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FILED

Feb 12, 2014
Court of Appeals
Division III
State of Washington

No. 322238

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

MATTHEW A. NEWMAN, an incapacitated adult; and RANDY
NEWMAN AND MARLA NEWMAN, parents and guardians of said
incapacitated adult,

(Plaintiffs/Respondents)

v.

HIGHLAND SCHOOL DISTRICT NO. 203, a Washington State
government agency,

(Defendant/Petitioner).

Appeal from Superior Court of Yakima County

**SCHOOL DISTRICT'S REPLY RE:
EMERGENCY MOTION FOR PARTIAL STAY OF TRIAL
COURT DISCOVERY PROCEEDINGS AND
MOTION FOR DISCRETIONARY REVIEW**

Mark S. Northcraft, WSBA #7888
Andrew T. Biggs, WSBA #11746
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I. FACTUAL BACKGROUND

As has been their typical approach in this case, the Plaintiffs, have badly mischaracterized the facts, misquoted testimony and pleadings, and have attempted to mislead the Court.¹ There was not even an attempt to make any “appropriate reference to the record” for all of the inaccurate “fact” statements, as is required by RAP 17.3(b)(5). Throughout their briefing, the Plaintiffs frequently make wholly unsupported factual and legal assertions, which this court is urged to disregard. Statements that are not supported by references to the record should be stricken. *See, e.g. Hirata v. Evergreen State Limited Partnership No. 5*, 124 Wn. App. 631, 103 P.3d 812 (2004). Self-serving statements in an appellate brief that are unsupported in the record should not be considered. *Housing Authority of Grant County v. Newbigging*, 105 Wn. App. 178, 19 P.3d 1081 (2001).

This is not the place for trial arguments, and at trial, the jury will hear the truth about what happened, and they will soundly reject the version the Plaintiffs’ lawyers continually press. The Plaintiffs’ attempts to mislead this Court and gain some sort of advantage by presenting only their carefully-tailored side of the case must be rejected. There are many incorrect factual statements, but the following are particularly noteworthy:

¹ Brief of Respondents in Opposition to Petitioner’s Motion for Discretionary Review and Motion for Emergency Stay (“Respondent’s Brief” herein).

... Matthew ... was removed from practice, after sustaining a concussion. His parents were not notified of this concussion during practice. He was not cleared to return to play by a licensed healthcare professional, which is required under the Lystedt Law.²

...

Nearly every player ... recalls the triggering event ...³ Matthew struck the pole vault pit with his head.⁴ ... Many players heard Matthew immediately say he had a headache.⁵ ... Matthew sat out of practice ... due to his head injury ...⁶

...

Despite having knowledge of Matthew's injury, Assistant Coach Dustin Shafer and Head Coach Shane Roy allowed Matthew to play in the team's football game against Naches High School the next day, September 18, 2009.⁷

...

The truly egregious facts also demonstrate that the District consciously facilitated Matthew's return to play, knowingly circumventing rules in place to protect injured student athletes.⁸

A motion for discretionary review is not the time for factual determinations: those will be considered later by the jury. The School District does not intend to trouble this Court with a lengthy counter-statement of facts, but the Court is advised that nearly every important "fact" in the Plaintiffs' briefing is seriously contested. At trial, the School

² Respondent's Brief at 1 (emphasis added).

³ Id.

⁴ Id.

⁵ Respondent's Brief at 2.

⁶ Id.

⁷ Id.

⁸ Id.

District will prove that: (1) there is no evidence that Matthew Newman hit his head during practice; (2) he did not suffer a concussion during practice; (3) even if Matthew hit his head during practice, he hid any effects from his coaches so that he would not be pulled from practice and the from game the next day (as Matthew's girlfriend testified)⁹; (4) the players and coaches were well-trained to recognize symptoms of concussions; (5) Matthew's parents knew how to recognize the symptoms of a possible concussion, and they saw none; and (6) the coaches would not have put a player's health at risk by playing him if there were any signs of concussive symptoms.

Not surprisingly, the Plaintiffs did not mention the testimony of witnesses who support the coach's position. And, they did not tell the Court about one of their main witnesses sending a text message to one of the coaches, in which he recants his own deposition testimony by saying "I don't think that you did anything wrong. And you had no idea Matthew had a headache."¹⁰ In this case, there is no doubt that Matthew suffered a serious injury in a football game. What is very seriously in dispute is how and why the injury occurred.

Throughout the case the Plaintiffs' attorneys have been using their take-no-prisoners approach, including making scurrilous and defamatory

⁹ See Appendix, at A-62-80.

¹⁰ See Appendix, at A-81-82

allegations about the School District's attorneys. As but one example, they have twice brought motions requesting the most unusual remedy of "disqualifying" the School District's attorneys. In both cases, the trial court rejected their aggressive and insupportable efforts. Now – even though the trial court rejected their efforts – the Plaintiffs again say:

Mr. Northcraft has engaged in truly shocking misconduct that has caused extreme harm and prejudice to the Plaintiffs.¹¹

... Mr. Northcraft again attempted to improperly influence and/or intimidate a potentially adverse witness.¹²

After reviewing extensive transcripts, declarations and briefing, the trial court found no support for the outrageous claims. This Court has no basis for re-considering the defamatory accusations. However, to properly supplement the record, the Court's attention is directed to two declarations from Mark Northcraft; the school district Administrator, an investigator, and an attorney who is skilled in school district law.¹³

II. ARGUMENT

A. **The Corporate Attorney-Client Privilege Applies to Former Employees as a Natural Extension of Washington Law. The Trial Court Declined to Make That Determination, Leaving it in the Hands of the Appellate Court.**

¹¹ Respondent's Brief at 3.

¹² Respondent's Brief at 9.

¹³ See Appendix, at A-11 through A-61.

When it considered the School District's motion for a protective order involving the privileged communications between the School District and former coaches (among others), the trial court mistakenly believed that Washington does not follow *Upjohn*.¹⁴ The *Youngs* case made it clear that *Upjohn* has long been Washington law, and it "remains the law today." (*Youngs v. Peacehealth*, No. 87811-1, 2014 WL 265568 (Wash. Sup. Ct. Jan. 23, 2014)). It is understandable that neither the trial court nor the counsel were aware of the *Youngs* decision – issued only days before the hearing on the motion. What is not understandable, however, is the plaintiffs' continued insistence that "the Trial Court was correct that Washington does not follow the *Upjohn* case."¹⁵ That claim is both disingenuous and misleading.

The questions of whether corporations enjoy the attorney-client privilege and whether the attorney-client privilege extends outside of "control group" employees have been answered by former courts. The *Youngs* court reaffirmed that "The United States Supreme Court's decision in *Upjohn*... holds that corporate attorney-client privilege extends to corporate clients. This remains the law today." (*Id.*). Chief Justice Burger's concurring opinion in *Upjohn* noted that a communication should be considered privileged when an employee *or former employee* speaks

¹⁴ (*Upjohn Co. v. U.S.*, 449 U.S. 383, 397 (1981)).

¹⁵ Respondent's Brief at 11.

with an attorney concerning litigation. (*Youngs, Supra*, at 402 (Burger, concurring)). Shortly after *Upjohn*, and more than 30 years ago, in *Long Beach v. Standard Oil*, the Ninth Circuit followed Justice Berger, reasoning that, because former employees also possess the information needed by corporate counsel to advise the client with respect to legal difficulties, communications with former employees are protected by the attorney-client privilege.¹⁶ The *Long Beach* decision was then followed by *Admiral Insurance*, which affirmed that approach, noting that the same attorney-client rationale that protects communications with current employees also protects communications with former employees.¹⁷

In the case at hand, the Plaintiffs are attempting to draw an artificial distinction between current employees and former employees, when no logical distinction exists. Courts have clearly been telling us that the Plaintiffs' position is not valid – for good and proper reasons. The determination of whether or not the corporation's attorney-client privilege applies to a situation should not be based on chance, or the vagaries of when an employee chooses to leave the employer. Using that approach allows the corporation's attorney-client privilege to be affected by one not holding the privilege: the employee.

¹⁶ (*In re Coordinated Pretrial Proceedings in Petroleum Products Antitrust Litigation, the City of Long Beach v. Standard Oil Company*, 658 F.2d 1355 n.7 (9th Cir. 1981) cert. denied, 455 U.S. 990 (1982)).

¹⁷ (*Admiral Ins. Co.*, 881 F.2d 1486, 1493 (9th Cir. 1989)).

The cases tell us that, whether or not the employee is a speaking agent, and whether or not the employee is in the control group, if that employee was central to the matter in dispute, the later legal communications are privileged. Of course, it is important to remember that the *facts* held by the employee are not shielded from discovery; it is only the communications with counsel that are privileged. The opposing party has a full opportunity to speak with the former employee, or to formally discover all factual information held by the former employee. The only discovery that is off limits is exactly the type at issue in our case: questions about discussions with the attorney.

Although the Washington court has not yet addressed a specific case involving a former employee, it certainly stands to reason that it is an appropriate question for the appellate court. It is not surprising that the Superior Court would leave the issue for determination by an appellate court. That is the appropriate place for the issue to be determined.

An appellate court would want to consider, for example, why the corporation's attorney-client privilege – one that is clearly honored by Washington courts – should be lost simply because an employee chooses to leave the company. One day the corporation's privilege is in place, and the next day it is lost. One can easily see that focusing on the timing of

employment leads to many difficult decisions and it can lead to inconsistent results.

The proper focus, and the one that has been followed by the Ninth Circuit and other courts, is to maintain the corporation's attorney-client privilege, even if the employee leaves the company. The timing of the legal communication should not affect the existence of the corporate attorney-client privilege. The courts made clear that the reason for the corporate privilege is to facilitate frank communication about alleged wrongdoing. The *Upjohn* Court sought to protect counsel's ability to "ascertain the factual background" of a "legal problem," and it rejected the narrow "control group" test because that test would frustrate the lawyer's *investigative* abilities. [*Upjohn*, 449 U.S. at 390] The employee's status as either a current or former employee at the time of the communications with corporate counsel should be immaterial, because at the time of the "alleged wrongdoing" the individual was a corporate employee. (*Id.*) Corporate employees, both current and former employees have the type of "factual background" that enables the corporation's attorney "to give [the corporation] sound and informed advice." (*Id.*)

Here, the former coaches were employees of the District at the time of the alleged wrongdoing. Accordingly, this Court should accept discretionary review, because the trial court erred by failing to recognize

that corporate attorney-client privilege extends to communications with both current and former employees. Specifically, it extends to communications with former employees who have the factual background that enables the District's attorney to give the District sound and informed legal advice. If those communications are not privileged, then the District's ability to prepare for trial and investigate the alleged wrongdoing is greatly limited.

This Court should accept discretionary review because the trial court has either "committed obvious error which would render further proceedings useless," or "committed probable error and the decision substantially alters the status quo or substantially limits the freedom of a party to act," or "so far departed from the accepted and usual course of judicial proceedings . . . as to call for review by the appellate court." (RAP 2.3(b)(1) – (3)).

There is no dispute that the attorney-client privilege is time-honored, and it is extremely important to faithfully preserve the privilege. Allowing the Plaintiffs to have access to privileged communications with the School District's former coaches – the very coaches who hold the knowledge on which the School District must base its investigation to obtain "factual background" so the School District's attorney and "give sound and informed advice" – runs afoul of the whole intent of the

attorney-client privilege. This Court should accept review and deal with the natural, logical, extension of the important attorney-client privilege. Failing to do so will allow privileged communications to flow into the hands of the opposing party; a problem that courts have long sought to avoid.

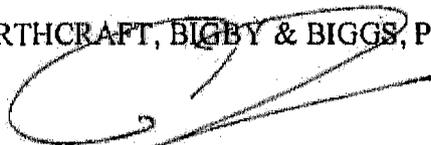
The Court should enter a stay of all discovery and other proceedings dealing with communications between former employees and the School District's counsel while the matter is pending before this Court. To do otherwise will allow the Plaintiffs to obtain information that will likely be determined to be privileged. The plaintiffs have shown no prejudice or other reason why a stay should not be granted pending appeal.

III. CONCLUSION

For the reasons set forth above, this court should grant a stay of discovery dealing with potentially-privileged communications, and it should grant discretionary review to determine the law to be applied in the case of attorney-client communications with former employees.

DATE SUBMITTED this 11th day of February, 2014.

NORTHCRAFT, BIGBY & BIGGS, P.C.



Mark S. Northcraft, WSBA #7888
Andrew T. Biggs, WSBA #11746
Attorneys for Defendant-Appellee

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2014 JAN 23 PM 2:50

Honorable Blaine G. Gibson
Hearing Date: January 24, 2014 at 2:00 p.m.

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F I L E D
JAN 23 2014

KIM M. EATON, YAKIMA COUNTY CLERK

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF YAKIMA

MATTHEW A. NEWMAN, an incapacitated
adult; and RANDY NEWMAN AND MARLA
NEWMAN, parents and guardians of said
incapacitated adult,

Plaintiffs,

vs.

HIGHLAND SCHOOL DISTRICT NO. 203, a
Washington State government agency,

Defendant.

No. 12-2-03162-1

**DECLARATION OF MARK ANDERSON IN
RESPONSE TO PLAINTIFFS' RENEWED
MOTION TO DISQUALIFY DEFENSE
COUNSEL**

DATE OF HEARING: January 24, 2014
TIME OF HEARING: 2:00 p.m. (special setting)
ASSIGNED JUDGE: Honorable Blaine G. Gibson

MICHELLE A. TOMCZAK hereby declares as follows, pursuant to GR 17(a)(2):

I am a legal assistant at Northcraft, Bigby & Biggs, P.C., attorneys for Defendant Highland School District No. 203 in the above captioned matter. I received for filing and have examined the attached Declaration of Mark Anderson, determined that it consists of four (4) pages, including this declaration, and that it is complete and legible.

