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FILED
COURT OF APPEALS DIV. #1
STATE OF WASHINGTON
2010 JAN -7 PM 3:58

No. 63928-5-I

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

PETER LANGE, Plaintiff, Appellant

v.

FRANCIS WHELAN, Defendant, Respondent

ON APPEAL FROM THE SUPERIOR COURT OF THE STATE OF
WASHINGTON COUNTY OF KING

BRIEF OF RESPONDENT FRANCIS WHELAN

Attorney for Respondent:

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ORIGINAL

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I. STATEMENT OF ISSUES

1. Did the Trial Court err in dismissing Appellant's case on the basis of the defective summons?
2. Did the Trial Court err in finding the eviction of Francis Whelan to be retaliatory in nature?
3. Did the Trial Court err in finding Appellant in violation of CR 11?
4. Did the Trial Court err in refusing to hear Appellant's Motion to Censure?
5. Did the Trial Court err in awarding fees to Respondent?

II. STATEMENT OF THE CASE

Background factual information for the underlying case in the trial court is contained in the Declaration of Francis Whelan (CP 6-24), the Declaration of Jennifer Napier (CP 43-45), Reply to Plaintiff's Motion to Show Cause (CP 25-30), Defendant's Request for Dismissal and Sanctions (CP 31-37), Defendant's Motion and Declaration for Fees and Judgment (CP 48-73), and Defendant's Reply to Declaration of Raymond Walters (CP 141-146).

In summary, Respondent entered into a lease with the Appellant. Respondent exercised his rights under the Washington State Landlord Tenant Act (LTA) and demanded that landlord perform necessary repairs to the only bathroom in the rental unit. (CP 12) When the Appellant failed to make the repairs, Respondent exercised his legal rights again in sending a letter and withholding rent for the days that the repairs were not completed. (CP 14) Approximately 3 days after receiving Respondent's letter, the Appellant served him with legal paperwork to terminate the lease, pay or vacate the unit, and sue him for unlawful detainer. The actions of Appellant created a "presumptive retaliatory eviction" under the LTA and RCW 59.18.250.

Appellant filed a Note for Motion with the King County Superior Court for a Show Cause Hearing set for May 20, 2009. Appellant failed to file a Motion for Show Cause and failed to obtain a Show Cause Order fixing the time and location for the hearing as required by the Civil Rules. Appellant failed to serve the Respondent with any materials for the May 20, 2009 hearing as well. Respondent's only notice of the hearing was Appellant's handwritten note on the top of the Answer to Complaint along with a doodle of a man's hands and face peering around a corner.

The hearing set for May 20, 2009 was scheduled on the calendar heard by Commissioner Watness in the Ex-Parte Department of the King County Superior Court. Commissioner Watness refused to hear Appellant's motion due to Appellant's failure to comply with the Civil Rules. Commissioner Watness stated, "There are a number of issues, factual issues regarding this case but I'm not going to get to that point because you [Appellant] have to go through the steps properly to start with." (verbatim transcript 5/20/09 11:20-23). He went on to state, "I am not going to deal with any of the merits at this point, until, until the threshold steps have been met." (verbatim transcript 5/20/09 11:8-9). As a result of Commissioner Watness' decision not to render any order on the merits of the matter, a new Show Cause Hearing date was set for May 29, 2009 and Commissioner Watness assisted the Appellant in correctly submitting the Motion to Show Cause and Order for Show Cause. Commissioner Watness did however order the Appellant to provide the court and opposing counsel with a corrected Declaration of Service of the Summons and Complaint, a Declaration of Service of the 20 day Notice to Vacate, and to deliver ALL documents to opposing counsel and the court no later than Friday of that week (7 days before the new hearing date). (verbatim transcript 5/20/09 13:11-14, 21-26 and 16:7-9)

