent upon the County either to adopt a precautionary approach, assuming hoped for benefits will not materialize until the uncertainty is sufficiently resolved, or an adaptive management approach, by which results will be continuously and scientifically monitored and the regulation amended accordingly to ensure adequate protection of critical areas. See WAC 365-195-920.

**C. New agricultural activities should not be allowed waiver of regulations based on conformity with an approved conservation plan.**

This device, like the use of density bonuses, is unproven to provide adequate protection for critical areas, and particularly for fish and wildlife habitat conservation areas. At a minimum, any reliance upon such a device would require an extensive (and expensive) adaptive management program that neither the county nor affected land owners are prepared to implement. Speculation that approved conservation plans will incorporate sufficient environmental protection to safeguard critical areas must not be allowed to substitute for application of best available science.

**D. The "native plantings" section regarding best management practices fails to include best available science.**

As WDFW points out, the section omits significant species of plants, and seemingly proposes strip-planting, where site-specific plans would be preferable. See Letter of October 3, 2006, from WDFW's Jeff Davis to the County's Bob Fink.

**E. The exemption of lakes less than 20 acres in size from fish and wildlife buffer**

requirements is not supported by best available science.

The County has no science to support the substitution of weaker wetland buffer requirements in place of fish and wildlife habitat conservation area buffers for lakes smaller than 20 acres. To the contrary, smaller lakes are of special importance to amphibians and some birds and reptiles.

**F. The exemption of Category III wetlands less than 2,500 square feet in area and isolated Category IV wetlands less than 7,500 square feet in area does not reflect best available science.**

As DOE's Rick Mraz points out in his letter of Sept. 22, 2006, to the County's Bob Fink, these exemptions based on size do not find support in the scientific literature. The County has provided no inventory of the number of potentially affected wetlands, no cumulative impacts assessment, no adaptive management program or any other monitoring mechanism to assure adequate protection of wetlands.

**G. Buffers are inadequate for Category I and II wetlands.**

The reduction of buffer widths through averaging would allow further incursion into buffers needed to protect such important wetlands. The best available science supports 300-foot buffers if the adjacent land use is of high-intensity, and even greater buffers if the needs of certain species of wildlife are considered. See Knutson and Naeff, *Management Recommendations for Washington's Priority Habitats: Riparian* (1997), esp. pp. 157-170.

**II. Provisions for allowing timber harvesting within buffers are not supported by best available science.**

As Mr. Mraz discusses, the scientific literature does not support the premise of the provision that 30% of the merchantable trees may be harvested consistent with maintaining the functions and values of the wetland as a critical area. Again, the County proposes an exemption of sorts to accommodate a special interest, but without scientific support to warrant its action.

**I. Variances from standards arbitrarily define the minimum reasonable use.**

§17.01.150 provides that the minimum reasonable use for a residence in a residentially zoned area shall be defined by the lesser of a) 40% of the area of the lot, or b) 2,550 square feet. The minimal reasonable use is not something to be asserted by fiat, arbitrarily, without any supporting evidence, and without even consideration of whether the site lends itself to a two or multi-story structure.

## **EXHIBIT B**

### **Summary of Proceedings Before Mason County Superior Court as to Diehl Representation as Presented to the Court of Appeals in Case No. 38671-II**

January 28, 2008 – Mr. Diehl filed a Motion & Affidavit of Prejudice against Judge Sawyer. CP 333-334. Mason County only has two Superior Court Judges. He knew Judge Sheldon would not hear the matter because of her real estate holdings in Mason County.

February 7, 2008 – The Shaw Family, hereinafter referred to as Shaw, filed a motion to preclude representation of ARD by Diehl on the basis he is not an attorney and cannot represent others. CP 306-310.

February 19, 2008 – Mr. Diehl's earlier Motion to Consolidate this matter with the Mason County matter heard before the WWGMHB is denied. CP 330-332.

February 21, 2008 – Mr. Diehl filed an Objection to Lack of Authority as to Court Commissioner Adamson. CP 328-329. He is now attempting to preclude any judicial officer in Mason County from hearing anything on this case.

