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No. 95937-4

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

EDWARD KILDUFF, Appellant,

v.

SAN JUAN COUNTY, a Political Subdivision of the State of
Washington, and JAMIE STEPHENS, in his capacity as San Juan
County Council Member and San Juan County Public Records
Officer, Respondents.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR SKAGIT COUNTY
#16-2-00718-2

BRIEF OF RESPONDENT

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INTRODUCTION

Should requesters under the Public Records Act exhaust their available remedies with a responding agency before filing suit? Respondent San Juan County directs those requesting documents to notify the prosecuting attorney before suing the County for an allegedly faulty response.

Any person who objects to the denial of a request for a public record, the closure of a public records request or the reasonable estimate of the charges to produce copies of public records may petition for prompt review of such action by tendering a written request for review to the prosecuting attorney for the County.

SJCC 2.108.130(A) (Attached as Appendix A). The County does not make a final determination until “the prosecuting attorney has made a written decision, or until the close of the second business day following receipt of the written request for review of the action of the public records officer, whichever occurs first.” SJCC 2.108.130(C).

Appellant Edward Kilduff knew about the County’s procedures and intentionally bypassed them. As he conceded before the trial court, complying with the County’s regulations would have undermined another lawsuit he filed against the County. “I did not want to make any position or take a position in this case which would jeopardize what would happen in that case.” (RP 11/1/17 at 140).

Mr. Kilduff justifies this disregard by asserting “the County simply does not have the authority to add to the conditions that must be met before it can be sued by a requester.” (Opening brief at 23).

The Skagit County Superior Court disagreed, holding that because he never received a final decision, Mr. Kilduff’s suit was premature.

Plaintiff failed to comply with SJCC 2.108.030 by failing to seek review by the prosecuting attorney to obtain a final decision for purposes of judicial review. Because the County did not issue any final decision denying review of the requested records, Plaintiff’s claim that he was wrongly denied records under the PRA fails and there is no final decision for the court to review.

(Findings and Conclusions ¶ 7; CP 84) (Attached as Appendix B).

Respondent San Juan County respectfully requests the Court to affirm the Superior Court and dismiss this appeal.

I. RESTATEMENT OF ISSUES PRESENTED

Mr. Kilduff’s appeal presents two issues:

A. Under San Juan County Code (SJCC) 2.108.130, a person requesting public records must present any denial to the prosecuting attorney before filing suit under the Public Records Act. The trial court found that Mr. Kilduff failed to exhaust this administrative remedy and did not have a final decision for review. Did the trial court err?

B. Under CR 11, the trial court has discretion to sanction an attorney and a litigant for raising a frivolous claim, advanced without reasonable cause. State ex rel. Quick-Ruben v. Verharen, 136 Wn.2d 888, 903, 969 P.2d 64 (1998) (“standard of review regarding sanctions under the statute or rule is abuse of discretion”). Here, the trial court concluded that Mr. Kilduff and his attorneys violated CR 11. Did the trial court abuse its discretion?

II. STATEMENT OF FACTS

Under RAP 10.3(a)(5), the Statement of the Case in an opening brief should be “a fair statement of the facts and procedure relevant to the issues presented for review, without argument.” Mr. Kilduff instead provides allegations and his controverted version of events as facts. In section IV below, the County asks the Court to disregard the argument and unsupported assertions in Mr. Kilduff’s Statement. Here, the County briefly describes the facts based on the Superior Court’s findings. Since Mr. Kilduff did not assign error to any of them, they are verities on appeal. RAP 10.3(g); Yousoufian v. Office of Ron Sims, 168 Wn.2d 444, 450, 229 P.3d 735 (2010) (“facts found by the trial judge...are unchallenged and therefore are verities on appeal”).

A. The County Responded Promptly To Mr. Kilduff's Document Request

On May 20, 2015, Mr. Kilduff submitted a public records request to San Juan County's Department of Community Development and Prosecuting Attorney's office. (Findings and Conclusions ¶ 1; CP 78). He asked for two sets of documents:

Please provide copies of all documents, correspondence, memos, statements, reports, and other contents of the SJC DCD code enforcement file #PCI-INQ-15-0003.

Please provide copies of all documents, memos, statements, reports, correspondence, and other records associated with the investigation of improper governmental action, related to the above reference code enforcement file. (Hughes wetland issue, Mike Thomas investigation).

(Findings and Conclusions ¶ 1; CP 78-79).

The County acknowledged the request on May 26, 2015 and immediately began fulfilling it. On May 28, 2015, County Public Records Clerk Sally Rogers obtained the first set of documents – the code enforcement file #PCI-INQ-15-0003 -- and provided it to Mr. Kilduff. (Findings and Conclusions ¶ 4: CP 79). This satisfied the first part of the records request. (Findings and Conclusions ¶ 4: CP 79).

Satisfying the second part of the request occurred simultaneously. The improper governmental action (IGA) investigation resulted in a March 11, 2015 report from the Prosecuting Attorney Randall Gaylord, describing the allegations and related documents. The Code Enforcement Officer had placed some of these IGA documents in the code enforcement file. As the trial court found,

on the morning of May 20, 2015, certain items which had earlier been put in the code enforcement file by the Code Enforcement Officer had been segregated by Randall Gaylord's assistant into a separate file. At the time of the request, the code enforcement file no longer contained material concerning a report of Improper Governmental Action (IGA report) because that material had been removed and placed in a separately labeled personal file which was returned to the Code Enforcement Officer. Prosecuting Attorney Randall K. Gaylord, the official responsible for conducting investigations of improper governmental action, maintained the prosecutor's file on the IGA investigation. The file segregation was done by an assistant in the County's prosecuting attorney's office pursuant to the request of Sam Gibboney, San Juan County's Director of Community Development and Planning.

(Findings and Conclusions ¶ 3; CP 79).

On May 28, 2015, Prosecutor Gaylord spoke with Mr. Kilduff on the phone. He explained that the County had supplied a redacted copy of the March 11th report to another requester, and this final

report “identified the documents which Mr. Gaylord had relied upon and set forth the findings and conclusions concerning the IGA complaint.” (Findings and Conclusions ¶ 5; CP 79-80). Prosecutor Gaylord testified that Mr. Kilduff agreed to accept the redacted report and would contact the County if he wanted more documents. (Findings and Conclusions ¶ 5; CP 79-80). Mr. Kilduff denied making any agreement. (Findings and Conclusions ¶ 5; CP 80).

On June 12, 2015, the public records clerk sent the redacted report to Mr. Kilduff “in final response to your public records request received 5/20/15.” (Findings and Conclusions ¶ 6; CP 80). The clerk confirmed “it was agreed that the County would proceed with providing a copy of the final report redacted as done for the response to Ms. Albritton’s public records request.” (Findings and Conclusions ¶ 6; CP 80).

The clerk closed the email by stating that this fulfilled Mr. Kilduff’s document request.

This email response and attachment fulfills your public records request. If you have any questions related to this request or believe we should have provided additional documents, please let me know.

(Findings and Conclusions ¶ 6; CP 80). As the trial court found, Mr. Kilduff did nothing in response.