After the May 20, 2009 hearing in this matter, both parties stopped outside of W-325 to discuss this matter and the possibilities of resolution. Jennifer Napier was present during this conversation. Counsel for Respondent again attempted to explain to Appellant the idea of a “presumptive retaliatory eviction” and explain the difficulties for him to prevail in that situation. During this conversation, Appellant explained that he knew his actions were a retaliatory eviction under the Landlord Tenant Act and that he simply didn’t care. (See Dec. of Jennifer Napier, CP 43-45) Appellant made it very clear that he was angry with Respondent for sending him the March 31, 2009 letter forcing Appellant to make repairs to the rental. Appellant stated that he brought the underlying lawsuit to “teach [Francis Whelan] a lesson” after he tried to “act like the boss.” (CP 45:1-5)

After the conversation with Appellant, counsel for Respondent brought a Request for Dismissal and Sanctions to be heard on the same day as the newly noted Show Cause Hearing. As the May 29, 2009 hearing approached, Appellant failed to comply with the Order of Commissioner Watness from May 20, 2009. Appellant did correct the Declaration of Service but failed to draft or submit any Declaration of Service of the 20 day Notice to Vacate. Proof of service of the 20 day Notice is a required step in bringing an action for Unlawful Detainer.

Appellant also failed to comply with the timeline set by Commissioner Watness for submission of his documents. Appellant faxed his documents to counsel for Respondent on May 26, 2009, three days before the hearing, and failed to deliver any working copies to the court.

The May 29, 2009 Show Cause Hearing was held before Commissioner Bradburn-Johnson. The Commissioner began the hearing by addressing the lack of paperwork from Appellant. She stated, “First to make sure that I had everything from everyone and I had papers from Mr. Lange that included the original summons and complaint and that’s all I have received....So all right, so Mr. Lange you didn’t provide any kind of response to defendant’s request but you did receive the papers right? You received the papers but didn’t file a response? You didn’t file a response right?” (verbatim transcript 5/29/09 3:19-26) She also informed him that, “you have to give a working copy to the court if you want us to read it.” (verbatim transcript 5/29/09 4:17-18) Regarding the Declaration of Service of the 20 day Notice, the Commissioner asked, “So do you have any proof that this has actually been served? I see you’ve got a certified stamp....but do you have, there needs to go with, there needs to be something that goes with that. Do you have a statement that shows” (verbatim transcript 5/29/09 10:11-18) Appellant replied, “I do not have a declaration of service.” (verbatim transcript

5/29/09 10:20) Commissioner Bradburn-Johnson then stated, “to be honest with you I think there is a problem here in terms of Commissioner Watness had made it clear that there was supposed to be proof of service and that is one thing that we do look at pretty closely so that notice has not been provided.” (verbatim transcript 5/29/09 11:17-20)

Commissioner Bradburn-Johnson then attempted to hold the hearing and discuss the facts which became increasingly difficult to do given the Appellant’s failure to supply the court with any documents or evidence. The issue of Appellant’s lacking paperwork came to a head and the Commissioner essentially ended the argument portion of the hearing and began verbally issuing her order. She stated to the Appellant, “I recognize that you are pro se but frankly you are held to the same standard as any lawyer that practices here. Misunderstandings are not when a commissioner tells you that you need to have something in a week ahead of time you need to do it. He wasn’t kidding.” (verbatim transcript 5/29/09 29:13-18) The Appellant attempted to explain further but was stopped by the Commissioner saying, “And I don’t want a response. It’s now my turn to talk.” (verbatim transcript 5/29/09 29:22)

Commissioner Bradburn-Johnson went on to state that although there were significant factual issues with the claims made by Appellant,

there was no need to address those issues at that time because the Appellant's case failed on procedural issues. The Commissioner stated, "This summons is completely defective and on that basis your lawsuit fails and I am going to dismiss it." (verbatim transcript 5/29/09 30:25-26) Appellants summons failed to specify dates for response as required and failed to include information about responding by facsimile. The Commissioner pointed out, "Your summons is not sufficient for what you were trying to do here. You used an old summons and I'm not sure where you got it but the summons does not include, there has to be a specific date here. It's not good enough. This is an old one that says seven days from date of service, they used to be fine. But not anymore. The law changed about a year ago and it requires also that you include information about how you can be reached by fax if you have a fax number." (verbatim transcript 5/29/09 30:12-20) The Commissioner also determined that Appellant's eviction was retaliatory in nature. Accordingly, the Commissioner awarded attorney fees to Respondent under Section 12 of the lease, under the Washington State Landlord Tenant Act, and under CR 11 as the entirety of Appellant's action was frivolous and meant to harass the Respondent. (CP 124-125) Commissioner Bradburn-Johnson did reserve the amount of attorney fees and sanctions to be awarded as she requested a full fee statement from

counsel for Respondent and wanted to give the parties an opportunity to resolve the amount between themselves.