///

DECLARATION OF MARK ANDERSON IN RESPONSE TO
PLAINTIFFS' RENEWED MOTION TO DISQUALIFY DEFENSE
COUNSEL - I

NORTHCRAFT, BIGBY & BIGGS, P.C.
819 Virginia Street / S...
Seattle, Washington
tel: 206-6...

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

3 DATED this 22nd day of January, 2014, in Seattle, Washington.
4

5 
6 Michelle A. Tomczak
7 Legal Assistant
8 michelle.tomczak@nothercraft.com
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25 **DECLARATION OF MARK ANDERSON IN RESPONSE TO
PLAINTIFFS' RENEWED MOTION TO DISQUALIFY DEFENSE
COUNSEL - 2**

w:\newman\p\d\p\lts' renewed mtn to disqualify'response.anderson decl

NORTHCRAFT, BIGBY & BIGGS, P.C.
819 Virginia Street / Suite C-2
Seattle, Washington 98101
tel: 206-623-0229
fax: 206-623-0234

I, Mark Anderson, declare as follows:

1. I am the Superintendent for the Highland School District. I have held this position since 2009. Prior to holding this position, I was s Superintendent in Montana for 12 years. In total, I have been a school district superintendent for the last 17 years.

2. I am familiar with the policies and procedures of the Highland School District. Although I am not a lawyer, I also am generally familiar with laws and regulations pertinent to school districts in the State of Washington, including access to and disclosure of the personnel files of public school employees. I am unaware of any legal, statutory, regulatory, or other authority which prohibits either a school district's general counsel or a school district's retained counsel from accessing or making a copy of the personnel files of a school district's employees for legitimate district purposes. If there is such legal authority, I am unaware of it and, in fact, have never heard of such authority. Litigation involving the district would be a routine example of a "legitimate district purpose" for which a district's attorneys might seek to review an employee's personnel file. Likewise, the policies and proccdures of the Highland School District do not prohibit either a school district's general counsel or a school district's retained counsel from accessing or making a copy of the personnel files of a school district's employees for legitimate district purposes.

3. I am likewise unaware of any legal, statutory, regulatory, other authority, or any policy or procedure of the Highland School District that would prohibit a school district's general counsel or retained counsel from reviewing or discussing with a current or former school district employec the contents of the employce's personnel file.

4. It is my understanding that, unlike a student's education records--which are protected from nonconsensual disclosure in most situations by federal and state law--the

personnel files of public school employees are public records and subject to public disclosure if requested under Washington's Public Records Act. (Chapter 42.56 RCW). Only "personal information" that would violate an employee's right to privacy (narrowly defined as that information which, if disclosed, would be highly offensive to a reasonable person and is not of legitimate concern to the public) can be redacted from a response to a Public Records Act request that seeks public school employee's personnel records under RCW 42.56.230 (2).

I declare under the penalty of perjury that the foregoing is true and accurate to the best of my knowledge.

DATED 16th day of January, 2014 in Cowichie, Washington.



Mark Anderson
Superintendent of the Highland
School District

2014 JAN 23 PM 2:50

Honorable Blaine G. Gibson
Hearing Date: January 24, 2014 at 2:00 p.m.

RECEIVED
YAKIMA COUNTY
COURT CLERK

F I L E D
JAN 23 2014

KIM M. EATON, YAKIMA COUNTY CLERK

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF YAKIMA

MATTHEW A. NEWMAN, an incapacitated
adult; and RANDY NEWMAN AND MARLA
NEWMAN, parents and guardians of said
incapacitated adult,

Plaintiffs,

vs.

HIGHLAND SCHOOL DISTRICT NO. 203, a
Washington State government agency,

Defendant.

No. 12-2-03162-1

DECLARATION OF ROCKIE HANSEN

DATE OF HEARING: January 24, 2014
TIME OF HEARING: 2:00 p.m. (special setting)
ASSIGNED JUDGE: Honorable Blaine G. Gibson

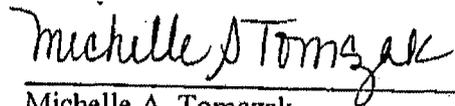
MICHELLE A. TOMCZAK hereby declares as follows, pursuant to GR 17(a)(2):

I am a legal assistant at Northcraft, Bigby & Biggs, P.C., attorneys for Defendant Highland School District No. 203 in the above captioned matter. I received for filing and have examined the attached Declaration of Rockie Hansen, determined that it consists of five (5) pages, including this declaration, and that it is complete and legible.

///

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

3 DATED this 22nd day of January, 2014, in Seattle, Washington.
4

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7 Legal Assistant
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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF YAKIMA

MATTHEW A. NEWMAN, an incapacitated
adult; and RANDY NEWMAN AND MARLA
NEWMAN, parents and guardians of said
incapacitated adult,

No. 12-2-03162-1

DECLARATION OF ROCKIE HANSEN

Plaintiffs,

vs.

HIGHLAND SCHOOL DISTRICT NO. 203, a
Washington State government agency,

Defendant.

I, Rockie Hansen, declare as follows:

1. I am an attorney in the State of Washington, practicing in Spokane.
2. I exclusively represent school districts since 1994.
3. In connection with my practice, I am familiar with the laws of the State of Washington concerning access to and disclosure of public records, including the personnel files of public school employees.
4. I am unaware of any legal, statutory, regulatory, or other authority or right to privacy that prohibits either a school district's general counsel or a school district's retained counsel

1 from accessing or making a copy of the personnel files of a school district's employees
2 for legitimate district purposes. Litigation involving the district would be a routine
3 example of a "legitimate district purpose" for which a district's attorneys might seek to
4 review an employee's personnel file. RCW 28A.405.250 discusses a school district
5 employee's access to his/her personnel file and specifically states: 'The school district
6 personnel file on any certificated employee in the possession of the district, its
7 employees, or agents shall not be withheld at any time from the inspection of that
8 employee.'" The attorney for the district is an agent for the district.

9 5. I am likewise unaware of any legal, statutory, regulatory, or other authority that would
10 prohibit a school district's counsel from reviewing or discussing with a current or former
11 school district employee the contents of the employee's personnel file on the same
12 conditions as a hired school district administrator would be allowed to discuss the
13 information with the employee.

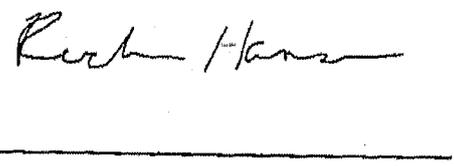
14 6. Unlike a student's education records—which are protected from nonconsensual
15 disclosure in most situations by federal and state law and can only be accessed by
16 individuals with an educational purpose even within the school—the personnel files of
17 public school employees are public records and subject to public disclosure if requested
18 under Washington's Public Records Act. (Chapter 42.56 RCW). Only "personal
19 information" that would violate an employee's right to privacy (narrowly defined as that
20 information which, if disclosed, would be highly offensive to a reasonable person and is
21 not of legitimate concern to the public) may (permissive) be redacted from a response to
22 a Public Records Act request that seeks public school employee's personnel records
23 under RCW 42.56.230 (2). Washington courts have repeatedly held that disciplinary
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records, meaning any records containing specific acts of misconduct by a school employee, are not exempt from disclosure and must be shared if a public records request is made.

I declare under the penalty of perjury that the foregoing is true and accurate to the best of my knowledge.

DATED this 22nd day of January, 2014 in Spokane, Washington.



Rockie Hansen, WSBA # 21804

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF YAKIMA

MATTHEW A. NEWMAN, an incapacitated
adult; and RANDY NEWMAN AND MARLA
NEWMAN, parents and guardians of said
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Plaintiffs,

vs.

HIGHLAND SCHOOL DISTRICT NO. 203, a
Washington State government agency,

Defendant.

No. 12-2-03162-1

**DECLARATION OF CATHERINE KOPTA
IN SUPPORT OF DEFENDANT HIGHLAND
SCHOOL DISTRICT'S CROSS MOTION TO
DISQUALIFY PLAINTIFFS' COUNSEL**

DATE OF HEARING: January 24, 2014
TIME OF HEARING: 2:00 p.m. (special setting)
ASSIGNED JUDGE: Honorable Blaine G. Gibson

MICHELLE A. TOMCZAK hereby declares as follows, pursuant to GR 17(a)(2):

I am a legal assistant at Northcraft, Bigby & Biggs, P.C., attorneys for Defendant Highland School District No. 203 in the above captioned matter. I received for filing via facsimile and have examined the attached Declaration of Catherine Kopta, determined that it consists of six (6) pages, including this declaration, and that it is complete and legible.

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

**DECLARATION OF CATHERINE KOPTA IN SUPPORT OF
DEFENDANT HIGHLAND SCHOOL DISTRICT'S CROSS
MOTION TO DISQUALIFY PLAINTIFFS' COUNSEL - 1**
w:\newman\pld\Def's Cross Mtn to Disqualify\Kopta decl.facsimile cover

NORTHCRAFT, BIGBY & BIGGS, P.C.
819 Virginia Street / Suite C-2
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tel: 206-623-0229
fax: 206-623-0234

1 DATED this 15th day of January, 2014, in Seattle, Washington.

2 

3 Michelle A. Tomczak

4 Legal Assistant

5 michelle.tomczak@northcraft.com

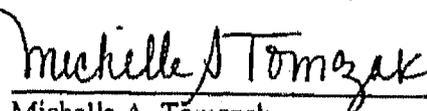
6 **CERTIFICATE OF SERVICE**

7 I, Michelle A. Tomczak, hereby certify under penalty of perjury under the laws of the state of
8 Washington that on January 15, 2014, I filed with the Court via Federal Express the original of the
9 foregoing document, and served a copy, via email, of the same upon the following counsel of record:

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11 Arthur Leritz
12 Melissa D. Carter
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20 SIGNED in Seattle, Washington on January 15, 2014.

21 

22 Michelle A. Tomczak

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24
25 **DECLARATION OF CATHERINE KOPTA IN SUPPORT OF
DEFENDANT HIGHLAND SCHOOL DISTRICT'S CROSS
MOTION TO DISQUALIFY PLAINTIFFS' COUNSEL - 2**
w:\newman\pld\Def's Cross Mot to Disqualify\Kopta decl. facsimile cover

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Honorable Blaine G. Gibson
Hearing Date: January 24, 2014 at 2:00 p.m.

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NEWMAN, parents and guardians of said
incapacitated adult,

Plaintiffs,

vs.

HIGHLAND SCHOOL DISTRICT NO. 203, a
Washington State government agency,

Defendant.

No. 12-2-03162-1

DECLARATION OF CATHERINE KOPTA
IN SUPPORT OF DEFENDANT HIGHLAND
SCHOOL DISTRICT'S CROSS MOTION TO
DISQUALIFY PLAINTIFFS' COUNSEL

DATE OF HEARING: January 24, 2014
TIME OF HEARING: 2:00 p.m. (special setting)
ASSIGNED JUDGE: Honorable Blaine G. Gibson

I, CATHERINE KOPTA, declare as follows:

1. I am over the age of 18 and competent to testify to the matters herein. This declaration is made based on my personal knowledge and I am competent to be a witness in this case.

2. I was deposed as a witness in the above-captioned case on November 12, 2013. My son, Forrest Kopta, was one of the classmates of the Plaintiff, Matthew Newman. Both Forrest and Matthew played football at Highland High School.

DECLARATION OF CATHERINE KOPTA IN SUPPORT OF
DEFENDANT HIGHLAND SCHOOL DISTRICT'S
CROSS MOTION TO DISQUALIFY PLAINTIFFS' COUNSEL - 1
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NORTHCRAFT, BIGBY & BIGGS, P.C.
619 Virginia Street / Suite C-2
Seattle, Washington 98101
tel: 206-623-0220
fax: 206-623-0234

1 3. I was nervous about being a witness, because I knew from my son that the Plaintiff's
2 attorneys misled him, and that Mr. Adler made Forrest very angry by the way they treated him.

3 4. I got to the deposition location pretty early, and I was surprised to see that Marla
4 Newman, Matthew's mother, was waiting for me in the stairwell. Marla came directly to me and she
5 told me to tell her what I was going to say in my deposition. I was uncomfortable talking to Ms.
6 Newman outside of the deposition, and I told her that I would just answer the questions that the
7 attorneys asked me. I said that I just wanted to go up to the deposition.

8 5. I went to the elevator, but Marla followed me into the elevator and she would not leave
9 me alone. While we were on the elevator, Ms. Newman glared at me with her arms crossed and asked
10 me why I was there. I told her I did not know why I was there. Marla said that she had "heard things"
11 around the community, and that I "owed it" to her and her family to "explain myself." Ms. Newman
12 was very insistent, and she made me really uncomfortable.

13 6. I explained to Ms. Newman that I did not like the way the interviews of the students were
14 conducted. I told her that we had trusted her family, but the Newmans and their lawyers betrayed our
15 trust by lying, and telling the boys that the attorneys were researchers, not attorneys. Ms. Newman
16 continued to smirk at me and I felt like she was trying to intimidate me.

17 7. When we reached the right floor, I tried to separate myself by staying in the waiting area
18 until the deposition started, but Marla would not leave me alone. Instead of going into the deposition
19 room with her attorneys (there were three of them there), she stayed in the waiting area with me.

20 8. Marla seemed to be doing her best to make me uncomfortable. She continued to loudly
21 insist that I "explain myself" and why I was there. I told Marla that the students had a right to be treated
22 honestly, and that it was wrong for the Newmans and their lawyers to lie to them in the interviews.