Mr. Kilduff did not contact San Juan County to follow up or request additional records concerning the IGA investigation. He did not contact Mr. Gaylord or Ms. Rogers in response to the invitation in her June 12, 2015 email. He did not express any dissatisfaction with the County's response or disagree with the description of the agreement reached with Mr. Gaylord. Mr. Kilduff waited 51 weeks until June 7, 2016, and then served this lawsuit.

(Findings and Conclusions ¶¶ 7; CP 80-81).

B. The Trial Court Dismissed Mr. Kilduff's Complaint For Damages.

On June 7, 2016, Mr. Kilduff sued San Juan County and County Council Member Jamie Stephens for violation of the Public Records Act and for Ouster. The County moved to dismiss Council Member Stephens, and on September 15, 2016, Skagit County Superior Court Judge Brian Stiles granted the motion, dismissing the claims with prejudice. (9/15/16 Order on Motion to Dismiss; Sub #41; CP __)*(Attached as Appendix C). The court reserved ruling on sanctions under CR 11 for filing frivolous claims. (9/15/16 Order on Motion to Dismiss at 2; Sub #41 CP __).

To address factual disputes over the County's response to Mr. Kilduff's record request, the trial court held show cause hearings on

* Respondent has filed a supplemental designation of clerk's papers and CP cites do not yet exist for these documents. The brief cites to the sub number to identify the document.

February 17, 2017, November 1, 2017, and November 8, 2017. (Findings and Conclusions at 2; CP 78). The court then dismissed Mr. Kilduff's complaint, concluding that he failed to exhaust his remedies under SJCC 2.108.130 before filing suit. As noted above, Mr. Kilduff purposely did not use the County's internal review procedures because he thought "doing so might jeopardize his position in this and other litigation which was pending between Mr. Kilduff and San Juan County." (Findings and Conclusions ¶ 8; CP 81).

Under SJCC 2.108.130, the County requires anyone objecting to denial of a document request to "tender a written request for review to the prosecuting attorney." SJCC 2.108.130(A). The prosecutor then has two days to affirm or reverse the denial. SJCC 2.108.130(B). At the end of two business days after submitting the request for review, the requester may sue under the Public Records Act. SJCC 2.108.130(C). However,

no lawsuit to review the action taken, compel the production of a public record, or impose a penalty or attorney fees shall be brought before the administrative remedies set out in this section have been exhausted by the party seeking the record.

SJCC 2.108.130(D).

Kilduff never submitted a written request for review to the prosecutor. “Because the County did not issue any final decision denying review of the requested records, Plaintiff’s claim that he was wrongly denied records under the PRA fails and there is no final decision for the court to review.” (Findings and Conclusions ¶¶ 7; CP 84). The court dismissed Mr. Kilduff’s complaint and awarded Council Member Stephens \$10,000 in sanctions under CR 11.

Mr. Kilduff appeals and has asked this Court for direct review.

ARGUMENT

III. STANDARD OF REVIEW

This Court reviews the trial court’s dismissal of the PRA claim de novo. Kittitas Cty. v. Allphin, 190 Wn.2d 691, 700, 416 P.3d 1232 (2018) (“we review challenges under the PRA de novo. RCW 42.56.550(3)”).

The Court reviews the trial court’s imposition of sanctions for an abuse of discretion. State ex rel. Quick-Ruben v. Verharen, 136 Wn.2d 888, 903, 969 P.2d 64 (1998) (“the appropriate standard of review regarding sanctions under the statute or rule is abuse of discretion”).

IV. THE COURT SHOULD DISREGARD THE IMPROPER AND IRRELEVANT ASSERTIONS IN MR. KILDUFF'S BRIEF

Before the Court is a legal question: does San Juan County have authority under the Public Records Act to enforce SJCC 2.108.130? Answering this question requires the Court to analyze the Act's structure, and in particular, whether the Legislature intended responding agencies to adopt and enforce rules for managing document requests. The Court's answer should not vary by the contents of a specific request. The ruling is the same whether Mr. Kilduff requested County records on wetlands, taxes, public works, or any other topic.

For this reason, much of Mr. Kilduff's opening brief is improper and irrelevant. He concedes that "this Court is presented with an entirely procedural question with respect to the ripeness of Mr. Kilduff's PRA claim", before devoting the next 10 pages of his Statement of Facts to argument. (Opening Brief at 3). For example, on page five of his brief he alleges that San Juan County Manager Mike Thomas is "indisputably unqualified to make such an evaluation as the existence of categorization of wetlands was reserved for professionals with specific scientific training per San Juan County Code 18.20.170." (Opening Brief at 5). This has nothing to do with

the County's process for responding to records requests. It also has no place in a Statement of Facts.

The same is true for Mr. Kilduff's attacks on the County Prosecutor, Randall Gaylord. As it did in Superior Court, the County objects to these unsupported assertions and asks the Court to disregard them. The County strongly disputes that the Prosecutor "sanitized" any files. (Opening Brief at 8, 11, and 12). But more importantly, the County asks the Court to give Mr. Kilduff's assertions no weight because they are irrelevant to the procedural issues in his appeal. Responding to his allegations point-by-point only suggests that they are somehow relevant.

The County respectfully requests the Court to disregard the argument in Mr. Kilduff's Statement of Facts and the claim that the County "sanitized" files or withheld documents from him. The issue is whether the County could reasonably rely on Mr. Kilduff to follow SJCC 2.108.130 and make a written request for review if he wanted more documents.

V. MR. KILDUFF'S LAWSUIT WAS PREMATURE.

The purpose of the Public Records Act is to facilitate disclosure, not to create lawsuits. The County adopted SJCC 2.108.130 to ensure its agencies produce all relevant documents, to

catch mistakes, and to prevent miscommunication over the scope and timing of disclosure. Had he followed the Ordinance, Mr. Kilduff would have received all the documents he requested or a written explanation why not. He chose to bypass this review process, depriving the County of its opportunity to complete its disclosure and rendering his lawsuit premature. The Skagit Superior Court correctly dismissed his case for failing to obtain a final decision.

In Hobbs v. State, 183 Wn. App. 925, 335 P.3d 1004 (2014), the Court of Appeals held that “under the PRA, a requester may only initiate a lawsuit to compel compliance with the PRA *after* the agency has engaged in some final action denying access to a record.” Hobbs v. State, 183 Wn. App. 925, 935–36, 335 P.3d 1004 (2014). Mr. Kilduff had to exhaust his administrative remedies under San Juan County’s code before seeking judicial review.

The role of exhaustion under the Public Records Act presents two legal issues for the Court. First, do agencies have authority to enact reasonable regulations governing production of documents under the Act? Second, does a requester’s failure to follow these regulations and obtain a final decision prevent judicial review? The Court appropriately answers both questions “yes”.

A. Agencies Have Authority To Adopt And Enforce Regulations Governing Document Disclosure

“The primary purpose of the PRA is to provide broad access to public records to ensure government accountability.” Kittitas Cty. v. Allphin, 190 Wn.2d 691, 701, 416 P.3d 1232 (2018). In the Act, the People through Initiative 276, established the rights of requesters and the obligations of responding agencies. But the details of responding to record requests fall to the agency itself. Recognizing this, the Act delegated authority to agencies like San Juan County to manage the mechanics of disclosure.