The parties were not able to resolve the amount owed for fees and sanctions however and another hearing had to be noted by Respondent for the court to make a determination. This hearing was noted for June 23, 2009 and Respondent requested a total of \$7,440.98 in fees and costs advanced. Appellant again failed to comply with the civil rules and faxed his responsive documents to the Respondent on June 22, 2009, the day before the hearing. At the June 23rd hearing, appellant requested a continuance of the hearing in order to obtain an expert witness by the name of Raymond Walters to enter a report on his opinion of the fees requested. The court granted Appellant's request for a continuance and the hearing on attorney fees and sanctions was continued to July 7, 2009. Included in the June 22, 2009 fax from Appellant was a Motion for Censure and for Sanctions. This motion did not include any substantiation and more importantly was not accompanied by a Note for Motion setting the hearing on the docket.

In preparation for the July 7, 2009 hearing, Raymond Walters did complete and deliver his report to counsel and the court in a timely manner as required by Commissioner Bradburn-Johnson. Appellant

however, failed to deliver any other materials to the court or to counsel for Respondent other than the report by Mr. Walters. Most notably, Appellant still failed to file and deliver a Note for Motion, placing his Motion for Censure on the docket for that day.

On July 7, 2009, the hearing to determine attorney fees and sanctions against the Appellant was held. Appellant's expert, Raymond Walters, suggested that fees be assessed against the Appellant in an amount of \$4,710. (CP 88) The Commissioner asked Appellant, "What is your view as to where the fee should be sent? And why?" (verbatim transcript 7/7/09 7:21) Appellant stated, "I think his fees should be \$800 based on what other lawyers charge." (verbatim transcript 7/7/09 7:23) The Commissioner then attempted to get Appellant to give a viable legal reason for his view that the fees should be so low. As Appellant spoke to the Commissioner, he again attempted to enter materials into evidence that had not been supplied to the opposing side and was stopped by the court. The Commissioner stated, "Well let me cut to the chase. I can't go below your own expert suggestion as to fees so I'm somewhere in between." (verbatim transcript 7/7/09 10:7-8) The Commissioner went on to say, "I'll give your expert testimony's some weight he says the total amount should be reduced to \$47, I'm not inclined to accept his total opinion I'll reduce it to \$6,000 plus the time spent today to argue

this motion.” (verbatim transcript 7/7/09 11:17-20) It was decided that 15 minutes had been spent arguing the motion and that Respondent was entitled to an additional 2 hours of time for responding to the Declaration of Raymond Walters. As the Order was being prepared for the Commissioner’s signature, Appellant asked, “Your Honor what about my motion for uh sanctions because I can show that the attorney lied in his declaration of facts?” (verbatim transcript 7/7/09 13:9-11) The Commissioner then pointed out to Appellant, “That’s not properly reported” as Appellant had failed to note his motion and place it on the docket for that day. (verbatim transcript 7/7/09 13:12) The Commissioner then entered an Order awarding Respondent a total of \$6,450 in fees against Appellant. Upon excusing the parties to the foyer area of the King County Superior Ex-Parte Department, Appellant wrote a check for the fees asking whether the check should be made out to “Son of a bitch”.