23 ///

24
25 **DECLARATION OF CATHERINE KOPTA IN SUPPORT OF**
DEFENDANT HIGHLAND SCHOOL DISTRICT'S
CROSS MOTION TO DISQUALIFY PLAINTIFFS' COUNSEL - 2
cc: newman@oldfield's cross motion to disqualify kopta.docx

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1 9. I was relieved that - finally - Ms. Newman left the waiting area and went into the
2 conference room. But only a few moments later, two of the Newmans' attorneys, both men, approached
3 me in the waiting area and they tried to talk with me. I was angry and I did not want to talk to them,
4 particularly after how they treated my son, and after the way Ms. Newman treated me that day. I said
5 that I would not talk with them. The two male attorneys would not just accept my answer, and they
6 asked if they could meet with me later, after things had "calmed down." I again said that I did not want
7 to talk with them.

8 10. I was very relieved when the school district attorney arrived, because I did not want to
9 face Ms. Newman and her three attorneys alone any longer.

10 11. I felt ambushed, and I felt that the Newmans' attorneys acted unprofessionally when they
11 arranged for Marla to be waiting for me in the stairway of an unfamiliar building, and also when they sat
12 in the adjoining conference room where they could easily hear her arguing with me in the waiting area.
13 I am confident that the attorneys participated in the plan to accost me when I arrived, and they knew that
14 Ms. Newman was attempting to intimidate me before my deposition.

15 12. The deposition went fine until it was the Newman's lawyer's turn to ask me questions.
16 He kept asking me the same questions over and over. I felt like they were not interested in hearing what
17 I had to say, but were just trying to get me to make a mistake and agree with what they were trying to
18 get me to say. The Newmans' lawyer did not really ask me questions, most of the times, he tried to put
19 words into my mouth.

20 13. At one point, the two male attorneys for the Newmans left the room and they left the
21 female attorney to stay in the deposition room with me. Shortly after, the school district attorney
22 followed the other men to the hallway.

23 ///

24
25 **DECLARATION OF CATHERINE KOPTA IN SUPPORT OF
DEFENDANT HIGHLAND SCHOOL DISTRICT'S
CROSS MOTION TO DISQUALIFY PLAINTIFFS' COUNSEL - 3**
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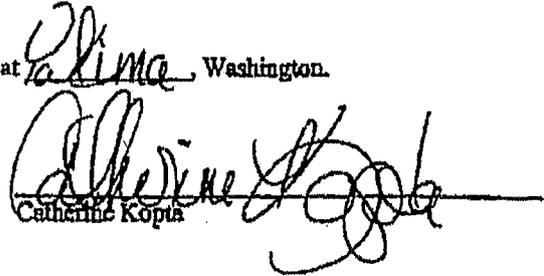
14. I did not hear anything out of the ordinary, and I could not even hear any of whatever discussion the attorneys had in the hallway.

15. The intimidating acts of the Newmans' attorneys and Maria worked; I felt very upset after being confronted by Maria. While we were on a break, I asked the school district attorney, Andrew Biggs, if he would walk me to my vehicle after the deposition, in case I was approached again by Maria and her attorneys. I did not want to have to face their strong-arm tactics again.

16. My son, Forrest, told me that, at his deposition, he requested a copy of the recording he gave the Newmans' lawyers at the Newmans' home (the one when they lied to him and said they were "researchers"). Forrest told me that, even though he asked for it, he has not received a copy of the recording. I also asked Forrest about his written statement, the one which I was asked to read during my deposition. Forrest said the statement is not accurate. He said that now that he is older he realizes he should have read the statement before signing it.

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct to the best of my knowledge.

DATED this 14 day of January, 2014, at Yakima, Washington.


Catherine Kopta

DECLARATION OF CATHERINE KOPTA IN SUPPORT OF
DEFENDANT HIGHLAND SCHOOL DISTRICT'S
CROSS MOTION TO DISQUALIFY PLAINTIFFS' COUNSEL - 4
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tel: 206-823-0229
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2014 JAN 23 PM 2:49

Honorable Blaine G. Gibson
Hearing Date: January 24, 2014 at 2:00 p.m.

F I L E D
JAN 23 2014

KIM M. EATON, YAKIMA COUNTY CLERK

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF YAKIMA

MATTHEW A. NEWMAN, an incapacitated
adult; and RANDY NEWMAN AND MARLA
NEWMAN, parents and guardians of said
incapacitated adult,

Plaintiffs,

vs.

HIGHLAND SCHOOL DISTRICT NO. 203, a
Washington State government agency,

Defendant.

No. 12-2-03162-1

**DECLARATION OF MARK S.
NORTHCRAFT RE: INTERVIEW WITH MR.
DIENER**

DATE OF HEARING: January 24, 2014
TIME OF HEARING: 2:00 p.m. (special setting)
ASSIGNED JUDGE: Honorable Blaine G. Gibson

I, Mark S. Northcraft, declare as follows:

1. I am over the age of eighteen years and competent to testify.
2. I am an attorney with the firm Northcraft, Bigby & Biggs, P.C.
3. On October 21, 2013, I interviewed Mr. Eric Diener at his place of business at the Wapato High School where he is employed as the high school principal. The purpose of the interview was to discuss his upcoming deposition that had been noted by the Newman attorneys.

4. Mr. Diener is a former employee of and football coach for my client, the Highland School District.

**DECLARATION OF MARK S. NORTHCRAFT
RE: INTERVIEW WITH MR. DIENER. 1**
w/newman

NORTHCRAFT, BIGBY & BIGGS, P.C.
819 Virginia Street / Suite
Seattle, Washington (206) 465-8222

1 5. Prior to the interview, our office contacted Mr. Mark Anderson, who is the
2 superintendent of the Highland School District, and requested a copy of Mr. Diener's personnel records
3 that were part of the District's files. I asked for the records because Mr. Diener had not worked for my
4 client, the Highland School District, for a number of years. I believed the records – his personnel file –
5 might help him to refresh his memory, including historical information, should he desire to look at the
6 records prior to his upcoming deposition.

7 6. Mark Anderson, the superintendent, provided me with Mr. Diener's personnel file.

8 7. Prior to the pre-deposition interview, I merely skimmed through Mr. Diener's file,
9 noticing several positive documents. I did not prior to my interview with him or at any time thereafter
10 give his records to anyone outside of my office.

11 8. During the interview, I mentioned to Mr. Diener that I had brought the District's
12 personnel records concerning him and that he was welcome to review the records if he so desired. Mr.
13 Diener declined my offer, and we pleasantly continued on discussing various topics about which I
14 thought he might be questioned. At no time during this interview did Mr. Diener express any concern
15 that I had brought his records with me or that somehow this intimidated him. What I did not know at the
16 time was that Mr. Diener already had met with the Newman attorneys and knew full well what they
17 were going to ask him about during his deposition.

18 9. During the interview, nothing else was said about the personnel file.

19 10. I neither procured nor brought Mr. Diener's file for intimidation tactics. I brought his
20 records to the interview thinking it might be helpful to him if he reviewed the contents for historical
21 information regarding his employment with the Highland School District.

22 11. It was not until his deposition that I learned Mr. Diener thought I had brought the file to
23 intimidate him.
24

25 DECLARATION OF MARK S. NORTHCRAFT
 RE: INTERVIEW WITH MR. DIENER. 2
 w/newman

NORTHCRAFT, BIGBY & BIGGS, P.C.
819 Virginia Street / Suite C-2
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tel: 206-623-0229
fax: 206-62

1 12. During the deposition, I immediately apologized, explaining it was not my intent and
2 explained why I had obtained and brought them. During the deposition, he seemed to understand that I
3 brought the file to help him and not intimidate him.

4 13. During the deposition, Mr. Diener also accused me of attempting to manipulate him.
5 because I expressed my opinion that the Newmans and their attorneys were trying to "screw" the School
6 District.

7 14. Although I do not remember saying that the Newmans were trying to "screw" the School
8 District, I likely did use that language in voicing that opinion which was based upon evidence that the
9 plaintiffs' and their attorneys were involved in manipulating and creating a story contrary to what really
10 happened at the Thursday practice. Mr. Diener did not in any way seem offended by my language or my
11 opinion. I voiced such an opinion, because at the time of Mr. Diener's deposition, I knew from
12 discovery in this case that (1) when Mr. Adler initially interviewed the players, he repeatedly had
13 misrepresented himself as a brain researcher and did not disclose to the players that he was really
14 investigating the case for the purpose of bringing a lawsuit against the District and for the purpose of
15 suggesting ideas to the players that could result in them relating inaccurate accounts of what had
16 happened; (2) neither Randy Newman nor Marla Newman, who were present during Mr. Adler's
17 misrepresentation to their son's former teammates, corrected this misrepresentation; and (3) the day
18 before the injury during the Naches football game, Matthew Newman received a head injury, after
19 practice, not during practice, while messing around with his friends, and he hid that head injury from his
20 football coaches. I also knew that one of the players who had been interviewed by Mr. Adler had
21 recanted his deposition testimony about the coaches knowing that Matthew had a headache.

22 15. Subsequent to Mr. Diener's deposition, I deposed Forrest Kopta, who is a former
23 teammate of Matthew Newman. During his deposition, Mr. Kopta reiterated that Mr. Adler represented
24

25 **DECLARATION OF MARK S. NORTHCRAFT**
 RE: INTERVIEW WITH MR. DIENER. J
 w/newman

NORTHCRAFT, BIGBY & BIGGS, P.C.
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tel: 206-623-0229
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1 himself as a researcher, the Newmans did not correct this misrepresentation, and he never received the
2 original audio recording of his statement.

3 I 6. Attached as Exhibit A is a true and correct copy of excerpts of Mr. Diener's deposition
4 I declare under the penalty of perjury that the foregoing is true and accurate to the best of my
5 knowledge.

6 DATED 22nd day of January, 2014 in Redmond, Washington.

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9 Mark S. Northcraft

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DECLARATION OF MARK S. NORTHCRAFT
RE: INTERVIEW WITH MR. DIENER - 4
w/newman

NORTHCRAFT, BIGBY & BIGGS, P.C.
819 Virginia Street / Suite C-2
Seattle, Washington 98101
tel: 206-623-0229
fax: 206-623-0229

EXHIBIT

A

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR YAKIMA COUNTY

MATTHEW A. NEWMAN, an)
incapacitated adult, and RANDY)
NEWMAN AND MARLA NEWMAN,)
parents and guardians of said)
incapacitated adult,)

Plaintiffs,)

vs.)

No. 12-2-03162-1

HIGHLAND SCHOOL DISTRICT NO.)
203, a Washington State)
governmental agency,)

Defendants.)

DEPOSITION UPON ORAL EXAMINATION OF
JOHN ERIC DIENER

October 21, 2013
4:22 p.m.
917 Triple Crown Way, Suite 200
Yakima, Washington

TAKEN AT THE INSTANCE OF THE PLAINTIFFS

REPORTED BY:
JERI L. CHANDLER, CCR No. 3191

1 A Our business address is 1103 Wasco Avenue,
2 Wapato, Washington, 98951.

3 Q How long have you been working as the principal
4 for Wapato?

5 A This will be officially my second year, but I was
6 the acting principal two years ago. So --

7 Q So started as the acting principal for the school
8 year of --

9 A I was acting principal of January 2011 -- or
10 2010. I have to count back. Two school years ago.

11 Q Okay. And this is your second full --

12 A Second full year, yes.

13 Q What were you doing for work before that?

14 A I was the assistant principal at Wapato High
15 School for a year before that, and then I was the
16 assistant principal at the Granger School District,
17 Granger High School, Granger, Washington, for two years.

18 And then from 1995 to 2008, spring, I was a
19 teacher and athletic director for a couple years, two
20 separate years, at the Highland School District, started
21 off at the middle school.

22 Q And then moved up to the high school?

23 A Moved up to the high school, yes.

24 Q Which years were you at the high school?

25 A I was at the high school, I want to say, 1999 to

1 I do take a little time to process.

2 I will tell you that that evening coming -- or
3 coming home, I thought it was quite odd, and then I
4 contacted -- real easy contact -- my wife, told her about
5 the situation. And she said that that's odd because, in
6 the school district that she works in, you have to have
7 the employee's permission.

8 I contacted my assistant superintendent, Mr. Dan
9 Murray, Wapato School District. You do have to have the
10 permission of the former employee. So that kind of got
11 under my skin a little bit.

12 And at this present time that -- you know, I can
13 speculate, but investigate me and ask for my personnel
14 file, it is spotless. That, to me, is -- this is just me.
15 I think it's a little bit of a tactic that was not
16 necessary.

17 Q What kind of tactic do you think that was?

18 A Digging up dirt on you. I have no dirt to dig.

19 Q Had you given permission to anyone to release
20 your personnel file?

21 A I haven't even looked at my personnel file since
22 I left Highland. So, no, I have not given anyone
23 permission to look at my personnel file or to take my
24 personnel file.

25 Q So it was surprising to you that you would be

1 BY MS. CARTER:

2 Q That was my next question. Did you feel like
3 perhaps this was an intimidation tactic?

4 MR. NORTHCRAFT: Object to the form.

5 THE WITNESS: It could be seen as that. It was
6 not necessary to pull my personnel file or to bring up my
7 personnel file in the first ten minutes of a meeting.

8 BY MS. CARTER:

9 Q Did you take it that way, as intimidation?

10 MR. NORTHCRAFT: Object to the form.

11 THE WITNESS: Not at the time. My comment back
12 was, I hope it was all good, and it wasn't until later
13 that I thought it was odd.