This delegation appears in three provisions. First, in RCW 42.56.040, the statute required local agencies to “prominently display and make available” rules of procedure and “substantive rules of general applicability adopted as authorized by law.” This presumes that agencies will adopt rules tailored to the jurisdiction and dedicated to full compliance. The County complied by adopting and publishing SJCC 2.108.130, governing review of any alleged denial of access to a document.

Second, in RCW 42.56.100, the Act authorized agencies to adopt reasonable regulations to expedite disclosure without jeopardizing the agencies’ substantive work.

Agencies shall adopt and enforce reasonable rules and regulations..., consonant with the intent of this chapter to provide full public access to public records, to protect public records from damage or disorganization, and to prevent excessive interference with other essential functions of the agency... Such rules and regulations shall provide for the fullest assistance to inquirers and the most timely possible action on requests for information.

RCW 42.56.100. The County in SJCC 2.108.130 fulfilled this requirement by describing how a requester receives a final decision from the County on a records request. The ordinance reinforces the Act by providing requesters with an additional tool to obtain records promptly.

Third, in RCW 42.56.520(4), the Act directed agencies to establish procedures to review decisions denying access to documents.

Agencies...shall establish mechanisms for the most prompt possible review of decisions denying inspection, and such review shall be deemed completed at the end of the second business day following the denial of inspection and shall constitute final agency action or final action...for the purposes of judicial review.

RCW 42.56.520(4). The County's review ordinance, SJCC 2.108.130, again satisfies this mandate by establishing a clear procedure for review within the two-day deadline.

The Act did not intend agencies to adopt regulations with no means to enforce them. The trial court's findings illustrate why the County and requesters both benefit from an enforceable mechanism for review. Judge Stiles found that the County responded quickly to Mr. Kilduff's May 20, 2015 request for the code enforcement file and the improper governmental action (IGA) file. (Findings and Conclusions ¶ 2; CP 79). The County produced the code enforcement file on June 2, 2015. (Findings and Conclusions ¶ 4; CP 79). On June 12, 2015, the County produced a redacted version of the IGA report. (Findings and Conclusions ¶ 6; CP 80).

The parties' dispute arises from what happened next. In her June 12, 2015 email to Mr. Kilduff, Public Records Clerk Sally Rogers instructed him that "this email response and attachment fulfills your public records request." (Findings and Conclusions ¶ 6; CP 80). The responsibility was Mr. Kilduff's to request more. "If you have any questions related to this request or believe we should have provided additional documents, please let me know." (Findings and Conclusions ¶ 6; CP 80).

This corresponded with Prosecutor Gaylord's understanding that Mr. Kilduff would contact the County after reviewing the IGA report. (Findings and Conclusions ¶ 5; CP 79-80). Had he wanted

more in response to his document request, Mr. Kilduff could ask either Ms. Rogers or Prosecutor Gaylord and the County would provide more.

The County's review ordinance, SJCC 2.108.130, reinforced the County's willingness to do more *once Mr. Kilduff asked*. If Mr. Kilduff genuinely believed that the County had denied his request, or was withholding documents, he had a powerful administrative remedy. "Any person who objects to the denial of a request for a public record may petition for prompt review of such action by tendering a written request for review to the prosecuting attorney for the County." SJCC 2.108.130(A). The Prosecutor then had two days to either affirm or reverse the denial. SJCC 2.108.130(B). This procedure resolves any misunderstandings immediately – at the local level without the need for judicial intervention.

The County therefore could reasonably rely on Mr. Kilduff to come back if he wanted additional information about the IGA file. When he did not, the County concluded it had satisfied the request. But the County did not, either in practice or under the law, make a final decision denying him records.

B. Mr. Kilduff's Failure To Comply With SJCC 2.108.130 Prevented The County From Making A Final Determination

This Court requires litigants to exhaust their administrative remedies for good reason.

[T]he doctrine of exhaustion: (1) insure[s] against premature interruption of the administrative process; (2) allow[s] the agency to develop the necessary factual background on which to base a decision; (3) allow[s] exercise of agency expertise in its area; (4) provide[s] a more efficient process; and (5) protect[s] the administrative agency's autonomy by allowing it to correct its own errors and insuring that individuals were not encouraged to ignore its procedures by resorting to the courts.

Durland v. San Juan Cty., 182 Wn.2d 55, 68, 340 P.3d 191 (2014); S. Hollywood Hills Citizens Ass'n for Pres. of Neighborhood Safety & Env't v. King Cty., 101 Wn.2d 68, 73, 677 P.2d 114 (1984) (“doctrine of exhaustion of administrative remedies is well established in Washington”).

Here, Mr. Kilduff purposely failed to use an effective, immediate administrative remedy: file a written objection with the County Prosecutor. He argues instead that the County cannot require him to do so. (Opening Brief at 23). He is incorrect.

The County's Ordinance creates a timely process for obtaining a final decision, which the Act requires as a condition of

filing suit. Under RCW 42.56.550(1), judicial review exists for “any person having been denied an opportunity to inspect or copy a public record by an agency.” San Juan County never denied Mr. Kilduff the opportunity to inspect the IGA file. Had he asked for the complete file after receiving the IGA report, the County would have produced it.

A final decision is a necessary prerequisite to judicial review.

Under RCW 42.56.550(1), the superior court may hear a motion to show cause when a person has “been denied an opportunity to inspect or copy a public record by an agency.” Therefore, being denied a requested record is a prerequisite for filing an action for judicial review of an agency decision under the PRA. Although the statute does not specifically define “denial” of a public record, considering the PRA as a whole, we conclude that a denial of public records occurs when it reasonably appears that an agency will not or will no longer provide responsive records.

Hobbs v. State, 183 Wn. App. 925, 936, 335 P.3d 1004 (2014).

If a requester fails to receive a final denial, like Mr. Kilduff here, a lawsuit is premature and unauthorized.

The language in RCW 42.56.520 itself refers to “final agency action or final action.” Thus, based on the plain language of the PRA, we hold that before a requester initiates a PRA lawsuit against an agency, there must be some agency action, or inaction, indicating that the agency will not be providing responsive records.

Hobbs, 183 Wn. App. at 936. By purposely refusing to seek the Prosecutor's review, Mr. Kilduff never obtained a final decision from the County. His lawsuit for damages therefore had a missing piece: the County never refused his request for documents. If he wanted more, all he had to do was ask. Judge Stiles correctly dismissed his claim for damages.

In his opening brief, Mr. Kilduff argues that the County "denied" his request by not providing all the documents it had. (Opening Brief at 16) ("it is undisputed that Mr. Kilduff did not receive all the records that were responsive to his request"). But under RCW 42.56.080(2) and the comment Mr. Kilduff cites – WAC 44-14-04004 – the County can produce records in installments. The County's first installment, the redacted IGA report, did not contain the complete file but rather served as a summary and index for future supplements. Mr. Kilduff had the ability to identify and request the next set of documents when he was ready.

As Prosecutor Gaylord testified,

I asked [Mr. Kilduff] to communicate directly back with me since I was the holder of the [IGA] file, if there was anything else that he wanted from the file. I made it very clear that he would receive an index of most of the items from the file from reading the report, and that would give him a good idea if there was follow up.