Throughout the entire time of the underlying case, Appellant also took multiple inappropriate actions against the Respondent. These actions include threats against the Respondent and other occupants of the rental unit, unfounded complaints to legal authorities against the Respondent, service of multiple summons and complaints, service of multiple 3 day Pay or Vacate notices (two of which occurred within 4

days after the court's dismissal of his lawsuit), stalking the Respondent by following him for days from his home to his work and other locations, committing defamation of character against the Respondent to his employers, and shutting off electricity to the living quarters of the rental unit while Respondent was still living there. These actions resulted in a temporary restraining order being issued by Commissioner Bradburn-Johnson against Appellant in favor of the Respondent. Commissioner Bradburn-Johnson also waived all of the fees for issuance of the restraining order as she was familiar with the inappropriate actions of the Appellant.

III. ARGUMENT

In his brief, Appellant fails to support his arguments and assignments of error with facts and fails to support them with evidence. The reason for this is that the only evidence that Appellant ever put before a Judge in this matter was the Declaration of Service of the Summons and Complaint, the Motion for Show Cause with no substantiation, the Order for Show Cause setting the time and place of the hearing, and the Declaration of Raymond Walters in regard to the request for fees. Appellant repeatedly failed to comply with the Civil Rules and as a result never managed to place any evidence supporting his case before a Judge. Accordingly, a majority of the materials attached to Appellant's Brief as

Exhibits were never admitted at the trial court and are inadmissible as evidence in this appeal.

The assignments of error propounded by Appellant are all clearly controlled by settled law in the favor of the Respondent and any decisions and orders that occurred in the trial court were clearly within the discretion of the trial court. Appellant has supplied no viable legal argument for the reversal of any portion of the decisions and orders entered by the trial court.

The Trial Court Did Not Err in Dismissing Appellant's Case for Defective Summons

Appellant asserts that the trial court erred in dismissing his action on the basis of the defective summons. It should be noted that the trial court also found the Appellant's eviction to be retaliatory which is sufficient grounds on its own for a dismissal of the action. However, regarding the defective summons, Appellant's argument centers around the purported "acceptance" of the summons by Commissioner Watness at the first hearing on May 20, 2009. The fallacy of this argument is that there was no first hearing with Commissioner Watness. Appellant had failed to file a Motion for Show Cause, had failed to obtain a Show Cause Order, and had failed to serve that Order upon the Respondent. The May

20th hearing before Commissioner Watness lasted only long enough for the Commissioner to explain that Appellant had not complied with the Civil Rules and that the Commissioner would not render any decision until the actual motion was properly set before the court. Commissioner Watness' only ruling that day was to order the Appellant to comply with the Civil Rules in noting the motion, submitting the required documentation, and providing all of his moving papers and substantiation to the court and opposing counsel in a timely manner.

The first properly set hearing in this matter was the May 29, 2009 hearing set before Commissioner Bradburn-Johnson. In that hearing the Appellant again failed to deliver any working papers to the court and thus the Commissioner was only able to review the Summons and Complaint and Respondent's Motion to Dismiss. The Commissioner reviewed the documents that were provided to her and dismissed the case on the grounds of the defective summons and retaliatory eviction. The summons was found to be defective in more ways than just the lacking fax number as Appellant argues. It was specifically pointed out that the summons also lacked the specific dates for response now required by the Civil Rules and as the Commissioner stated, "this Summons is completely defective. And on that basis alone this action fails." (verbatim transcript 5/2909 30:21-23)

Commissioner Bradburn-Johnson did also note the failure of Appellant to comply with the order made by Commissioner Watness. Appellant failed to draft and supply any form of proof that the 20 day Notice to Vacate was served upon the Respondent. Commissioner Watness had specifically ordered the Appellant to supply that proof because Appellant could not bring an action for Unlawful Detainer without first proving that the Notice to Vacate was received by the resident. Appellant's failure to provide that proof could also have been valid grounds for dismissing his action as he failed to comply with a court order and take the requisite steps to bring his action.

Appellant also failed to reply to Respondent's Motion to Dismiss set for that day. Appellant failed to send responsive documents to Respondent in a timely manner and failed to send any working papers to the court for the Commissioner to review. Appellant's failure to respond and failure to comply with the order issued by Commissioner Watness directly led to the dismissal of his action.