14 And then, you know, you talk to one person who
15 works in the central office at our school district, you
16 talk to your assistant superintendent, say off the record,
17 Dan, personnel files, do we give those out? And then I
18 explained to him. And he said, very leery, we wouldn't do
19 that. We'd have to ask for permission.

20 BY MS. CARTER:

21 Q So you didn't take it as intimidation at the time
22 of the meeting?

23 A No.

24 Q But what about when you reflected on it?

25 MR. NORTHCRAFT: Object to the form.

1 And I have seven witnesses say, yeah, he had marijuana, he
2 had marijuana, he had marijuana, he had marijuana. And
3 their stories match up, and we're talking to them
4 separately, in other rooms, other administrators. We're
5 going to get the kid.

6 Now, of course, I can get the kid with marijuana
7 because we can drug test him and everything; but, for
8 discipline, if we have especially a dozen -- I mean, I'm
9 going to discipline a kid at Wapato with just two
10 witnesses if their stories match up. So if you have
11 multiple witnesses in a discipline case or, I would
12 assume, in this case, yeah, I mean, that's -- that's going
13 to build a stronger case for you.

14 MS. CARTER: Thank you.

15 THE WITNESS: You're welcome.

16

17

EXAMINATION

18 BY MR. NORTHCRAFT:

19 Q Mr. Diener, I truly apologize if you thought I
20 brought your personnel file, offered to show it to you
21 to -- if you thought I tried to intimidate you. That
22 certainly was not my intent at all.

23 A Okay.

24 Q I brought it so that -- in fact, I skimmed it a
25 little bit, just kind of turned a few pages, and I

1 thought, well, the reason I'm going to bring it for you is
2 so you can look at it in case you wanted to refresh your
3 memory on anything.

4 And I assume there's nothing bad in there. So
5 I'm not sure that I could use any information to
6 intimidate you, but I certainly -- that was not my intent.
7 It was to actually help you. So I'm sorry you feel that
8 way.

9 MS. CARTER: Object to the form.

10 THE WITNESS: When I went home -- and you would
11 admit that my first comment to you was, Well, I hope
12 everything was good, something to that.

13 BY MR. NORTHCRAFT:

14 Q Yeah. I remember that, and I remember saying --
15 well, I kind of skipped through it and I saw a
16 recommendation, but I didn't read them all.

17 A Wow, I didn't know I had one in there.

18 Q Well, there was something in there. Looked like
19 a recommendation.

20 A There would be no discipline, but as I thought
21 about it --

22 Q I don't know. I couldn't tell you what's in
23 there.

24 A To tell you the truth, as I thought --

25 Q I skipped through it.

1 A As I thought about it, in my world, those
2 personnel files, we can't give those out without
3 permission of the person who's the file.

4 Q Yeah.

5 A And so it dawns on me, why would the Highland
6 School District be handing out my file without my consent
7 or at least say that your file has been requested?

8 Q And I understand that. And just so you know, I'm
9 the lawyer for the district.

10 A But still I would have the right to know that
11 it's been taken out.

12 Q I don't know that. I'm not disagreeing with you
13 or agreeing with you. I'm just telling you that, as the
14 district's attorney, I felt I could look at that
15 information. And I frankly didn't, but I could have that
16 information to show it to you in case you wanted to
17 refresh your memory.

18 A Okay.

19 MS. CARTER: Object to the form.

20 BY MR. NORTHCRAFT:

21 Q So, anyway, I hope -- I hope your concerns are
22 better now because I certainly didn't mean to intimidate
23 you for any reason whatsoever. I have no reason to do so.

24 A I found it -- I found it odd that evening.
25 That's why I talked --

1 Q Okay. I don't disagree with you. I assume you
2 did find it odd.

3 A Sure.

4 Q But it certainly wasn't my intent to somehow
5 intimidate you for any reason whatsoever.

6 A Okay.

7 MS. CARTER: Object to the form.

8 BY MR. NORTHCRAFT:

9 Q Do you remember that part of the conversation
10 where I told you about Billy Gellerson had testified under
11 oath that he said that Coach Schafer knew that Matthew had
12 a headache; and then I told you that, after that
13 deposition, he had sent a text message to Coach Schafer
14 saying, Wait a minute. I know you didn't know he had a
15 headache. And your response was, Well, then he must have
16 perjured himself.

17 Do you remember telling me that?

18 MS. CARTER: Object to the form.

19 THE WITNESS: Correct. I said that Billy was a
20 good kid, and then you told me that, and I said, Well,
21 then, looks like he must have perjured himself if that's
22 the case.

23 BY MR. NORTHCRAFT:

24 Q Right. The thing about somebody striking their
25 head on the -- on the goal post, if you hit your head on

1 Q On any of the occasions that you either texted
2 him or talked with him after the Factoria meeting, did you
3 talk about the substance of your testimony, what kind of
4 questions they were going to ask or anything like that?

5 A If he did -- and I believe what we talked about
6 was, you know, kind of basically -- I know what Richard
7 tells me. Tell the truth, just tell the truth. We're
8 going to ask you questions.

9 I think for the substance of today, most of the
10 questions -- it was just we're going to ask you questions
11 about, you know, exactly what Ms. Carter asked, you know,
12 background, what's your knowledge of concussion, who are,
13 you know, coaches.

14 Q During our conversation that you and I had, you
15 said that I used the word "screw the district," the phrase
16 "screw the district." Is that what you recall me saying?

17 A I recall you saying that, yes.

18 Q If that's what you recall, I don't remember it.
19 I probably was thinking worst words than that, but that's
20 because I worked in a packing plant for a year and a half.

21 A I understand.

22 Q So you said that you were used to pretty rough
23 language -- correct? -- in your job?

24 A Uh-huh.

25 Q Did I offend you at all by saying the word

1 "screw"?

2 A Didn't offend me; but I thought, you know, that's
3 a little -- you know, if I recall it, it stuck out in my
4 mind.

5 Q Well, I hope I didn't offend you.

6 A No.

7 MR. NORTHCRAFT: All right. That's all the
8 questions I have. Thanks.

9 THE WITNESS: Okay. Thank you, sir.

10 MS. CARTER: Just one follow-up.

11

12 FURTHER EXAMINATION

13 BY MS. CARTER:

14 Q In any of your meetings with Mr. Adler or myself,
15 did we tell you that the Highland School District was out
16 to screw the Newmans?

17 A No.

18 Q Did we use any kind of language to that effect?

19 A No.

20 MS. CARTER: That's all I have.

21

22 FURTHER EXAMINATION

23 BY MR. NORTHCRAFT:

24 Q Are you aware of any lawsuit brought by the
25 Highland School District against the Newman family?

1 CHANGES IN FORM AND SUBSTANCE REQUESTED BE MADE

2 IN THE FOREGOING ORAL EXAMINATION TRANSCRIPT:

3 (Note: If no changes desired, please sign and date
4 where indicated below.)

5	PAGE	LINE	CORRECTION AND REASON
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16 I, JOHN ERIC DIENER, hereby declare under penalty of
 17 perjury that I have read the foregoing deposition and that
 18 the testimony contained therein is a true and correct
 transcript of my testimony, noting the corrections above.

19

20

21

JOHN ERIC DIENER

22

Date: _____

23 See: Wash. Reports 34A, Rule 30(e)
 24 USCA 28, Rule 30(e)

24 PLEASE RETURN TO: Central Court Reporting,
 25 P.O. Box 8029, Yakima, WA 98908

Honorable Blaine G. Gibson
Hearing Date: September 27, 2013
Hearing Time: 2:00 p.m.

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF YAKIMA

MATTHEW A. NEWMAN, an incapacitated
adult; and RANDY NEWMAN AND MARLA
NEWMAN, parents and guardians of said
incapacitated adult,

Plaintiffs,

v.

HIGHLAND SCHOOL DISTRICT NO. 203, a
Washington State government agency,

Defendant.

No. 12-2-03162-1

**DECLARATION OF MARK S.
NORTHCRAFT IN SUPPORT OF
DEFENDANT'S RESPONSE TO
PLAINTIFFS' MOTION TO
DISQUALIFY AND/OR FOR OTHER
RELIEF**

DATE OF HEARING: September 27, 2013
TIME OF HEARING: 2:00 p.m.
ASSIGNED JUDGE: Judge Blaine G. Gibson

I, Mark S. Northcraft, declare as follows:

I am over the age of eighteen years and am competent to testify to the matters herein. I am an attorney with the law firm of Northcraft, Bigby & Biggs, P.C., and I am familiar with the file in the above-captioned matter. The following is based upon my personal knowledge.

I was admitted to practice law in the State of Washington and the United States District Court for Western Washington in 1977. I was subsequently admitted to practice in the United States District Court for Eastern Washington, and the Ninth Circuit Court of Appeals. I have been an attorney in good standing for over 35 years. During those years, I have represented both plaintiffs and defendants, and my firm continues to do so. I have been lead counsel in hundreds of cases, both small and large.

1 My practice has involved litigation throughout western and eastern Washington. I have
2 appeared in at least 15 different counties in Washington. I also have been admitted pro-hac vice in
3 California, Utah and Montana.

4 Over my many years of practice in Washington and other states, I have represented both
5 individual clients and businesses and corporations, and I have represented numerous school districts,
6 municipal bodies, the state of Washington while employed as an assistant attorney general for the
7 Torts Division, and other types of public entities.

8 In all of my years of practice in multiple state and federal jurisdictions, I have had only one
9 bar complaint filed against me. This occurred when I was employed by the Attorney General's office
10 when I refused to authorize payment for an exorbitant hourly rate charged by a doctor for the taking
11 of his deposition. This complaint was fully investigated by the former Dean of the University of
12 Puget Sound School of Law, and I was never disciplined in any way for attempting to save public
13 funds.

14 I am proud to tell this court that I have never – not once – been accused of any sort of
15 improper interviewing or questioning of any witness, let alone witness tampering. Over the years,
16 I have dealt with countless different attorneys, opposing parties, judges, masters, magistrates and
17 others, and none have ever suggested (much less accused me of) witness tampering. It is only in the
18 present case, which involves exceedingly aggressive, retaliatory attorneys, who themselves are
19 conspiring to put on false evidence as to when Matthew Newman developed a headache before the
20 Naches Valley football game on September 18, 2009, can any claims of witness misconduct be
21 found. I take my ethical obligations very seriously, and it is extremely disconcerting that the
22 plaintiffs' attorneys have chosen this method of attempting to convince the court otherwise. It is
23 highly improper for the attorneys to impugn my professional reputation for the blatant and improper
24 purpose of advancing their interests, in an obvious attempt to distract attention away from their own
25 unethical, if not criminal behavior, and I trust the court will take all appropriate measures to deal
26 with these attorneys' unprofessional conduct.

**DECLARATION OF MARK S. NORTHCRAFT IN
SUPPORT OF DEFENDANT'S RESPONSE TO PLAINTIFFS'
MOTION TO DISQUALIFY AND/OR FOR OTHER RELIEF - 2**
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1 Further, despite having handled hundreds of cases involving many different attorneys, I have
2 never filed pleadings in which I had to inform the court of what I believe to be improper conduct
3 relating to witnesses. I have never brought a motion, or replied to one, in which I have told the court
4 that the opposing attorneys have crossed the line and engaged in witness tampering or conspiring to
5 convince witnesses of facts that they do not personally recall. This is the single time that I have had
6 to approach a court with such information, and I hope it never happens again.

7 I also would like to say that it is very disappointing that these attorneys have provided my
8 former ethics professor, John Strait, with false accusations and incomplete information about what
9 has been happening in this case, such that he could set forth the opinions that he has formed.
10 Notably, I received an A from Professor Strait in the ethics class that he taught at the University of
11 Puget Sound School of Law. I am equally disappointed that Professor Strait would form opinions
12 about me without ever having spoken to me concerning the actual facts of what has occurred. These
13 facts are as follows:

14 INTERVIEW OF JOE SCOTT

15 John Young from Canfield and I interviewed Joe Scott on February 26, 2013. This interview
16 occurred at the administrative offices for the Kennewick School District in Kennewick, Washington.
17 Accompanying Joe Scott for his interview were his mother, Feleighsha Beach, and his stepfather,
18 Zach Beach. This interview was recorded with the permission of Mr. Scott and his parents. Attached
19 hereto as Exhibits A and B respectively are a complete unedited transcript of the recording and a
20 complete unedited copy of the actual recording.

21 Prior to interviewing Joe Scott I had never met him or communicated with him directly. I also
22 had never met or communicated with his mother or his stepfather. The interview was arranged by
23 Mr. Young. The only interview I have personally attended and conducted of witnesses in this case
24 who have personal knowledge of the events surrounding the Matthew Newman lawsuit, other than
25 current and former school district employees, is of Joe Scott. I did not exchange any words with Joe
26

1 Scott or his parents prior to the commencement of the recorded interview except to introduce myself
2 by name and shake their hands.

3 When I interview a witness, it is my general technique, which I used in the interview of Joe
4 Scott, to ask as few leading questions as possible so that I learn what the witness knows based upon
5 their memory and using their own words. (Exhibit A at page 4 of 39.) In conducting the interview
6 of Joe Scott, I intended to obtain his version of events unimpeded by what I already knew about what
7 the other players and Newmans' counsel were claiming occurred with respect to Matthew Newman's
8 development of a headache prior to the Naches Valley football game on September 18, 2009. Mr.
9 Young, who had arranged the interview and had been in contact with Joe Scott, began the interview.
10 (Exhibit A at pages 1 of 39 – 3 of 39.) As Joe Scott began to tell us how the sideline tackle of
11 Matthew Newman had occurred, I emphasized to him that I wanted him to describe the tackle in his
12 own words, which I repeated a number of times during the interview:

13 MARK **Just describe for us then, what you remember happening. You then saw**
14 **where he was going...**

15 SCOTT I remember running and then he, I had to adjust because he's a faster runner
16 than I was. So I adjusted towards him and I tackled him from behind and I
17 grabbed, grabbed his jersey. Yeah, I did bring him down, but I...