(RP 2/17/17 at 55). This is not a denial. Doe L v. Pierce Cty., ___ Wn. App. 2d ___, 433 P.3d 838, 859 (2019) (“when an agency produces records in installments, the agency does not “deny” access to the records until it finishes producing all responsive documents”).

Next, Mr. Kilduff asserts that the Public Records Act preempts the County’s requirement that a requester file a written request for review with the Prosecutor before filing suit. He is incorrect for three reasons.

First, the Act expressly provides that agencies may ask for written requests for review of an initial denial. Under RCW 42.56.520(4), agencies “shall establish mechanisms for the most prompt possible review of decisions denying inspection, and such review shall be deemed completed at the end of the second business day following the denial of inspection and shall constitute final agency action.” The People, in adopting Initiative 276, directed agencies to create these review procedures to eliminate misunderstandings or miscommunication, and established that an agency decision becomes final only after the two-day review period expires.

Mr. Kilduff argues that this review is merely “internal”, not involving participation from the requester. (Opening Brief at 19). Yet

he later quotes from the Attorney General's model rule, WAC 44-14-080, which allows a person denied documents to "petition in writing (including email) to the public records officer for a review of that decision." (Opening Brief at 21). The only reasonable reading of RCW 42.56.520(4) is that agencies may create a review process for *requesters*, not simply for internal quality control. The County appropriately asks requesters to file a written petition if they feel the County has improperly denied a record request.

The crux of the parties' disagreement is whether the County can require a written petition before a requester files suit. Mr. Kilduff argues that this Court in Progressive Animal Welfare Society v. University of Washington, 125 Wn.2d 243, 884 P.2d 592 (1994) foreclosed any requirement to exhaust administrative remedies. PAWS, 125 Wn. at 253 ("regardless of internal review, initial decisions become final for purposes of judicial review after 2 business days"). This overstates the Court's ruling.

In PAWS, the Court summarized the provisions of RCW 42.56.520 before concluding that the University of Washington could raise exemptions not mentioned in their letter denying inspection. It did not detail what the internal review would entail, nor did it construe

an ordinance properly adopted under RCW 42.56.100's rule-making authority.

Furthermore, the Court in PAWS had an unequivocal denial of documents. The University stated so in writing. Here, the County never denied Mr. Kilduff's request and was prepared to disclose more of the IGA file when he asked. Had he filed a written petition, the County would have immediately given more information and resume working with him to satisfy his request. (RP 2/17/17 at 54-55). Nothing was decided; nothing was denied.

Second, the County's review process reinforces, rather than conflicts with the Public Record Act. Under Mr. Kilduff's view of the Act, any conversation between agency and requester creates a two-day window. If the requester interprets a statement as a "denial" of the request, the agency has two days to somehow discover, review, and fix it. The requester has no responsibility to raise the issue or file an objection.

The County's review process requires both requester and agency to address miscommunication immediately – leading to the most efficient and comprehensive enforcement of the Act. Exhaustion of remedies does not excuse the County from any duty to requestors. It instead provides a uniform, effective mechanism for

a requester to raise and resolve problems without having to file a lawsuit.

This Court upholds and enforces administrative remedies for exactly this reason. Administrative review provides a more efficient process to resolve disputes and allows an agency to correct its own mistakes. Smoke v. City of Seattle, 132 Wn.2d 214, 226, 937 P.2d 186 (1997). If, through the administrative process, an agency corrects its earlier mistake, the problem is solved and judicial remedies are not ordinarily warranted. Brower v. Pierce County, 96 Wn. App. 559, 566, 984 P.2d 1036 (1999).

Third, a written petition triggers the Act's two-day review period. The County's ordinance does not expand the time allowed to cure an improper denial. Instead, it starts the clock definitively. By requiring Mr. Kilduff to use the County's review process, the Court reinforces the Act's procedural protections for requestors. Even if an agency had not denied a document request, a written petition forces the agency to immediately fulfill the request or defend the denial in court. It eliminates any ambiguity over what the requester wants and what the agency has provided.

In contrast, Mr. Kilduff's position would undermine any value to the County's regulations under RCW 42.56.100 and .520,

rendering them illusory. If a requester can disregard the County's requirement of a written request for review, then the Act's delegation of authority to agencies to adopt and publish procedures for disclosing records and reviewing denials has no meaning. Nowhere in Mr. Kilduff's brief does he recognize or discuss the authorization in RCW 42.56.100 for agencies to create reasonable, *binding* rules. As Judge Stiles concluded, Mr. Kilduff is not free to ignore the County's duly adopted ordinance requiring a written request for review.

VI. OUSTER IS A FRIVOLOUS, NON-EXISTENT CLAIM.

The Superior Court had compelling reasons to dismiss Mr. Kilduff's attempt to oust San Juan Council Member Jamie Stephens.

Mr. Kilduff is not and does not claim to be the San Juan County Prosecuting Attorney. Mr. Kilduff does not claim to hold any right or title to the position of San Juan County Council Member or San Juan County Public Records Officer.

(Findings and Conclusions ¶ 2; CP 82). This fact is important because it excludes Mr. Kilduff from bringing a *quo warranto* action.

The rule on standing to bring a *quo warranto* action in Washington state has not been altered or expanded since it was announced over 125 years ago in Mills v. State ex rel. Smith, 2 Wash. 566, 27 P. 560 (1891). In a more recent decision, State ex rel. Quick-Ruben v. Verharen, 136 Wn.2d 888, 969 P.2d 64 (1998), the court of appeals [Supreme Court] affirmed CR 11

sanctions and RCW 4.84.185 costs against the plaintiff and his counsel for filing a *quo warranto* action where the plaintiff could not claim a right or title to the challenged office and therefore lacked standing.

(Findings and Conclusions ¶ 5; CP 82).

Because “even a minimal inquiry into the facts of this case would reveal that Plaintiff lacks standing”, the Superior Court imposed \$10,000 in sanctions under CR 11. (Findings and Conclusions ¶ 4; CP 85). Mr. Kilduff and his counsel ask this Court vacate the sanctions, arguing “in 2016 when he filed this lawsuit, Mr. Kilduff was left with no option but to sue to seek court resolution of this clear conflict.” (Opening Brief at 34).

This Court should affirm the Superior Court’s decision for five reasons. First, Judge Stiles did not abuse his discretion. Throughout his opening brief, Mr. Kilduff fails to acknowledge, let alone satisfy, the high standard of review to reverse an order of sanctions.

In deciding whether the trial court abused its discretion, we must keep in mind that the purpose behind CR 11 is to deter *baseless* filings and to curb abuses of the judicial system. CR 11 is not meant to act as a fee shifting mechanism, but rather as a deterrent to frivolous pleadings. Courts should employ an objective standard in evaluating an attorney's conduct, and the appropriate level of pre-filing investigation is to be tested by inquiring what was reasonable to believe at the time the pleading, motion or legal memorandum was submitted.

Biggs v. Vail, 124 Wn.2d 193, 197, 876 P.2d 448 (1994) (citations omitted). Mr. Kilduff has not shown an abuse of discretion.