Given the Appellant's failure to comply with Commissioner Watness' order, his failure to respond to the Motion to Dismiss, his use of a defective Summons, and his failure to provide the court with proof of service of the 20 day Notice to Vacate, the trial court did not err in

dismissing this case. In fact, given the Appellant's failures and direct violation of Commissioner Watness' order, the court had no choice but dismissal. Appellant's assertion that Commissioner Watness "accepted" the defective summons carries no legal or factual weight and should be dismissed out of hand.

The Trial Court Did Not Err in Finding the Eviction Retaliatory

The trial court found that the Respondent validly exercised his rights under the Landlord Tenant Act when he sent his March 31, 2009 letter demanding repairs be completed in the bathroom of the unit and withholding rent for the time the repairs had not been completed. Within 4 days of the March 31, 2009 letter, Appellant sent a Notice of Intent to Terminate the Lease and a Summons and Complaint for Unlawful Detainer to the Respondent. The provisions of the Landlord Tenant Act under RCW 59.18.240 provide that the landlord is prohibited from taking a retaliatory action against the tenant when the tenant has lawfully asserted or enforced his rights as Respondent did in this matter. The subsequent provision under RCW 59.18.250 provides that any eviction initiated by the landlord within 90 days of tenant's assertion or enforcement of his rights is presumed to be retaliatory in nature. The burden of proof shifts to the landlord to show that the eviction is not retaliatory.

In this matter, Appellant began his eviction 4 days after Respondent asserted his rights. Under RCW 59.18.250, the eviction is presumed to be retaliatory and the Appellant had the burden of proof to show otherwise. This position then went one step further when the Appellant ADMITTED that the eviction was retaliatory. (CP 43-45) After the conversation with Appellant following the May 20, 2009 hearing with Commissioner Watness, this action changed for a presumptive retaliatory eviction to an actual retaliatory eviction.

The shifting of the burden of proof as required by RCW 59.18.250 meant that Appellant was required to submit sufficient proof at the May 29, 2009 hearing to show that his eviction was not retaliatory. Due to his failure to comply with the Civil Rules and his violation of the order of Commissioner Watness, Appellant provided absolutely zero admissible evidence to Commissioner Bradburn-Johnson to rebut the presumption of retaliatory eviction.

Given that the eviction by Appellant was not just presumed retaliatory but was actually retaliatory in nature and given the Appellant's failure to supply any evidence to the contrary, the court was forced to determine that the eviction was retaliatory and did not err in doing so.

The Trial Court Did Not Err Finding Appellant in Violation of CR 11

Once the eviction brought by Appellant was determined to be retaliatory in nature, the Appellant was automatically in violation of CR 11 for his actions in bringing the suit. Appellant also attempted to submit legal pleadings and declarations that were in violation of CR 11 as they were not well grounded in fact or existing law. It was clear from the facts before the court that the entirety of Appellant's case was frivolous in nature and done specifically with the intent to harass the Respondent.

This is not the first time that Appellant has been found to have violated CR 11 in the King County Superior Court. As recently as June 3, 2005, Judge Linda Lau found Appellant in violation of CR 11 in cause # 04-2-37786-2SEA. Appellant was sanctioned for fees in the amount of \$5,287 for practice of law without a license, issues involving malicious prosecution, and for bringing frivolous claims not well grounded in law or fact. Appellant is a serial filer and has filed approximately one lawsuit per year over the last decade in King County Superior Court and the US District Court alone. Every one of those lawsuits has been thrown out by the courts. Claims made by Appellant even include lawsuits against individuals for leaving negative feedback on EBay. In both of the lawsuits

regarding EBay, the courts threw out the suit before the named Defendant even answered or appeared.

Given the court's reoccurring dealings with Appellant's frivolous lawsuits, given Appellant's admission that this eviction proceeding was retaliatory in nature, and given Appellant's continuous failure to comply with court orders and the Civil Rules, the court no choice but to find Appellant in violation of CR 11 and did not err in doing so.