18 YOUNG Was it kind of a horse-collar tackle?

19 SCOTT Uh, I definitely had his jersey. I didn't grab his collar. I remember grabbing
20 his jersey so I probably pulled back on it.

21 YOUNG Okay.

22 MARK **So just let him describe it. I just want, from your words I just want to**
23 **know what you remember.**

24 (Exhibit A at pages 10 of 39 – 11 of 39; emphasis supplied; see also pages 13 of 39 and 14 of 39.)

25 By the time the Joe Scott interview occurred, I had attended a number of depositions of other
26 former players that were on the 2009 Highland School District football team, including Billy
Gellerson, Tyler Hakala, and Kavan Stoltenow. As set forth in Highland School District No. 203's
Response in Opposition to Plaintiffs' Motion for Protective Order, I am personally aware based upon

1 the deposition testimony of these former players of a number of irregularities and ethical infractions
2 regarding the interviews by Richard Adler and other members of his firm of these players, having
3 listened to the players testify in their depositions. Consequently, by the time I interviewed Joe Scott,
4 I was particularly mindful of obtaining his version of the tackle of Matthew Newman without any
5 injection into his mind of what the other players now claim they saw and heard. However, I was too
6 late. As I learned during the interview of Joe Scott, Mr. Adler already had contacted Joe Scott by
7 telephone and had attempted to suggest to Joe Scott what he should remember by recounting for Joe
8 Scott what these other players were saying about Matthew Newman claiming he had a headache after
9 the Joe Scott tackle:

10 SCOTT And then we just went about practice. And when, I don't know which lawyer,
11 the other lawyer that called me, it wasn't the one that called me for this
right here.

12 MARK Uh-hmm.

13 SCOTT **He said something about Matthew telling other players that he had a**
14 **headache and stuff and he was asking me if he told me that. I wasn't**
15 **really close friends with him or anything and then next day he said he was**
still having head problems. But I didn't talk to him really like that all. He
wasn't really one of my good friends.

16 (See Exhibit A at page 12 of 39; emphasis supplied.)

17 SCOTT So what's the lawyer's name again?

18 MARK Uh, well, there's a guy named Adler...

19 SCOTT That's who called me.

20 MARK Adler called you?

21 SCOTT Adler. I think that's, yeah, I'm pretty sure.

22 (Exhibit A at page 36 of 39.)¹

23
24 ¹ *The testimony of Lisa Sorenson was taken on April 16, 2013. In the fall of 2009,*
25 *Lisa Sorenson was Matthew Newman's girlfriend. Ms. Sorenson testified that Matthew Newman*
26 *did not have a headache as result of the tackle involving Joe Scott during the Thursday*
practice before the Naches Valley football game the next day. Ms. Sorenson testified that during
(continued...)

1 It is claimed by counsel for the Newmans that I have engaged in witness tampering with
2 respect to Joe Scott and his parents. As can be seen by reading and recognizing the structure of the
3 entire transcript of the Joe Scott interview, which counsel for the Newmans have in their possession,
4 this claim is libelous and another example of the unethical practices in which the Newman attorneys
5 are engaging in this case. The transcript clearly shows that at no time before obtaining from Joe
6 Scott his full version of what happened during practice, during the game the next day, and until he
7 moved to a different school district did I talk to Joe Scott or his parents about my belief that the
8 Newmans, their attorneys, and certain former players were fabricating a story as to Matthew
9 Newman developing a headache as a result of the Joe Scott tackle.

10 As can be seen from the following, which occurred about one-third of the way through the
11 interview, I purposefully deflected any discussion about what Mr. Adler had suggested to Joe Scott
12 about Matthew having claimed he had a headache as a result of Joe Scott tackling Matthew during
13 the Thursday practice:

14 SCOTT **He said something about Matthew telling other players that he had a**
15 **headache** and stuff and he was asking me if he told me that. I wasn't really
16 close friends with him or anything and then next day he said he was still
17 **having head problems.** But I didn't talk to him really like that all. He
18 wasn't really one of my good friends.

19 MARK Right. Okay. So that's like a whole other part of this story. But what
20 I'm really interested in is what you remember and who said things to

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(...continued)

*a telephone conversation with Matthew that Thursday night, Matthew told Lisa he had a
headache as a result of colliding with something after practice while messing around playing
catch with Billy Gellerson, Tyler Hakala, Kavan Stoltenow, and possibly other players. Matthew
did not ever talk to Ms. Sorenson that Thursday night about having received an injury during the
Thursday practice, only that he had been injured after practice while messing around with
Gellerson, Hakala, and Stoltenow. Matthew did not tell Ms. Sorenson that he had been tackled
by Joe Scott during the Thursday practice. Although Ms. Sorenson does not recall exactly what
Matthew said he hit after practice, it was her impression that he hit his head on a goalpost and
that it was this collision that caused him to have a headache. (See Exhibit C attached hereto at
pp 15:10-16:25, 17:11-16, 19:8-15, 21:8-12, 45:6-15, 46:11-24, 47:7-48:1, 49:6-8, and 84:13-
21.)*

1 you, if anybody said anything to you. So we're up to the point where you
2 kind of grabbed him from behind, tried to stop him, you tangled up and you
3 fell down. Do you remember what part of your body hit the ground
4 first?

5 (Exhibit A at page 12 of 39.)

6 It was not until toward the end of the interview that it was first discussed with Joe Scott that
7 Billy Gellerson and others were blaming Joe Scott for giving Matthew a concussion. (See Exhibit
8 A at page 29 of 39 – 30 of 39, which is set forth below.) Notably, the first thing about which Mrs.
9 Beach made inquiry, after I concluded that part of the interview that dealt with the tackle and the
10 subsequent events, was whether her son needed an attorney. Mrs. Beach's inquiry about whether
11 her son needed an attorney occurred even before I discussed that a group of players had come up with
12 a story that Matthew suffered a concussion as a result of her son's tackle:

13 MARK All right. Do you folks have any questions of us?

14 MOM I do, but I don't know-. It was always a concern of mine is, **does he need to
15 get an attorney?**

16 MARK No.

17 FELICIA Okay.

18 MARK No. He does not.

19 SCOTT **That's what I was worried about when the first guy called me, because
20 I was like, he was kind of like had that vibe about him that I was, it was
21 my fault** and it was like, I didn't know what to say to him the whole time.

22 MARK Right. Uh, no. What's happened here is that the Newman family is suing
23 the Highland School District. They're not suing any people. Um, there's
24 nothing about your participation in that football game for which you could be
25 sued. You're just, there's nothing that you did wrong. You tackled the kid.
26 I mean you didn't even really tackle him, you basically fell over him as you
 were trying to stop him. So there wasn't any intentional hit, there was no
 assault or battery. there's nothing that you did that could give rise to any sort
 of a lawsuit.

 SCOTT Yeah.

 MARK What they're claiming against the district is that, and it's interesting, because
 it's sure turning out to be the case that these, this group of kids, these juniors,
 have come up with this story that he had a concussion as a result of this tackle
 that you had with him and that then lead to him having this neurologic

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meltdown the next day because he was still suffering from the symptoms or the tap on the concussion.

(Exhibit A at page 34 of 39 – 35 of 39.)

In fact, earlier in the interview, as Joe Scott was relating what happened to him after Matthew collapsed during the Naches Valley game, he said the following:

MARK That's right. You went to Finley. When you, prior to leaving and going to Finley...

SCOTT Uh-hmm.

MARK ...that summer, did you hear any rumors about people talking about how is it that Matthew got hurt?

SCOTT What do you mean how? Like...

MARK Well, for example...

SCOTT ...they're asking how or...

MARK Yeah. Did people come up with a theory, well this is how and why he got hurt?

SCOTT Oh, yeah. This, kids were, kids at school were just saying, uh, that he got hit very hard during the games way too many times and I don't know. It was like a lot of hits. He got hit a lot.

MARK Okay. Did anybody up to the time you left ever suggest that the collision and tackle that you were involved with...

SCOTT Yeah. Billy.

MARK Um, Billy suggested that maybe you'd had, maybe he'd had—well, let me put it this way...

SCOTT He said that I gave him a concussion.

MARK That's what I was going to ask you. So Billy suggested that to you?

SCOTT He did. I remember the juniors, as a whole, they would kind of say, 'Oh, dude, it's your fault he got hurt.' And I was like, 'No.'

MARK Which juniors? So it was Billy. Who else was doing it?

1 SCOTT Billy, Tyler, Forest, their whole group.²

2 (Exhibit A at page 29 of 39 - 30 of 39.)

3 After the tape recorder was turned off at the end of the Joe Scott interview, I collected my
4 materials and left the room. I did not engage in any discussion with Joe Scott, Feleighsha Beach,
5 or Zach Beach other than to say good bye, shake their hands, and thank them for their time. Neither
6 at that time nor at any other time, other than during the Beach depositions on August 8, 2013, when
7 I cross examined them, did I ever discuss with either Mr. or Mrs. Beach the idea of tape recording
8 an interview of Joe Scott by Mr. Adler and members of his firm, which as of the date of my
9 interview of Joe Scott had not been actually set up. As I stated in the deposition of Mrs. Beach, I did
10 not recall ever having any discussion with her or her husband about tape recording an interview that
11 had not yet even been set up. The reason I do not recall having such a discussion is because such
12 a discussion never occurred. The only time that the subject of an interview of Joe Scott took place

13
14 ² *This statement by Joe Scott is clear evidence that the conspiracy by Billy
15 Gellerson, Tyler Hakala, and others to blame Joe Scott for the Matthew Newman injury began
16 shortly after Matthew collapsed in the Naches Valley game. This blaming of Joe Scott by
17 Gellerson and the others was designed to deflect blame away from these boys as to what had
18 actually occurred, along with theirs and Matthew's failure to tell the Highland High School
19 coaches that they knew Matthew was suffering from a concussion symptom as a result of the
20 injury he suffered after practice. That is, Billy Gellerson and Tyler Hakala knew that Matthew
21 did not have a headache as a result of the Joe Scott tackle, but instead had a headache because
22 of what he hit, apparently a goal post, while messing around throwing passes with them after
23 practice. Once the Newman lawyers became involved, this conspiracy to lie about what
24 happened grew to include the fabrication that Dustin Shafer, one of the Highland High School
25 coaches, knew that Matthew had a headache as a result of the Joe Scott tackle, but let him
26 participate in the Naches Valley game notwithstanding. That the deposition testimony by Billy
Gellerson and others that Coach Shafer knew Matthew had a headache is a lie is proved by the
text message sent to Coach Shafer on May 11, 2013 in which Gellerson said, "... you had no
idea Matthew had a headache." (See Exhibit D attached hereto.)*

*It also should be noted that after Lisa Sorenson broke up with Matthew Newman she and
Billy Gellerson began dating. (See Exhibit C at pp 67:11-24.) While dating, Gellerson never
talked with Ms. Sorenson about the Joe Scott sideline tackle of Matthew Newman, and when she
talked to Gellerson about what Matthew had told her, Gellerson did not deny that Matthew got
a headache as a result of him messing around after practice throwing passes. (See Exhibit C
at pp 68:14-23.)*

DECLARATION OF MARK S. NORTHCRAFT IN
SUPPORT OF DEFENDANT'S RESPONSE TO PLAINTIFFS'
MOTION TO DISQUALIFY AND/OR FOR OTHER RELIEF - 9
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1 while I was in the presence of Joe Scott and his parents was when Joe Scott, apparently concerned
2 about why Mr. Newman had called him and wanted to talk to him, asked me if he should talk to him.
3 In response to this question, I told Joe Scott he could talk to anyone he wanted. (Exhibit A at pages
4 38 of 39 and 39 of 39.)

5 In fact, the first time that I learned that **Richard Adler wanted to interview Joe Scott again**
6 was over a month after our interview of Joe Scott. At that time, Mr. Young contacted me to inform
7 me that Joe Scott had called him and Mr. Adler wanted to interview him. Mr. Young suggested to
8 me that we might suggest to the Beaches that they record the interview. I considered the idea and
9 felt that it was a good one given the evidence that a story was being concocted regarding Matthew
10 having a headache as a result of the Joe Scott tackle during the Thursday practice, and that tape
11 recording the interview would **prevent Mr. Adler from further attempting to change Joe Scott's**
12 **memory as to the existence of such a headache.** I knew at the time of the call from Mr. Young,
13 having interviewed Joe Scott and his parents, that **Mr. Adler already had tried to suggest the**
14 **headache story to Joe Scott** (Exhibit A at page 12 of 39), that Mrs. Beach was worried she needed
15 to get a lawyer for her son, (Exhibit A at page 34 of 39), that Joe Scott felt Mr. Adler was accusing
16 him of causing Matthew's injury (Exhibit A at page 34 of 39), that Joe Scott was worried about
17 whether he should talk to Mr. Newman (Exhibit A at page 38 of 39 - 39 of 39), and that Mr. Beach
18 was concerned that Mr. Adler would try to get his stepson to lie (Exhibit A at page 39 of 39). Also
19 included in my thinking was that there is nothing illegal about recording a conversation so long as
20 permission is obtained and if the recording occurred, then there would be a clear record of what was
21 said. My hope was that it would keep Mr. Adler from further attempting to persuade Joe Scott that
22 he should remember a headache like the other boys were claiming had occurred as a result of the
23 Thursday practice tackle. Neither during this conversation with Mr. Young nor at any other time did
24 I ever suggest what the Beaches should say if Mr. Adler were to question them as to why they wanted
25 to tape record the interview. As a comment upon Mrs. Beach's allegation that I told her to tell Mr.
26 Adler "they said just [to tape record the interview] because I wanted it for my benefit" is actually the

1 truth with respect to why the tape recording was suggested in the first place. However, this was
2 never said by me to Mrs. Beach because when I was in her presence on February 16, 2013, I never
3 had a conversation with her about tape recording an interview with Mr. Adler that had not even been
4 arranged as of that date. And, as she admitted in her deposition, I never talked to her after the
5 February 16, 2013 interview except at her and her son's depositions. (Exhibit E at 68:17-69:1.)