Second, there is no claim for “ouster” under Washington law, despite Appellant’s repeated assertions. (Opening Brief at 29) (“Mr. Kilduff’s *ouster claim* is based on the long-standing common law rule”). The case Mr. Kilduff cites – Kennett v. Levine, 50 Wn.2d 212, 310 P.2d 244 (1957) – concerned a writ of prohibition and nowhere mentions an ouster claim. The common law term “ouster” refers to a co-tenant asserting exclusive possession over a tenancy in common. Cummings v. Anderson, 94 Wn.2d 135, 145, 614 P.2d 1283, 1289 (1980) (“for ouster to exist, there must be an assertion of a right to exclusive possession”). Appellant’s confusion led directly to suing Council Member Stephens for a non-existent claim. (Complaint ¶ 60) (“Defendant Stephens...holds two incompatible offices and must be ousted from one of them”).

Third, Mr. Kilduff does not have standing to assert the correct claim: *quo warranto*. As the trial court found, even minimal research would disclose that he could not allege a *quo warranto* action.

Quick–Ruben failed to show any *special interest* in the office of Pierce County superior court judge. Having failed to establish such special interest, he has thus failed to meet his burden to sustain the private *quo warranto* action he chose to pursue.

State ex rel. Quick-Ruben v. Verharen, 136 Wn.2d 888, 900, 969 P.2d 64 (1998). Mr. Kilduff had no factual or legal basis to allege a special interest in Council Member Stephen's elective position. Despite this, he sued the Council Member and tried to remove him. (Complaint at 14; CP 14) ("Order Defendant Stephens to vacate his seat on the County Council").

Fourth, Mr. Kilduff's alleged "good faith" does not absolve his errors. A "mere citizen, a voter, or a taxpayer" has no right to maintain a *quo warranto* action. State ex rel Dore v. Superior Court, 167 Wash. 655, 658, 9 P.2d 1087 (1932); accord Mills v. State ex rel. Smith, 2 Wash. 566, 572-75, 27 P. 560 (1891). In his complaint, Mr. Kilduff sued Council Member Stephens for an alleged irreconcilable conflict between serving as Council Member and as Public Records Officer. (Complaint ¶ 4; CP 4). Yet the conflict did not exist, and furthermore, Mr. Kilduff had no legal right to sue Council Member Stephens to "vacate his seat." (Complaint at 14; CP 14). Naming Council Member Stephens as a party lacked any reasonable basis in law and violated CR 11. (Findings and Conclusions ¶ 1; CP 84) ("Mr. Stephens is not a property party to a claim under the Public Records Act").

Fifth, there are no grounds here to extend the scope of *quo warranto*. As the trial court concluded,

Plaintiff cites a 2016 Attorney General's Opinion and Kennett v. Levine, 50 Wn.2d 212, 310 P.2d 244 (1957), for the proposition that *quo warranto* standing should be expanded. These documents do not suggest that *quo warranto* standing should be expanded, rather, they recognize that non-judicial remedies may exist to allow the removal of an appointed official and acknowledge the standing limitations inherent in a private *quo warranto* action. The argument that *quo warranto* standing should be broadened is frivolous and advanced without reasonable cause.

(Findings and Conclusions ¶ 5; CP 85).

Appellant makes the same flawed arguments in his Opening Brief. They deserve the same response from this Court.

VII. Mr. Kilduff Does Not Deserve An Award Of Reasonable Attorneys' Fees.

Only a prevailing party can qualify under the Public Records Act for an award of reasonable attorneys' fees. RCW 42.56.550(4). Here, Mr. Kilduff fails to prevail on his claim that the trial court erred. Even if this Court reverses the trial court, the merits of Mr. Kilduff's claim remain undecided. The trial court on remand should decide whether an award is appropriate.

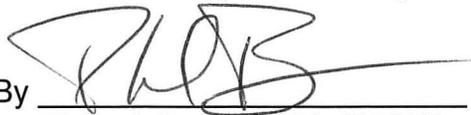
CONCLUSION

The Public Record Act provides a powerful tool for citizens to review the workings of State and local government. It also imposes substantial liability if an agency incorrectly denies access to a document. To reduce the chance of miscommunication or an incorrect denial, Respondent San Juan County requires its Prosecuting Attorney to review all alleged denials before they become final. The County's Ordinance reinforces the remedies in the Act and ensures the prompt disclosure of requested records.

Plaintiff Edward Kilduff bypassed the County's process and filed suit before receiving a final decision. The consequence of Mr. Kilduff's choice is that his lawsuit was premature. San Juan County respectfully requests this Court to affirm the Skagit County Superior Court and dismiss this appeal.

DATED this 21st day of March, 2019.

RANDALL K. GAYLORD
San Juan County Prosecuting Attorney

By 

Philip J. Buri, WSBA #17637
Special Deputy Prosecutor
Buri Funston Mumford & Furlong
1601 F. Street
Bellingham, WA 98225
360/752-1500

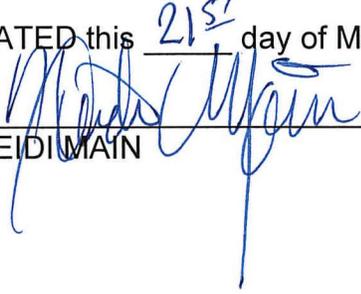
DECLARATION OF SERVICE

The undersigned declares under penalty of perjury under the laws of the State of Washington, that on the date stated below, I mailed or caused delivery of **San Juan County's Response Brief** to:

Nicholas Power
Attorney at Law
540 Guard St.
Friday Harbor, WA 98250-8044

Michele Lynn Earl-Hubbard
Allied Law Group, LLC
PO Box 33744
Seattle, WA 98133-0744

DATED this 21ST day of March, 2019.



HEIDI MAIN

2.108.130 Administrative review of actions by public records officer.

A. Any person who objects to the denial of a request for a public record, the closure of a public records request or the reasonable estimate of the charges to produce copies of public records may petition for prompt review of such action by tendering a written request for review to the prosecuting attorney for the County. The written request shall specifically refer to the written statement by the public records officer or other staff member which constituted or accompanied the action taken.

B. Immediately after receiving a written request for review of a decision of the public records officer, the prosecuting attorney shall request a response from the public records officer or other person who responded to the request. The prosecuting attorney will immediately consider the matter and either affirm or reverse such action within two business days following the receipt of the written request for review of the action.

C. Administrative remedies shall not be considered exhausted until the prosecuting attorney has made a written decision, or until the close of the second business day following receipt of the written request for review of the action of the public records officer, whichever occurs first.

D. For purposes of the public disclosure laws, the action of the public records officer becomes final only after the review conducted under this section has been completed. No lawsuit to review the action taken, compel the production of a public record, or impose a penalty or attorney fees shall be brought before the administrative remedies set out in this section have been exhausted by the party seeking the record. (Ord. 14-2017 § 4; Ord. 9-2015 § 8; Ord. 6-2005 § 13)

APPENDIX B

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SKAGIT COUNTY, WASH
FILED

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MAVIS E. BETZ, CO. CLERK
Deputy

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

EDWARD KILDUFF,

Plaintiff,

vs.