The Trial Court Did Not Err in Refusing to Hear Appellant's Motion to Censure

Appellant alleges that the trial court erred in refusing to hear his Motion for Censure. However, Appellant did not comply with the Civil Rules as he failed to note his motion on the docket and failed to provide working papers to the court. Given Appellant's failure to properly note the motion, the court had no authority to hear it. This was pointed out to Appellant by counsel for Respondent as well as the Commissioner when he stated, "That's not properly reported" in response to Appellant's question about whether his motion would be heard. (verbatim transcript 7/7/09 13:12)

Given Appellant's failure to comply with the Civil Rules and his failure to properly note his motion on the docket, the court had no authority to hear his motion and did not err in refusing to do so.

The Trial Court Did Not Err in Awarding Fees to Respondent

Appellant failed to comply with the Civil Rules through every single step of the eviction process. Appellant violated the court order issued by Commissioner Watness. Appellant admittedly brought a retaliatory eviction against the Respondent. Appellant failed to ever supply the court with documentation to substantiate his case against Respondent. The court was forced to award fees to Respondent given the continuing actions of the Appellant.

Respondent was awarded fees on THREE different bases. The first was Appellant's violation of CR 11 which was specifically admitted by him when he stated that his eviction was retaliatory and due to his failure to submit any evidence to the court to rebut the presumptive retaliatory nature of the eviction. The second basis for fees was the Washington State Landlord Tenant Act under RCW 59.18.250 which calls for the Respondent to recover costs and fees if he prevails. The third basis for attorney fees was the lease entered into by the parties which stated

under Section 12 that if litigation is instituted, the prevailing party is entitled to all reasonable costs and attorney's fees.

Any one of the three basis that attorney fees and costs were awarded would have allowed Respondent to recover from the Appellant. Even if Appellant was found NOT to have violated CR 11 and was found NOT to have violated the Landlord Tenant Act, his case was still dismissed due to his failures and attorney fees and costs would still have been due under Section 12 of the lease. Given the actions by the Appellant and language of the lease, the court had no choice but to award fees to Respondent and did not err in doing so.

IV. ADDITIONAL ATTORNEY FEES

The trial court in this matter, by finding that Appellant violated CR 11, determined that the entirety of Appellant's case was frivolous and done for improper purposes, that being to harass the Respondent. With the entirety of the underlying matter being deemed frivolous, inherently any appeal generated from that underlying matter is also frivolous in nature.

Appellant has taken the same approach to this appeal as he did in the underlying matter repeatedly failing to comply with the RAP's. This Court has been forced to send multiple notices to Appellant threatening

the dismissal of his appeal unless he complies with the rules in a timely manner. Appellant's actions even extend to filing a Designation of Clerk's Papers that completely omit any of the pleadings submitted by Respondent. Appellant has submitted a brief that includes documents and a significant amount of alleged facts that were not entered at the trial court. A number of Appellant's attached exhibits do not even match their counterpart filed in the underlying action. He has also asserted arguments in his brief that are not grounded in existing law (Acceptance of the Summons, etc).

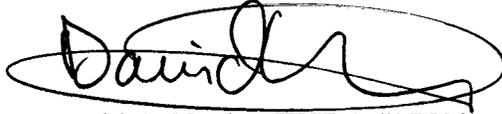
For Appellant's failures to comply with the RAP's and the inherently frivolous nature of his appeal, Respondent respectfully requests that this Court award additional attorney fees and costs above and beyond the fees and costs awarded by the trial court. Included with this motion is a Declaration of Attorney Fees submitted by counsel for Respondent.

V. CONCLUSION

Appellant fails to raise or substantiate any issues regarding the trial court's decision and order. For the foregoing reasons, the Respondent respectfully requests that this Court deny Peter Lange's Appeal, affirm the underlying Order of the Court, and enter an Award of Attorney's Fees to Respondent for having to defend the frivolous appeal.

DATED this 7th day of January, 2010.

DAVID A. NAPIER, PS

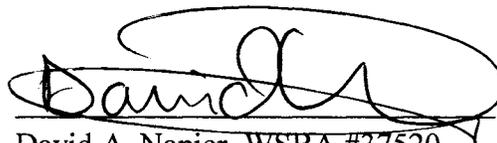
A handwritten signature in black ink, appearing to read "David", enclosed within a large, hand-drawn oval.