6 At no time did I ever give Felcighsha Beach "legal advice" as to what to say to Mr. Adler at
7 his interview of her son should he question her desire to tape record the interview, as I never had any
8 communication with her about it at Joe Scott's interview on February 16, 2013, and I never talked
9 to her again until the deposition of her son on April 15, 2013. (Exhibit E at 68:17-69:1.) I also at
10 no time ever discussed with Joe Scott, Feleighsha Beach, or Zach Beach the ramifications of any
11 verdict against the Highland School District, should one occur, or that Matthew Newman could
12 possibly have suffered a headache as a result of the Joe Scott tackle. I know I did not have such a
13 discussion because neither of those things are true. Likewise, a verdict against the District would
14 have no economic repercussion for the District since the District is fully insured for any verdict that
15 could be rendered against it as a result of Matthew Newman's injury. And, of course, the Newman
16 attorneys know this as they have received a complete description of the insurance for the District,
17 along with a copy of the insurance policy, as a result of discovery in this matter.

18 I also have never spoken to Joe Scott personally since our interview of him other than to ask
19 him questions during his deposition, which I took on April 15, 2013. However, I did call Joe Scott
20 on his cell phone subsequent to the Lisa Sorenson deposition, which took place the next day on April
21 16, 2013. I did so because I thought it would make him feel better, given the accusations and
22 innuendo that he was the cause of Matthew's injury, if he learned that Lisa Sorenson had testified
23 that Matthew did not have a headache as a result of Joe Scott's tackle of him, but had a headache
24 because he was injured while messing around after practice was over with Billy Gellerson, Tyler
25 Hakala, and Kavan Stoltenow, who were Joe Scott's accusers.

26

1 The next time that I saw or spoke with Feleighsha Beach was at the time of Joe Scott's
2 deposition, which took place on April 15, 2013. This was after the interview that Richard Adler and
3 Melissa Carter of his firm had conducted of Joe Scott in the presence of Feleighsha Beach.
4 Immediately upon entering the deposition room with her son, Mrs. Beach announced that I could not
5 videotape her son's deposition, which had been properly noted as a videotape deposition and for
6 which her son had received a subpoena. I attempted to change her mind, but she was adamant. She
7 threatened to leave with her son if I went forward with a video of the deposition. I attempted to elicit
8 from Melissa Carter, an attorney with the Adler firm and an officer of the court, support for
9 proceeding in accordance with the duly noted videotaped deposition and subpoena, but she did not
10 assist in any way, and only said, "It's your call." Because of the importance of preserving Joe Scott's
11 testimony, I decided to proceed with the deposition without videotaping it. It was my mental
12 impression at the time that Mrs. Beach had been counseled by the Adler firm to disrupt the video
13 recording of Joe Scott's deposition, given that Joe Scott's testimony does not support their claim that
14 Matthew suffered a headache as a result of the Joe Scott tackle during the Thursday practice.

15 **RPC 1.7 CONFLICT OF INTEREST: CURRENT CLIENTS**

16 The Rules of Professional Conduct are very explicit as to when a conflict of interest exists
17 with respect to current clients. RPC 1.7(1)(a) provides that "[a] concurrent conflict of interest exists
18 if (1) the representation of one client will be directly adverse to another client; or (2) there is
19 significant risk that the representation of one or more clients will be materially limited by the
20 lawyers' responsibilities to another client" The Newman's counsels' allegations and the
21 apparent opinion of John Strait that a conflict of interest exists between the Highland School District
22 and its current and former coaches under the facts of this case are absolutely false.

23 In this case, the Highland School District, which is a municipal corporation, can only act
24 through its employees. As such, it can only be held vicariously negligent if its employees were
25 negligent. Although the Newmans' attorneys did not name the individual coaches, this is nothing
26 more than a ruse to suggest, as they have in numerous depositions, that the coaches do not have any

1 interest in the outcome. These attorneys know, as does this Court, that it is the acts of the coaches
2 upon which the Newmans' negligence claims are based. In summary, the Newman lawyers are
3 claiming that the District's coaches, including former head coach Shane Roy, former assistant
4 coaches Dustin Shafer, Thomas Hale, and Matt Bunday, as well as current coach Justin Burton, knew
5 or should have known that Matthew Newman had a headache as a result of the sideline tackle by Joe
6 Scott during the Thursday practice, and that they, in direct violation of the Lystedt law, played him
7 anyway in the big rivalry game against Naches Valley so that Highland could win the game. Any
8 claim by the Newman attorneys in their briefing or anywhere else that their legal theory against the
9 Highland School District is anything different than as summarized is a complete falsehood.

10 As required by the General Principles set forth in part [2], I specifically assessed whether a
11 conflict of interest exists in deciding whether I could represent Dustin Shafer and others with respect
12 to their depositions. It is my professional judgment as a lawyer who has represented government
13 entities for the entirety of my career that under the facts of this case, representing the individual
14 coaches, including Mr. Shafer, for the sole purpose of providing legal advice and consultation with
15 respect to their depositions in no way violates RPC 1.7. The interests of these coaches are directly
16 aligned with the interests of the Highland School District, that is, to provide evidence with respect
17 to the Newman claim that they acted negligently such that the District would be vicariously liable
18 for injury to Matthew Newman. In no way has my representation of the Highland School District
19 been adversely affected or materially limited by representing these coaches for the sole purpose of
20 providing legal advice and consultation with respect to their depositions that were taken by these
21 attorneys. Because there is no conflict of interest, there has never been any reason to seek a waiver
22 of a conflict of interest amongst the coaches and the District.

23 Had the lawyers for the Newmans actually sued the individual coaches in this case, our firm
24 would have represented them jointly, along with the District, just like I have represented Districts
25 and employees thereof in other similar cases. Most recently, our firm successfully represented both
26 the Kent School District and an employee thereof who was accused of negligence and the violation

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1 of the civil rights of the allegedly injured student. This case was defended by our firm and by me
2 in the Federal Court for the Western District of Washington (No. 2:09-cv-O 1223-ICC), the Ninth
3 Circuit Court of Appeals (No. 10-35430; 648 F.3d 965), and the King County Superior Court (No.
4 08-2-20671-8 KNT). At no time did the Plaintiffs' attorneys in that case, Judge Coughenour, the
5 Federal Judges for the Ninth Circuit panel, or Judge Hollis Hill ever raise an issue that a conflict of
6 interest existed because of our firm's joint representation of the Kent School District and one of its
7 employees.

8 **RPC 8.4 (MISCONDUCT), RPC 5.3 (RESPONSIBILITIES**
9 **REGARDING NONLAWYER ASSISTANTS, RPC 4.3**
10 **(DEALING WITH UNREPRESENTED PERSON)**

11 I did not in any way violate the Rules of Professional Conduct set forth in RPC 8.4, RPC 5.3,
12 or RPC 4.3. As the foregoing facts prove, at no time did I instruct the Beaches or Joe Scott to lie,
13 misrepresent material facts to the Beaches or Joe Scott, or offer legal advice to the Beaches or Joe
14 Scott in violation of the Rules of Professional Conduct.

15 As a final comment, I find it quite illuminating that the Newman attorneys have accused me
16 of violating the Rules of Professional Conduct in light of their own behavior in this case. The
17 following excerpts from the Deposition of Feleigsha Beach further depict their witness tampering
18 efforts with respect to attempting for the second time to get Joe Scott to change his story that he
19 never heard Matthew say he had a headache as a result of the sideline tackle. The following also
20 depicts that Ms. Carter's taking of the deposition of Feleigsha Beach, who is not a witness to the
21 Thursday practice and who could only express hearsay or duplicative testimony at best, was for the
22 sole purpose of attempting to disqualify me from this case.³

23 _____

24 ³ *It is no wonder that the Newman attorneys want me disqualified. I am the*
25 *attorney who has uncovered their participation in a conspiracy by Matthew Newman's friends,*
26 *in particular, Billy Gellerson, Tyler Hakala, Kyle Belton, and Antonio Gonzales, to put on*
perjured testimony about Matthew suffering a concussion and headache as a result of the Joe
Scott tackle. As the evidence in this case proves, the injury that gave Matthew Newman a
(continued...)

1 Mrs. Beach and her son, Joe Scott, met with the Newman attorneys, which included Richard
2 Adler and Melissa Carter, after I met with Joe Scott. (Exhibit E at 36:9-18.) During this meeting,
3 the Newman attorneys first asked Joe Scott what had happened with respect to the tackle. (Exhibit
4 E at 48:17-49:19.) Then the Newman attorneys had Joe Scott read at least one of the statements
5 taken from the boys interviewed by Mr. Adler in the summer of 2010. (Id.) This statement was from
6 Joe Scott's "good friend" Antonio Gonzales. (Id.) Included in the statement the Newman attorneys
7 took from Antonio Gonzales, Joe Scott's "good friend", is the following:

8 AG [Antonio Gomez]: We help him [Matthew] up and he is kinda holding his helmet
9 with his right hand when he says he has a headache.

10 RA [Richard Adler]: Are you sure that the coach [Dustin Shafer] heard Matthew say he has
11 a headache right after the play is the following statement.

12 AG [Antonio Gomez]: Yeah. Matt said it pretty loud. And then after play Coach Shafer
13 takes him to the end zone to him makes sure he is not dizzy or anything and he just like for
14 the rest they are back there in the end zone talking.

15 (Exhibit F.) After the Newman attorneys had Joe Scott read his "good friend's" statement, they then,
16 towards the end of the interview, asked Joe Scott to "clarify" what happened. (Exhibit E at 48:17-
17 49:19.)

18 Mr. Adler's and Ms. Carter's attempts at witness tampering to get Joe Scott to change his
19 story about the headache concoction did not end there. During the meeting with Joe Scott, these two
20 lawyers also specifically suggested that the reason Matthew had collapsed in the game on Friday
21 night was because he had been injured in practice the day before. (Exhibit E at 69:6-16.) In fact,
22 these two lawyers discussed this subject in detail during the meeting with Joe Scott.⁴ (Exhibit E at
23 69:6-16.)

24 ³ (*...continued*)
25 *headache occurred after practice and was then hidden from the coaches by these same players*
26 *and Matthew Newman himself.*

⁴ *To Joe Scott's credit, and despite the witness tampering efforts by Mr. Adler and*
Ms. Carter, Joe Scott always has said he never heard Matthew Newman say he had a headache.
(See Exhibit A at 18 of 39; see Exhibit G at 43:17-44:15.)

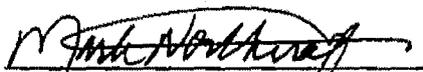
1 In addition, Mr. Adler and Ms. Carter discussed with Joe Scott and Mrs. Beach what I had
2 briefly told Joe Scott and his parents during my interview of him, after getting Joe Scott's statement
3 as to what happened, that a group of players were coming up with a story that Matthew had a
4 headache and concussion as a result of the Joe Scott tackle. (Exhibit E at 41:5-14.) After hearing
5 what the Newman lawyers had to tell them, Mrs. Beach testified that there was no way the
6 concussion headache story was concocted. (Exhibit E at 41:15-22; 41:25-42:6.) Of course, Mr.
7 Adler and Ms. Carter did not ever tell Mrs. Beach, prior to taking her deposition, about the entirety
8 of the evidence before this Court that proves the headache-concussion story is not true. (Exhibit E
9 at 70:24-71:3.)

10 Mrs. Beach also has not seen the Gellerson text message which states that Coach Shafer did
11 not know Matthew had a headache. This text message, along with the testimony of Lisa Sorenson,
12 prove that Gellerson and his co-conspirators are lying about Matthew suffering a concussion and
13 developing a headache as a result of the Joe Scott tackle. Instead of telling Mrs. Beach the entire
14 story, Mr. Adler and Ms. Carter told Mrs. Beach what they wanted her to hear, convinced her that
15 the headache-concussion story was not concocted, and then took a deposition from her in which she
16 expressed her view that I was dishonest, not truthful, and made misrepresentations to her. Then
17 based upon their efforts, they have moved for my disqualification.

18 It is obvious to me that Mrs. Beach is being used as a pawn by Mr. Adler and Ms. Carter in
19 an attempt to discredit me for uncovering the players' and their misbehavior that is ongoing in this
20 case.

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

23 DATED this 24th day of September, 2013, at Seattle, Washington.

24
25 
26 Mark S. Northcraft, WSEA #7888

Honorable Blaine G. Gibson
Hearing Date: September 27, 2013
Hearing Time: 2:00 p.m.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF YAKIMA

MATTHEW A. NEWMAN, an incapacitated
adult; and RANDY NEWMAN AND MARLA
NEWMAN, parents and guardians of said
incapacitated adult,

Plaintiffs,

v.

HIGHLAND SCHOOL DISTRICT NO. 203, a
Washington State government agency,

Defendant.