SAN JUAN COUNTY, a political subdivision of
the State of Washington, and JAMIE STEPHENS
in his capacity as San Juan County Council
Member and San Juan County Public Records
Officer,

Defendants.

NO. 16-2-00718-2

FINDINGS OF FACT, CONCLUSIONS
OF LAW, JUDGMENT, AND ORDER
DISMISSING PUBLIC RECORDS ACT
CLAIMS AND GRANTING JAMIE
STEPHENS' MOTION FOR
SANCTIONS AND COSTS

I. JUDGMENT SUMMARY

JUDGMENT CREDITOR..... San Juan County

JUDGMENT DEBTOR..... Nicholas E.D. Power, Michele Earl-Hubbard, and Edward Kilduff

PRINCIPAL JUDGMENT AMOUNT.....\$0.00

INTEREST TO DATE OF JUDGMENT..... N/A

ATTORNEY'S FEES.....\$10,000.00

COSTS.....N/A

OTHER RECOVERY AMOUNT.....N/A

Attorney's fees, costs and other recovery amounts shall bear interest at 12% per annum.

ATTORNEY FOR JUDGMENT CREDITOR.....Jonathan W. Cain, Dep. Pros. Attorney

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER
DISMISSING PUBLIC RECORDS ACT CLAIMS - 1

Cause No.: 16-2-00718-2

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II. INTRODUCTION

This matter came on for hearing on September 15, 2016 under the Public Records Act ("PRA") and Defendant Jamie Stephens' motion to dismiss the ouster claim and to dismiss Mr. Stephens as a party and motion under CR 11 and RCW 4.84.185 for an award of expenses and attorney fees in opposing the ouster claim set forth in Plaintiff's complaint. At the conclusion of the September 15, 2016 hearing the Court entered an order granting Jamie Stephens' motion to dismiss the ouster claim and to dismiss Mr. Stephens as a party and reserved ruling on the remaining issues. The Court held a show cause hearing to receive evidence and testimony offered by the parties on the PRA claims on February 17, 2017; November 1, 2017; and November 8, 2017.

Defendant San Juan County appeared through Special Deputy Prosecuting Attorney Jeff Myers, Defendant Jamie Stephens appeared through Deputy Prosecuting Attorney Jonathan W. Cain, and Plaintiff Edward Kilduff appeared through attorneys Nicholas E.D. Power and Michele Earl-Hubbard. The court considered the evidence and testimony offered together with the pleadings and briefing filed in the action and the oral argument of the parties' counsel.

The Court issued a written decision dated December 7, 2017. Based on the arguments of Counsel and the evidence presented, the Court finds:

III. FINDINGS OF FACT

A. Public Records Request Dated May 20, 2015

1. Plaintiff Edward Kilduff made a public records request to Defendant San Juan County on May 20, 2015. The records request contained two parts, seeking:

- a. Please provide copies of all documents, correspondence, memos, statements, reports and other contents of the SJC DCD code enforcement file #PCI-INQ-15-0003

1 b. Please provide copies of all documents, correspondence, memos, statements, reports
2 and other records associated with the investigation of improper governmental action,
3 related to the above referenced code enforcement file. (Hughes wetland issue, Mike
Thomas investigation).

4 2. San Juan County timely responded to Plaintiff's records request on May 26, 2015, three
5 business days after the request was made, by acknowledging its receipt and providing an estimate of
6 time for its response.

7 3. On the morning of May 20, 2015, certain items which had earlier been put in the code
8 enforcement file by the Code Enforcement Officer had been segregated by Randall Gaylord's assistant
9 into a separate file. At the time of the request, the code enforcement file no longer contained material
10 concerning a report of Improper Governmental Action (IGA report) because that material had been
11 removed and placed in a separately labeled personal file which was returned to the Code Enforcement
12 Officer. Prosecuting attorney Randall K. Gaylord, the official responsible for conducting investigations
13 of improper governmental action, maintained the prosecutor's file on the IGA investigation. The file
14 segregation was done by an assistant in the County's prosecuting attorney's office pursuant to the
15 request of Sam Gibboney, San Juan County's Director of Community Development and Planning.
16
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18 4. On May 28, 2015, county public records clerk Sally Rogers obtained a copy of the code
19 enforcement file as it existed at the time of the request. What the County considers the code
20 enforcement file was provided to Plaintiff Kilduff on June 2, 2015 to satisfy the first part of Plaintiff's
21 records request. Plaintiff was informed to expect a response to the second part of his request,
22 concerning an improper governmental action investigation, within two weeks.
23

24 5. On May 28, 2015, Mr. Kilduff had a telephone conversation with Prosecuting Attorney
25 Randall K. Gaylord. Mr. Gaylord informed Mr. Kilduff that the County had recently redacted a final
26 IGA report and sent it to another requester, and that the document could easily be duplicated and sent to

1 Mr. Kilduff. The final IGA report identified the documents which Mr. Gaylord had relied upon and set
2 forth the findings and conclusions concerning the IGA complaint. Mr. Gaylord testified that Mr. Kilduff
3 agreed to proceed by accepting the final redacted IGA report (as sent to another requester) and that he
4 would contact Mr. Gaylord if additional records were desired. Mr. Kilduff testified that he was told by
5 Mr. Gaylord that he was being sent the final IGA report but denies there was any discussion that it
6 would be in lieu of providing additional records.
7

8 6. Public Records Clerk Rogers sent Mr. Kilduff the final redacted IGA report on June 12,
9 2015, together with an email that summarized Mr. Kilduff's conversation with Mr. Gaylord. In her
10 email to Kilduff, she stated that:

11 In final response to your public records request received on 5/20/15 for the remaining document,
12 ("for copies of all documents, memos, statements, reports, correspondence and other records
13 associated with the investigation of improper governmental action, related to the above
14 referenced code enforcement file (Huges wetland issue, Mike Thomas Investigation)" per Randy
15 Gaylord he spoke to you by phone it was agreed that the County would proceed with providing a
16 copy of the final report redacted as done for the response to Ms. Albritton's public records
17 request.

18 Attached is a memorandum dated 3/11/15 from Randall K. Gaylord, RE: Report on IGA Report
19 dated January 21, 2015. The attachment has the name redacted of the person making the report
20 pursuant to RCW 42.41.030. The identity of a reporting person is to be kept confidential to the
21 extent possible under law, unless the employee authorized the disclosure of his or her identity in
22 writing. RCW 42.41.030(7).

23 This email response and attachment fulfills your public records request. If you have any
24 questions related to this request or believe we should have provided additional documents,
25 please let me know.
26

7. Mr. Kilduff did not contact San Juan County to follow up or request additional records
concerning the IGA investigation. He did not contact Mr. Gaylord or Ms. Rogers in response to the
invitation in her June 12, 2015 email. He did not express any dissatisfaction with the County's response

1 or disagree with the description of the agreement reached with Mr. Gaylord. Mr. Kilduff waited 51
2 weeks until June 7, 2016, and then served this lawsuit.