February 21, 2008 – ARD/Diehl responded to the Shaw

Motion to preclude representation and asserted that GR 24 & WAC 242-02-110 authorized Mr. Diehl to represent ARD. ARD/Diehl also asserted due process (without any citation of authority), and RCW 36.70A.280(3). CP 302-305.

February 25, 2008 – Hearing on the Shaw motion. Judge Sheldon indicates she is recusing herself so no hearing can be held. CP 327.

February 27, 2008 – Judge Sheldon actually files recusal. CP 326.

March 10, 2008 – Hearing on Shaw's motion was stricken (no judge is available because of Mr. Diehl's actions). CP 325.

March 26, 2008 – Hearing was held. Shaw motion was granted (the date on the preamble paragraph of the order is wrong as the order was drafted prior to the February 25, 2008, hearing and not changed). CP 300-301. Mr. Diehl's Motion for Revision regarding consolidation was also denied on this date.

April 10, 2008 – John Diehl, individually, filed a motion to allow him to appear as a member of ARD, pro se, or to intervene. Mr. Diehl cited the Administrative Procedures Act, RCW 34.05, et. seq., and CR 24. CP 295-299.

April 22, 2008 – Shaw responded raising issues of collateral

estoppel, that CR 24 did not apply to administrative appeals to Superior Court (citing to a holding of the Supreme Court of the State of Washington in another matter in which it adopted Mr. Diehl's position), that RAP 10.6 did, and did not authorize his request. The Shaw Family also asked for terms. CP 290-294.

April 25, 2008 – Mr. Diehl responded to the Motion for Terms. Shaw responded April 29, 2008. CP 286-289.

May 5, 2008 – Hearing before Court Commissioner Adamson who allowed Mr. Diehl to intervene as an individual, denied his Motion to Appear as a Member of ARD, and denied terms to Shaw. CP 324.

May 7, 2009 – Shaw filed Motion for Reconsideration. CP 279-285.

May 20, 2008 – Hearing. Order entered re: Commissioner Adamson's ruling of May 5, 2008 (which counsel for Shaw had to draft). Court ruled for Shaw on Reconsideration and Diehl was not allowed to intervene. CP 275-278, 323.

May 27, 2008 – Diehl filed Motion for Revision. CP 272-274.

June 9, 2008 – Hearing. Court entered Findings re: Motion for Reconsideration. CP 270-271, 322.

July 11, 2008 – Hearing in Lewis County before Judge Lawler as visiting Mason County Judge. Diehl's Motion for Revision was denied. Diehl failed to appear. CP 264-269, 321.

August 12, 2008 – Diehl filed a Motion to Join John E. Diehl and/or Extension of Time and Continuances. Diehl rehashed arguments previously made. CP 255-261.

September 2, 2008 – Shaw filed Motion for Terms Pursuant to CR 11 and RCW 4.84.185, and Rogerson Hiller Corporation v. Port of Port Angeles, 96 Wash.App. 918, 982 P.2d 131 (1999), and also responded substantively to Diehl's Motion. CP 246-254.

September 8, 2008 – Hearing in Lewis County in front of Judge Lawler. Mr. Diehl failed to appear. Diehl's motion was denied. Shaw motion was granted. CP 235-238, 319.

September 15, 2008 – ARD/Diehl filed a response to the Motion for Terms. CP 231, 234. He never filed a motion or noted the matter for a hearing.

I declare:

On the 3rd day of June, 2010, I mailed a true and correct copy of the Shaw Family LLC

Brief, in a properly stamped envelope by regular mail addressed as follows:

John Diehl  
679 Pointes Drive W.  
Shelton, WA 98584

Jerald R. Anderson  
Attorney General's Office  
P.O. Box 40110  
Olympia, WA 98504-0100

Alan D. Copsey  
Attorney General's Office  
P.O. Box 40110  
Olympia, WA 98504-0100

Monty Cobb  
Deputy Prosecuting Attorney  
Mason County Prosecutors Office  
P.O. Box 639  
Shelton, WA 98584

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Signed at Shelton, Washington on June 3, 2010.

  
SANDRA L. BACA