No. 12-2-03162-1

**DECLARATION OF JOHN YOUNG
IN SUPPORT OF DEFENDANT'S
RESPONSE TO PLAINTIFFS' MOTION
TO DISQUALIFY AND/OR FOR OTHER
RELIEF**

DATE OF HEARING: September 27, 2013
TIME OF HEARING: 2:00 p.m.
ASSIGNED JUDGE: Judge Blaine G. Gibson

I, John Young, declare as follows (see attached declaration):

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I, **JOHN YOUNG**, declare as follows:

I am over the age of eighteen years and am competent to testify to the matters herein.

I am an investigator for Canfield, which is the self-insured administrator and risk manager for the Highland School District No. 203. I am familiar with the file in the above-captioned matter. I have been the Director of Investigations for Canfield for the past ten years, managing and conducting investigations. In this capacity, I have been involved with several thousand investigations for the more than one thousand entities and agencies that Canfield serves. My typical practice is to conduct "discovery investigations," meaning it is my role to gather the facts of the issue and/or incident, assemble accurately a report summarizing my findings, and report that to the entity requesting my service. It is not my role to establish liability or no liability.

Prior to joining Canfield, I was a deputy sheriff for the Grant County Sheriff's Office for eleven years. In that role, I offered investigative reports and testimony in a variety of cases before the district, superior, and federal courts. I ran for the Office of Sheriff and was elected to a four year term of office. At the end of my tenure, I chose not to seek re-election for a second term. During the fifteen years of my employment with the Grant County Sheriff's Office, my professionalism and veracity was respected by members of the law enforcement community, the various prosecuting attorneys with whom I worked, as well as by the members of state and federal agencies with which I have been associated.

My involvement in the above-captioned matter began in September 2012 when I was asked to contact and interview the coaches of Highland High School's 2009 football team, as well as the students who participated in football during that year. I have also been asked to interview various other witnesses or parties with knowledge relevant to this case.

On February 26, 2013, I met with Mark Northcraft, counsel for the District, and Joe Scott and his parents, Zach and Feleighsha Beach. The meeting occurred at the Kennewick School District's administrative offices. Mr. Northcraft and I introduced ourselves, and I provided copies of my business card with my contact information. I obtained permission to record the interview. The majority of the interview was focused on asking Joe about what he remembered in relation to this case. I asked Joe about his play during the 2009 season. Mr. Northcraft also asked Joe questions. We watched a video of the 2009 Friday night Naches game in an effort to identify players. Joe drew a diagram of the field to depict the Thursday night practice. Neither Joe nor his parents ever objected to any of the questions posed during the interview.

At the conclusion of our interview, I turned the recorder off. I informed Mrs. Beach I was having difficulty contacting some of the other players. She said she knew where some of them lived and volunteered to locate their contact information. We then left the meeting room, and I did not have any further discussion with either Joe or his parents on that day.

On March 27, 2013, Joe contacted me and told me Mr. Newman had contacted him and had arranged to meet with him in Kennewick. Recalling the Beaches' concern that they expressed during the earlier interview that the Plaintiffs' attorneys may try to influence Joe, I contacted Mr. Northcraft about the idea of having the Beaches tape record the meeting in the interest of protecting Joe and his family. We discussed the idea and agreed that if the Beaches were interested, then they had every right to do so.

On March 28th, I arranged to deliver a recorder to Joe, after I discussed the issue with Ms. Beach and discussed their concern that Mr. Newman would try to get Joe to change his story. I told Ms. Beach that she could always demand that the meeting be recorded, if she wanted to, and she indicated that she did not have a recorder.

On March 29th, I delivered a digital recorder to the Beach residence in Kennewick. Prior to arriving at the residence, I called Joe and reminded him I was on my way. When I arrived at the residence, Zach Beach met me at the door and informed me that Joe was on his way home. While waiting for Joe to arrive, Mr. Beach and I discussed his earlier stated concern for Mr. Newman or the attorney trying to get Joe to change his story. Mr. Beach mentioned again, his distrust for attorneys. I agreed with Mr. Beach's concern. After giving the recorder to Mr. Beach and Joe, I explained that they should announce their intent to record the meeting and that they could simply state that there would not be an interview if the recording was not agreed to. At no time did I ever suggest to either Mr. or Mrs. Beach that they lie about why they wanted to record the interview.

On April 2nd, I spoke with Ms. Beach and she told me that when she got home, she discovered that the meeting had not been recorded. There was nothing on the recorder. She offered to mail the recorder to me. I told her I would be willing to pick it up, and she agreed to meet me at the court house in Yakima, where she would be attending a court proceeding at a later date. I agreed to the meeting, but was not able to be there when the time came. Again, she told me she would mail the recorder back to me. After waiting for the arrival of the recorder for over a month, I tried several times to contact Ms. Beach and discuss the return of the recorder.

On June 11th, I tried to call Joe and did not get an answer. On the following day, June 12th, I spoke with Joe. He told me he had not talked with his mother about the recorder. Joe gave me Mr. Beach's cell number and I called him. Mr. Beach told me he did not attend the meeting with Mr. Newman and had not discussed the meeting with Ms. Beach. Mr. Beach told me the best time to call his wife was after 5-5:30. I agreed to call her after 5:30. I have made many calls to her cell number and have left messages asking for a return call and/or the return of the recorder.

While reading the transcription of Ms. Beach's deposition, I was taken aback by the fact that she chose to lie to me about recording the interview of her son with Mr. Newman and his attorneys. Clearly, she was under no obligation to record the interview if she had chosen otherwise, and I made that clear to her. I suggested recording the interview, because of their expressed concern that the attorney would try to suggest or encourage Joe to lie about what happened during that football season. Before I finished reading the final lines of the depositions, I felt she and her husband were not describing an interview that I had attended, because their testimony was not based in fact, and did it in any way reflect the meeting, as I witnessed it.

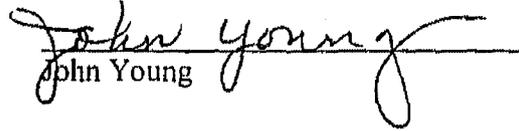
Contrary to the testimony of Mr. and Mrs. Beach testimony, neither I nor Mr. Northcraft ever said school programs at the Highland School District could be negatively affected by the Plaintiffs' lawsuit.

Also contrary to the testimony of Mr. and Mrs. Beach, neither Mr. Northcraft nor I discussed with them at Joe Scott's interview the tape recording of the interview of Joe Scott conducted later by the Plaintiffs' attorneys. The subject of tape recording never came up until much later, after Joe Scott called me on March 27, 2013.

During the twenty five years that I have been involved with investigations, I have always prided myself in the professionalism of my conduct. The meeting that I attended with Joe Scott, Feleighsha Beach, and Zach Beach was conducted professionally. Mr. Northcraft and I were totally honest with them and made every effort to reassure them that Joe was not being blamed for Mathew Newman's injury. I am at a loss to understand or explain why the attitude and feeling of cooperation that we were shown by Mr. and Mrs. Beach during the meeting of February 26, 2013 changed between the time we met with them and their depositions.

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct to the best of my knowledge.

DATED this 23rd day of September, 2013, at Ephrata, Washington.


John Young

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SUPERIOR COURT OF WASHINGTON, YAKIMA COUNTY

MATTHEW A. NEWMAN, an)
 incapacitated adult; and RANDY)
 NEWMAN AND MARLA NEWMAN,)
 parents and guardians of said)
 incapacitated adult,) 12-2-03162-1
 Plaintiffs,)
 vs.)
 HIGHLAND SCHOOL DISTRICT NO.)
 203, a Washington State)
 governmental agency,)
 Defendant.)

DEPOSITION UPON ORAL EXAMINATION OF
LISA SORENSON

1:29 P.M.
 APRIL 16, 2013
 1701 EAST YAKIMA AVENUE
 YAKIMA, WASHINGTON

REPORTED BY: CARLA R. WALLAT, CCR 2578

1 Q. And do you know when after June of 2011 Emily
2 dated Dustin Shafer?

3 A. Like when she started dating him?

4 Q. Yeah. If you know.

5 A. I'm not 100 percent on that.

6 Q. Roughly?

7 A. Well, all I know is he moved to California
8 when they were talking. When they actually started
9 dating, I'm not 100 percent sure on.

10 Q. Okay. Have you ever talked to the lawyers
11 that represent the Newmans?

12 A. Yes.

13 Q. Who have you talked to?

14 A. I'm --

15 Q. This is Melissa Carter, have you spoken with
16 her?

17 A. Yes, I think. Yes.

18 Q. Okay. And this is Arthur Leritz, have you
19 ever spoken with him?

20 A. No.

21 Q. Have you ever spoken with any other lawyers
22 that represent the Newman family?

23 A. Yes.

24 Q. Do you remember their names?

25 A. No.

1 Q. Was it a Mr. Adler or do you know?

2 A. I'm not -- I have no idea.

3 Q. Was it a man or a woman?

4 A. It was a man.

5 Q. And how many times have you spoken with one or
6 more lawyers that represent the Newman family?

7 A. Only once.

8 Q. When was that?

9 A. Like the date?

10 Q. Yes. If you remember the date, that'd be
11 great; if you don't, just approximately when it
12 occurred.

13 A. Oh, goodness. A couple months ago. A month
14 or so ago? Couple months ago?

15 Q. So within the last two months or so?

16 A. Yes.

17 Q. So it's now April, would that have been
18 February, approximately?

19 A. I'm not 100 percent sure.

20 Q. Okay. Where did you meet?

21 A. At the Newmans' house.

22 Q. And did you meet with Ms. Carter and someone
23 else at that time?

24 A. Yes.

25 Q. Do you remember how long the meeting lasted?

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~~A.~~ A couple hours.

~~Q.~~ Was either Mr. -- was either Mr. for

~~Mrs.~~ Newman or both of them involved in this meeting?

A. Yes.

Q. Who, who was involved?

A. Both.

Q. Both of them?

A. Yes. Mr. and Mrs. Newman.

Q. What about Matthew, was he involved?

A. No.

Q. Anyone else involved in this two-hour meeting
at the Newman residence?

A. No.

Q. Do you recall what you talked about?

A. Yes.

Q. What do you recall talking about?

A. We just talked about the incident, what
happened with Matthew and our relationship.

Q. All right. Any other general subjects that
you can remember talking about?

A. Just -- I mean, it was pretty much like what
our relationship was like and -- after the incident and
pretty much all I remember from that.

Q. Okay. Well, why don't we just go through this
and then you can tell me what you remember, too.

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A. Yes.

Q. Okay. So let me make sure I understand what you're telling me.

Was it after practice that he told you he'd gotten hurt or are you telling me that he got hurt after practice?

A. He told me he got hurt after practice and he told me this after he had practice.

Q. All right. So what -- why don't you just tell me what he told you.

A. What he told me?

Q. Yeah.

A. He said him and a few other of his friends were just messing around and he injured himself and I told him like if he told the coaches about it and he said no. And he just said he had like a headache and I told him he should talk to the coaches about it, but they were playing Naches the next day and he didn't want to be sat out.

Q. Did he tell you what other friends he was messing around with after practice at which time he got hurt?

MR. NORTHCRAFT: Object to the form.

Misstates testimony.

A. I'm pretty sure it was Tyler Hakala, Billy

1 ~~Gellerson and Kavan Stoltenow, and if there's any~~
2 ~~others, I'm not really aware.~~

3 Q. (BY MR. NORTHCRAFT) Okay. What were they
4 doing that resulted in Matthew getting hurt?

5 A. I'm not 100 percent sure. Like all I know is
6 that they were just messing around after practice, just
7 tossing the ball around. What they did exactly, it's
8 so long ago, I can't really remember.

9 Q. When was it that he told you that he got hurt
10 after practice was over?

11 MS. CARTER: Object to the form.

12 A. He called me that night.

13 Q. (BY MR. NORTHCRAFT) And do you remember what
14 he told you on the phone that night?

15 A. Yeah.

16 Q. What did he tell you?

17 A. He just -- well, he told me like what they
18 did. Like he hit his head on something and like I -- I
19 told him -- I just told him that he needed to tell the
20 coaches because what happened to his friend, John Hein,
21 because he can't -- he could never play sports because
22 he had so many concussions. And then he said that he
23 was just going to take some medicine and just hopefully
24 it would get better in the morning. And then the
25 conversation just kind of ended there about that.

1 Q. When you told him that he needed to tell the
2 coaches that he hit his head on something, was he
3 reluctant to do so?

4 MS. CARTER: Object to the form.

5 A. Yeah. I think he -- I think he was kind of
6 scared to tell them because they're -- I don't know,
7 they were pretty cautious with John, one of his
8 friends, like he couldn't even step foot on a football
9 field without, you know -- so it was a big game and I
10 ~~don't think he wanted to risk the fact of sitting out.~~

11 Q. (BY MR. NORTHCRAFT) Okay. Did you -- do you
12 have any idea what he hit his head on after practice?

13 A. No.

14 Q. Did he tell you that when he hurt his head
15 practice was already over?

16 A. Yeah.

17 Q. Did you talk to him any more that evening?

18 A. No.

19 Q. Do you remember anything else that you talked
20 about during this phone call that you had with Matthew
21 during which he said that he had hurt his head after
22 practice was over?

23 A. No. Can you --

24 Q. Do you want me to repeat that?

25 A. Yeah.

1 A. My senior year at the beginning of fall when
2 he went to school for like a month or so. Or a couple
3 months. He was in like my English class. Like he went
4 back to school like after he graduated to like, I don't
5 know, just help further his learning I guess.

6 Q. Right.

7 A. And so like I saw him. We never talked,
8 though.

9 Q. Okay. Now, you said that -- let me double
10 back to the two general subjects that you talked with
11 the lawyers about and Mr. and Mrs. Newman. You said
12 that you talked about the incident. Is there anything
13 that you talked about with them that you haven't told
14 me about?