3 8. During the 51 weeks following the County's June 12, 2015 public records response, the
4 County deposed Mr. Kilduff in a separate action about his failure to use the administrative review
5 procedure set forth in Section 2.108.130 of the San Juan County Code. Following the deposition, the
6 County moved for dismissal of that action. The motion to dismiss was granted in May 2016 by Judge
7 Eaton in *Kilduff v. San Juan County*, San Juan County No. 15-2-05073-8. Mr. Kilduff was aware that
8 San Juan County Code 2.108.130 required him to seek review by the prosecuting attorney and that
9 failure to do so was grounds for dismissal of a lawsuit. Despite his knowledge of this administrative
10 remedy, Mr. Kilduff failed to seek administrative review of the County's June 12, 2015 public records
11 response. Mr. Kilduff did not use the internal review procedure because of his belief that doing so might
12 jeopardize his position in this and other litigation which was pending between Mr. Kilduff and San Juan
13 County.
14
15

16 B. Sanctions And Costs

17 1. The complaint filed by Mr. Kilduff in this matter states that it is a "Complaint for
18 violation of the public records act and for ouster." The *quo warranto* or "ouster" claim is filed against
19 Defendant Jamie Stephens, who was sued in his official capacity as a member of the San Juan County
20 Council and as San Juan County Public Records Officer. The complaint stated that Mr. Stephens held
21 the position of San Juan County Council Member and San Juan County Public Records Officer and
22 requested that Mr. Stephens be ordered to "vacate his seat" on the San Juan County Council.
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1 required to be completed within two business days of a denial and constitutes final agency action for
2 purposes of judicial review.

3 2. San Juan County has duly adopted an ordinance providing such a mechanism in SJCC
4 2.108.130, which requires:

5
6 A. Any person who objects to the denial of a request for a public record may petition for
7 prompt review of such action by tendering a written request for review to the prosecuting
8 attorney for the County. The written request shall specifically refer to the written
9 statement by the public records officer or other staff member which constituted or
10 accompanied the action taken.

11
12 B. Immediately after receiving a written request for review of a decision of the public
13 records officer, the prosecuting attorney shall request a response from the public records
14 officer or other staff member denying the request. The prosecuting attorney or his or her
15 designee will immediately consider the matter and either affirm or reverse such denial
16 within two business days following the receipt of the written request for review of the
17 denial of the public record.

18
19 C. Administrative remedies shall not be considered exhausted until the prosecuting
20 attorney has made a written decision, or until the close of the second business day
21 following receipt of the written request for review of the action of the public records
22 officer, whichever occurs first.

23
24 D. For purposes of the public disclosure laws, the county shall have concluded a public record is
25 exempt from disclosure only after the review conducted under this section has been completed.
26 No lawsuit to review the action taken, compel the production of a public record, or impose a
penalty or attorney fees shall be brought before the administrative remedies set out in this section
have been exhausted by the party seeking the record.

3. Under SJCC 2.108.030, a person objecting to the denial of a records request is required to
use this administrative mechanism before the County's response is deemed "final" for purposes of
judicial review.

4. Agencies are authorized by the Public Records Act to adopt rules and regulations that
will govern its disclosure of public records. RCW 42.56.040(1). RCW 42.56.100 authorizes agencies to
adopt rules and regulations the statute authorizes agencies to "adopt and enforce reasonable rules and
regulations ... to provide full public access to public records, to protect public records from damage or

1 disorganization, and to prevent excessive interference with other essential functions of the agency.”

2 Failure to follow the agency's rules for obtaining records relieves the agency of the duty to provide the
3 requested record.

4 5. SJCC 2.108.030 is a local regulation that is consistent with the provisions of the Public
5 Records Act and requires the County to complete its review within the two-day time period established
6 by RCW 42.56.520. It does not conflict with state law and was validly enacted pursuant to the authority
7 granted to local agencies by the Public Records Act in RCW 42.56.040 and RCW 42.56.100.

8 6. RCW 42.56.520 was interpreted in *Hobbs v. State*, 131 Wn. App. 925, 936, where the
9 court held:

11 The language in RCW 42.56.520 itself refers to “final agency action or final action.”
12 Thus based on the plain language of the PRA, we hold that before a requester initiates a
13 PRA lawsuit against an agency, there must be some final agency action or inaction,
indicating that the agency will not be providing the requested records.

14 7. Plaintiff failed to comply with SJCC 2.108.030 by failing to seek review by the
15 prosecuting attorney to obtain a final decision for purposes of judicial review. Because the County did
16 not issue any final decision denying review of the requested records, Plaintiff’s claim that he was
17 wrongly denied records under the PRA fails and there is no final decision for the court to review.

18 B. Sanctions And Costs

19 1. Mr. Stephens is not a proper party to a claim under the Public Records Act. Plaintiff’s
20 counsel conceded that the public records claim was brought against defendant San Juan County only and
21 not against Mr. Stephens.

22 2. The proper and exclusive method of determining the right to public office is under the
23 *quo warranto* statute, Chapter 7.56 RCW. There are two types of *quo warranto* actions: a public action
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1 brought by the prosecuting attorney and a private action. In a private *quo warranto* action, the plaintiff
2 must plead some right or title in himself to the office in order to bring an action under the statute.

3 3. Because Mr. Kilduff is not a prosecuting attorney and does not claim to hold any right or
4 title to the position of San Juan County Council Member or San Juan County Public Records Officer,
5 reasonable inquiry by Mr. Kilduff's counsel would have shown that the argument that Mr. Kilduff had
6 standing to pursue claims for ouster against Jamie Stephens, advanced in the summons and complaint,
7 was not well grounded in fact nor warranted by existing law or a good faith argument for the extension,
8 modification or reversal of existing law.

9 4. Even a minimal inquiry into the facts of this case would reveal that Plaintiff lacks
10 standing because he is neither the prosecuting attorney nor entitled to any challenged office held by Mr.
11 Stephens. Where a plaintiff seeks to oust an elected official in a *quo warranto* proceeding in which the
12 plaintiff was neither the prosecutor nor able to show a special interest in the challenged office, CR 11
13 sanctions against the plaintiff and his counsel are warranted. *State ex rel. Quick-Ruben v. Verharen*, 136
14 Wn.2d 888, 969 P.2d 64 (1998).

15 5. Plaintiff cites a 2016 Attorney General's Opinion and *Kennett v. Levine*, 50 Wn.2d 212,
16 310 P.2d 244 (1957), for the proposition that *quo warranto* standing should be expanded. These
17 documents do not suggest that *quo warranto* standing should be expanded, rather, they recognize that
18 non-judicial remedies may exist to allow the removal of an appointed official and acknowledge the
19 standing limitations inherent in a private *quo warranto* action. The argument that *quo warranto*
20 standing should be broadened is frivolous and advanced without reasonable cause.

21 6. The claims set forth against Mr. Stephens in the Complaint in this matter were frivolous
22 and advanced without reasonable cause.
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1 7. Counsel for Plaintiff violated CR 11 and sanctions are warranted.

2 8. Expenses and attorney's fees were incurred by San Juan County in opposing the claims
3 set forth in the Complaint. Forty hours is a reasonable time in opposing the claims. Two hundred fifty
4 dollars (\$250.00) per hour is a reasonable rate.

5 **ORDER AND JUDGMENT**

6 Based on the Findings and Conclusions set forth above, it is hereby ORDERED, ADJUDGED, AND
7 DECREEED:

- 8
- 9 1. Plaintiff's claims under the Public Records Act are DISMISSED with prejudice.
 - 10 2. Jamie Stephens' motion for sanctions under CR 11 and costs under RCW 4.84.185 is
11 GRANTED.
 - 12 3. Pursuant to CR 11 and RCW 4.84.185 Defendant Jamie Stephens is hereby awarded and
13 shall have judgment for reasonable attorneys' fees and costs in the amount of \$10,000
14 payable to Defendant San Juan County, for which Nicholas E.D. Power, Michele Earl-
15 Hubbard, and Plaintiff Edward Kilduff are jointly and severally liable.

16
17 DONE IN OPEN COURT this ^{MAY - 8 2018} day of May, 2018.

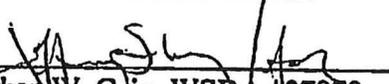
18 MAY - 8 2018

19 **DAVE NEEDY** For:

20 Hon. Brian L. Stiles, Judge

21 Presented by:

22 RANDALL K. GAYLORD
23 PROSECUTING ATTORNEY

24 By: 
Jonathan W. Cain, WSB #37979
25 Deputy Prosecuting Attorney
26 Attorney for Defendants

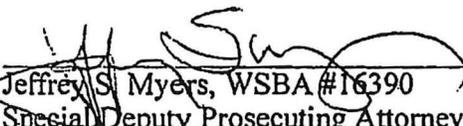
LAW, LYMAN, DANIEL, KAMERRER
& BOGDANOVICH, P.S.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER
DISMISSING PUBLIC RECORDS ACT CLAIMS - 10

Cause No.: 16-2-00718-2

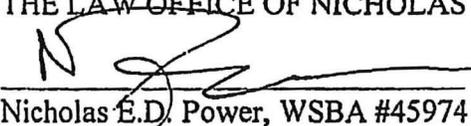
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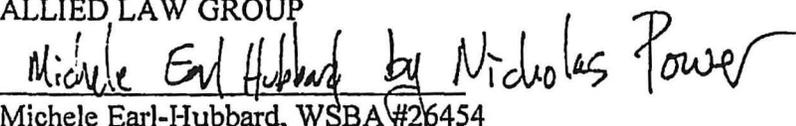

Jeffrey S. Myers, WSBA #16390
Special Deputy Prosecuting Attorney
Attorney for Defendants

Approved as to form:

THE LAW OFFICE OF NICHOLAS POWER


Nicholas E.D. Power, WSBA #45974
Attorney for Plaintiff

ALLIED LAW GROUP


Michele Earl-Hubbard, WSBA #26454
Attorney for Plaintiff

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER
DISMISSING PUBLIC RECORDS ACT CLAIMS - 11

Cause No.: 16-2-00718-2

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SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR SKAGIT COUNTY

EDWARD KILDUFF,

Plaintiff,

v.

SAN JUAN COUNTY and JAMIE
STEPHENS,

Defendants,

No. 16-2-00718-2

**ORDER ON DEFENDANT JAMIE
STEPHENS' MOTION TO DISMISS
AND MOTION FOR SANCTIONS
AND COSTS**

3

I. BACKGROUND

THIS MATTER came before this Court for hearing on SEPT 15, 2016. Defendants appeared by Deputy Prosecuting Attorney Jonathan W. Cain. Plaintiff appeared by his attorneys Nicholas E.D. Power and Michele Earl-Hubbard. The Court considered the pleadings in this matter and the arguments of the parties. At the conclusion of this hearing the Court made a verbal decision granting the relief requested by Jamie Stephens.

II. FINDINGS

Based on the arguments of counsel and the evidence presented, the court finds:

1. Reasonable inquiry by Plaintiff Edward Kilduff's counsel would have shown that the argument that Mr. Kilduff had standing to pursue claims for ouster against Jamie Stephens, advanced in the summons and complaint, was not well grounded in fact nor was it warranted by existing law or a good faith argument for the

ORDER ON DEFENDANT JAMIE STEPHENS MOTION
TO DISMISS IN PART - 1

SAN JUAN COUNTY PROSECUTOR
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TEL (360) 378-4101 • FAX (360) 378-3180

1 extension, modification or reversal of existing law.

2 2. Reasonable inquiry by Plaintiff Edward Kilduff's counsel would have shown that
3 the argument that Mr. Stephens is a proper party to a Public Records Act action,
4 advanced in the summons and complaint, was not well grounded in fact nor was it
5 warranted by existing law or a good faith argument for the extension, modification
6 or reversal of existing law.

7 ~~3. Counsel for Plaintiff violated CR 11 and sanctions are warranted.~~

8 4. The claims set forth against Mr. Stephens in the Complaint in this matter were
9 frivolous and advanced without reasonable cause. **IS RESERVED**

10 ~~5. Defendant Jamie Stephens incurred expenses and attorney's fees in opposing the~~
11 ~~claims set forth in the Complaint.~~

12 III. ORDER

13 Now, therefore, it is hereby ORDERED:

- 14 1. Defendant Jamie Stephens Motion to Dismiss for Failure to State a Claim and
15 ~~Motion for Sanctions and Costs~~ is GRANTED.
- 16 2. Defendant Jamie Stephens is DISMISSED with prejudice from the above-entitled
17 action.
- 18 3. All claims for ouster or incompatible offices as set forth in paragraphs 1, 4, and 56-
19 60 of the Complaint and in paragraph 1 of the relief sought are DISMISSED.
- 20 4. Pursuant to CR 11, plaintiff's Counsel Nicholas E. D. Power and Michele Earl-
21 Hubbard shall each pay Defendant Jamie Stephens' reasonable attorneys' fees in an
22 amount to be set at hearing on _____.

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~~5. Pursuant to RCW 4.84.185, Defendant Jamie Stephens is awarded attorney fees and costs to be paid by Plaintiff Edward Kilduff in an amount to be set at hearing on _____~~

DONE IN OPEN COURT this _____ day of Sept 2016.

[Signature]
SUPERIOR COURT JUDGE

Presented by:

RANDALL K. GAYLORD
PROSECUTING ATTORNEY

By: *[Signature]*
Jonathan W. Cain, WSBA #37979
Deputy Prosecuting Attorney

COPY RECEIVED APPROVED AS TO FORM:
THE LAW OFFICE OF NICHOLAS POWER

[Signature]
Nicholas E.D. Power, WSBA #45974

ALLIED LAW GROUP
[Signature]
Michele Earl-Hubbard, WSBA #26454
Attorneys for Plaintiff

ORDER ON DEFENDANT JAMIE STEPHENS MOTION
TO DISMISS IN PART - 3

SAN JUAN COUNTY PROSECUTOR
350.COURT STREET • P.O. BOX 760
FRIDAY HARBOR WA 98250
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BURI FUNSTON MUMFORD, PLLC

March 21, 2019 - 4:04 PM

Transmittal Information

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Appellate Court Case Title: Edward Kilduff v. San Juan County, et al.
Superior Court Case Number: 16-2-00718-2

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