15 A. Just the incident. I'm trying to think
16 what --

17 Q. Take your time.

18 A. -- all was said.

19 I'm not 100 percent sure.

20 Q. Okay. Nothing comes to mind at this point?

21 ~~A. JUST STUFF like what like he actually did,~~
22 because what I remember, I remember they said was a
23 little different than what they had heard from like
24 other players or whatever, and like I wasn't there so I
25 don't feel like I'm -- can really vouch for what

1 happened.

2 Q. Did they show you some statements? Did they
3 have you read some things?

4 A. No.

5 Q. Did they tell you that some of his friends had
6 said something different about his injury?

7 A. They didn't tell me this. I've heard through
8 like the grapevine that people have been saying
9 different things. But like what I remember -- the
10 reason why I remember it so well is because it was such
11 a big impact, it was something like I thought about all
12 the time.

13 Q. Right.

14 A. But...

15 Q. So you said that you remember that they, I'm
16 assuming you meant the two attorneys, said something
17 that was a little different and so I'm trying to figure
18 out what it is that they said that was different than
19 what Matthew had told you?

20 A. Well, what I thought he hit, because like
21 there's like track stuff on the football field and then
22 I thought he hit the goalpost honestly. And then I
23 think what really might have happened is that he hit
24 like some of the track equipment or something like
25 that. All I know is that like he was like I guess

1 ~~trying to catch a ball, smacked his head on something~~
2 ~~and then he thought he had like a minor concussion.~~
3 ~~And that's where all the headaches started coming in.~~
4 ~~And so what he actually hit his head on I'm not~~
5 ~~100 percent sure.~~

6 Q. You weren't there?

7 A. Yeah.

8 Q. You just know what he told you?

9 A. Yeah.

10 Q. And your understanding of what he told you was
11 that he was trying to catch a pass and hit his head on
12 a goalpost?

13 A. Uh-huh.

14 Q. Is that "yes"?

15 A. Yes.

16 Q. Now, you also said that you had -- you spoke
17 with the Newmans and their attorneys about your
18 relationship with Matthew.

19 Have you -- did you -- do you remember
20 speaking with them about anything that you and I
21 haven't talked about?

22 A. It was just more I guess on a personal basis.
23 Like did we talk a lot and like what did we usually
24 talk about. Stuff like that. If you would like me to
25 tell you, I can. We talked about sports most of the

1 time.

2 Q. Yeah. That's what you said earlier, yeah.

3 What I'd like to know is what you recall
4 telling the Newmans and their attorneys, if you haven't
5 already told me already. Is there anything else that
6 you remember talking about with them about your
7 relationship?

8 A. Not that I can think of.

9 Q. Okay.

10 A. Nothing vitally important at all.

11 MR. NORTHCRAFT: That's all the
12 questions I have for now. Thank you.

13 EXAMINATION

14 BY MS. CARTER:

15 Q. Good afternoon, Lisa. Melissa Carter,
16 attorney for the Newmans. Nice to see you again.

17 A. Nice to see you.

18 Q. You started dating Matthew your freshman year
19 and this incident you've been talking about occurred
20 your sophomore year, correct?

21 A. Yes.

22 Q. Were you a cheerleader your freshman year as
23 well?

24 A. I was on drill. It's kind of like pre cheer.

25 Q. Okay.

1 very different. Are there any instances that you can
2 recall where you noticed Matthew's a different person
3 now after he came back from Seattle, any examples?

4 A. He like just didn't have the -- I don't know
5 how to say, like that macho personality. It was just
6 more very on the, I don't know how to explain this. He
7 was just very defensive, very -- like more
8 conservative, just not like, like a typical high school
9 boy. I don't know if that makes any sense.

10 Q. Sure.

11 ~~How often did the two of you talk on the phone~~
12 ~~while you were dating before his injury in the fall of~~
13 ~~2009???~~

14 A. It was almost every night. We talked on the
15 phone quite a bit.

16 Q. Okay. Did you both have cell phones?

17 A. Yeah.

18 Q. So you would talk on your personal cell phone?

19 A. Yeah.

20 Q. Typically how long did those evening phone
21 conversations last between the two of you?

22 A. Oh, probably about like an hour. Probably the
23 longest maybe two hours every night.

24 Q. So he would walk you to about three classes
25 during the school day, you two would see each other at

1 they were going to do, the drills they were going to
2 do.

3 Q. And you don't remember him telling you what
4 drills they ran?

5 A. No.

6 Q. He also told you about the guys on the team
7 when he was discussing practice. Which guys did he
8 talk about?

9 A. He talked about Tyler Hakala, Kavan Stoltenow,
10 Billy Gellerson. I mean, there's a lot of other guys
11 that he was like friends with. Those are just the
12 three that I remember specifically who he talked about.

13 Q. What did he tell you about each one?

14 A. That they were just, I don't know, they were
15 just messing around and stuff like after practice.
16 Tyler Hakala and Matthew were like kind of like similar
17 in like the football sense. And so Tyler's kind of
18 like the backup, and so, I don't know, he talked about
19 him a lot. I don't know if I answered your question.

20 Q. Well, during that conversation you had with
21 Matthew Thursday night, you said that he told you about
22 the drills they ran during practice and then he told
23 you about the guys on the team.

24 My question is: Which guys did he tell you
25 about and what did he tell you about them?

1 A. Those three guys and he -- honestly, he didn't
2 really care for Tyler too much. He was kind of -- like
3 they were kind of like two competitive people. I mean,
4 they were friends and so he usually talked about him a
5 lot. And then Billy and Kavan, they were just, I don't
6 know, I don't really know exact specifically what he
7 said about them. He just said that they were just
8 messing around after practice, the four of them. And
9 if -- anyone else, I'm not 100 percent sure on.

10 Q. You've used the term a few times "messing
11 around" after practice. What does "messing around"
12 mean in your mind?

13 A. Tossing the ball around. Like what guys do.
14 Like roughhousing, I guess.

15 Q. Okay. Did he tell you if this occurred while
16 the rest of the team was still on the field?

17 A. No. He said that people were like leaving,
18 people -- some people stayed, some people were just
19 kind of like scattering like after practice.

20 Q. Okay.

21 A. And that's it.

22 Q. Did he tell you what time this messing around
23 on the field occurred?

24 A. He said it happened like right after practice.

25 Q. Did he tell you whether any of the coaches

1 were still on the field?

2 A. No.

3 Q. Did he tell you who threw a ball that he was
4 trying to catch as they were messing around?

5 A. No. Well, he probably did. I'm just not
6 sure.

7 Q. And did he tell -- and it was your impression
8 that he hit a field goalpost. Where did you get that
9 impression?

10 A. I just thought that's what he told me.

11 Q. As you sit here today, do you recall him
12 telling you that he struck his head on the field
13 goalpost?

14 A. Yeah. Or I'm -- I'm -- I guess that's what I
15 assumed he told me.

16 Q. You say you assumed he told you that. Do you
17 actually recall him saying, I struck my head on the
18 field goalpost?

19 A. No.

20 Q. Was it your assumption because you assumed he
21 struck something?

22 A. Yeah.

23 Q. Okay. And he didn't tell you what he struck?

24 A. I'm pretty sure he told me what he struck.
25 It's just the fact of me paying attention probably

1 wasn't all that great.

2 Q. So do you not have a clear memory of him
3 telling you what he struck but you're pretty sure he
4 told you he struck something?

5 A. He told me he struck something with his head.
6 What it was, that's what I wasn't sure.

7 Q. And he was in the process of trying to catch a
8 ball when that happened, that's your recollection?

9 A. Yeah.

10 Q. And you do recall that Kavan was present while
11 this was going on?

12 A. Yeah.

13 Q. Per Matthew's conversation with you?

14 A. Yeah.

15 Q. And that Billy was present while this was
16 going on per Matthew's conversation with you?

17 A. Yeah.

18 Q. And that Tyler was present per his
19 conversation with you?

20 A. Yeah.

21 Q. Did he tell you whether anyone else was
22 present during his conversation with you?

23 A. Not that 100 percent sure of.

24 Q. Okay. And it was as people were leaving the
25 field at the end of practice when this happened?

1 A. Yeah.

2 Q. Did he tell you whether any coach came over
3 and talked to him after this incident where he struck
4 his head on something?

5 A. No.

6 Q. Did he tell you that he'd been tackled during
7 practice by an underclassman named Joe Scott that day?

8 A. No.

9 Q. And you said you don't recall specifically him
10 telling you about a tackle on this day. But he did
11 generally tell you about tackles when he would talk
12 about football?

13 A. Yeah.

14 Q. When he was telling you about the drills that
15 they ran during this Thursday night conversation, did a
16 tackle come up during this discussion with drills?

17 A. I'm not sure.

18 Q. Okay. And in fact, you don't remember what
19 drills he discussed with you?

20 A. No.

21 Q. So he may have mentioned tackle, but you don't
22 recall it today?

23 A. No.

24 Q. Okay. So he may have said it and you're not
25 recalling it?

1 A. Well, I mean, it comes up so frequently. I
2 mean, he always talked about being tackled. I mean he
3 had bruises all over his body, so if specifically he
4 said it that day I'm not 100 percent sure. He may
5 have. It's just been so long ago, I'm not 100 percent
6 sure on that specific day.

7 Q. Did he mention anything else to you during
8 this Thursday night conversation about what happened
9 during the practice?

10 A. No.

11 Q. Did he mention anything else about what
12 happened after practice during this conversation with
13 you Thursday night?

14 A. No.

15 Q. Did he mention anything else with you at all
16 during this conversation on Thursday night?

17 A. Like what do you mean?

18 Q. Was there anything else that the two of you
19 discussed during this telephone conversation on
20 Thursday night other than what you've already shared
21 with us?

22 A. No.

23 Q. Okay. And this conversation took about an
24 hour?

25 A. Yeah, about that.

1 practice?

2 A. No.

3 Q. You never approached Billy or Tyler or --

4 A. No.

5 Q. ~~or~~ or Kavan to talk about what happened while
6 ~~he~~ he was messing around Thursday night and the fact that
7 ~~he~~ he told you his head hurt?

8 A. I've told Billy about it. Me and Billy used
9 to date and I've told him my story, like what I
10 remember, and he's never corrected it.

11 Q. When did you date Billy?

12 A. 2011, well, let's see here. So at the
13 beginning of my junior year, so 2011 in the fall to
14 just all my junior year.

15 Q. So Billy would have been a senior that year?

16 A. Yep.

17 Q. Was Matthew in school that year as well?

18 A. I think he was part of the time.

19 Q. And when did you and Billy break up?

20 A. We broke up that summer, I want to say maybe
21 mid June maybe. Mid June, July. We were kind of on
22 and off throughout the summer.

23 Q. So fall of 2011 through summer of 2012?

24 A. Yep. Yes.

25 Q. Okay.

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF YAKIMA

MATTHEW A. NEWMAN, an)
incapacitated adult; and RANDY)
NEWMAN and MARLA NEWMAN, parents)
and guardians of said)
incapacitated adult,)
Plaintiffs,)

vs.

No. 12-2-03162-1

HIGHLAND SCHOOL DISTRICT NO.)
203, a Washington State)
government agency,)
Defendant.)



VIDEOTAPED DEPOSITION OF DUSTIN SHAFER,
taken on behalf of the defendant, at Hilton
Garden Inn, 12603 Mariposa Road, Conference Center,
Victorville, commencing at 10:14 a.m., Monday, September
16, 2013, before Diana L. Porter, Certified Shorthand
Reporter No. 12729.



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Messages Billy Gelferson Edit

Call FaceTime Contact

Hey coach, just wanted to say idk what you are hearing.. But we arnt attacking you. Me and the other players are honest to god saying what we remembered. I dont think that you did anything wrong. And you had no idea matthew had a headache. I dont want bad blood. I feel a loyalty to you coaches and wouldn't want u to think we were picking sides

Exhibit 3
D. Shafer
September 16, 2013
Diana L. Porter, CSR No. 12729

SHAFER 10



Send

FILED

Feb 12, 2014

Court of Appeals

Division III

State of Washington

No. 322238

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

**MATTHEW A. NEWMAN, an incapacitated adult; and RANDY
NEWMAN AND MARLA NEWMAN, parents and guardians of said
incapacitated adult,**

(Plaintiffs/Respondents)

v.

**HIGHLAND SCHOOL DISTRICT NO. 203, a Washington State
government agency,**

(Defendant/Petitioner).

Appeal from Superior Court of Yakima County

CERTIFICATE OF SERVICE

Mark S. Northcraft, WSBA #7888

Andrew T. Biggs, WSBA #11746

NORTHCRAFT, BIGBY & BIGGS, P.C.

819 Virginia St., Ste. C-2

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(206) 623-0229

Attorneys for Defendant/Petitioner

I, Michelle A. Tomczak, declare under penalty of perjury of the state of Washington, that the following facts are true and correct:

I am a citizen of the United States, over the age of 18 years, and not a party to or interested in the within-entitled cause. I am an employee of Northcraft, Bigby & Biggs, P.C., located at 819 Virginia Street, Suite C-2, Seattle, Washington 98101.

On February 12, 2014, I caused the following documents to be sent via email to Bridget.Lochell@courts.wa.gov, Commissioner's Administrative Assistant at Washington State Court of Appeals, Division III:

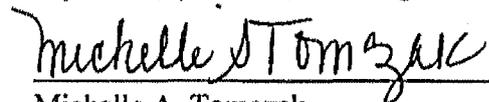
- School District's Reply Re: Emergency Motion for Partial Stay of Trial Court Discovery Proceedings and Motion for Discretionary Review

And served said document *via email* upon all counsel of record:

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DATED this 12th day of February, 2014, at Seattle, Washington.


Michelle A. Tomczak