David A. Napier, WSBA #37520
Attorney for Respondent Francis Whelan

CERTIFICATION OF SERVICE

I certify that I mailed a copy of the foregoing Respondent's Appellate Brief to Peter J. Lange, Appellant, at 4085 Hillcrest Ave. SW, Seattle, WA 98116, postage prepaid, on January 7, 2010.

DAVID A. NAPIER, P.S.

A handwritten signature in black ink, appearing to read "David", enclosed within a large, hand-drawn oval.

David A. Napier, WSBA #37520
Attorney for Respondent

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

PETER J. LANGE,
Appellant,

v.

FRANCIS WHELAN,
Respondent.

SECOND DECLARATION OF
ATTORNEY FEES

David A. Napier, on oath declares:

I am Respondent's attorney on this appeal.

Every charge enumerated in the fees request was incurred responding to the pleadings filed by the Appellant. This required specialized knowledge of the particular issues involved in notice on unlawful detainer.

This took time and effort away from other clients, but if I had not responded, my client's interests would have been compromised.

I was admitted to the Washington State Bar and have been actively practicing law from 2006 to the present. My primary area of practice is civil litigation. I bill at \$200.00 per hour. This rate is reasonable and consistent with other attorneys in the area with similar levels of experience and skill.

I have represented Francis Whelan in this matter since May 12, 2009.

Attached hereto is a complete and true statement of the attorney fees incurred by Respondent on this appeal.

ORIGINAL

Also attached hereto is a complete and true statement of attorney fees incurred in the trial court.

Respondent asks for an award of attorney fees on this appeal in the sum stated at the bottom of page 3 of the ledger attached hereto.

The services rendered were necessary to presentation of this appeal.

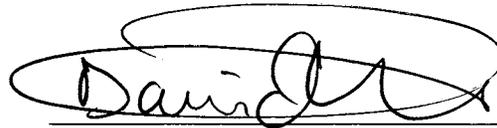
At least 4 hours of additional time was spent above and beyond the time listed in the statement for review of materials, meeting with Respondent, and review of appellate procedure. These additional hours are not being claimed at this time.

The hourly rate charged was \$200.00 for the period from May 12, 2009 to present.

I declare under penalty of perjury that the foregoing statements are true to the best of my knowledge, information, and belief.

Signed in Lynnwood, Washington, this 7th day of January, 2010.

DAVID A. NAPIER, PS



David A. Napier, WSBA #37520
Attorney for Respondent

CERTIFICATION OF SERVICE

I certify that I mailed a copy of the foregoing Declaration of Attorney Fees to Peter J. Lange, Appellant, at 4085 Hillcrest Ave. SW, Seattle, WA 98116, postage prepaid, on January 7, 2010.

DAVID A. NAPIER, P.S.



David A. Napier, WSBA #37520
Attorney for Respondent

Date	File #	Description	Time	Misc.
5/7/2009	2009.035	Draft Answers to both Complaints of Peter Lange. Draft letter to Plaintiff and mail both Answers to him for filing as requested. Mail out letter and Answers.	0.8	\$0.84 Postage
5/15/2009	2009.035	Review materials and claims made by Plaintiff. Research WA Landlord Tenant Act and Seattle Municipal Code for provisions relating to claims by Plaintiff.	1.7	
5/18/2009	2009.035	Draft Defendant's Reply to Show Cause Motion, Declaration of Francis Whelan, Declaration of David Napier, and Proposed Order. Multiple phone calls, emails, and drafts to complete the Declaration of Francis Whelan. Phone call to Plaintiff to confirm fax number and fax of all documents to Plaintiff as requested.	6	
5/19/2009	2009.035	File Defendant's Reply and Declarations of Whelan and Napier with the Court. Deliver Judge's working copies to the Judge's mailroom. Pull up court records and print copies of the Declaration of Service and other documents filed by the Plaintiff but not provided to Defendant or counsel.	1.5	\$1.75 Parking \$1.25 Copies
5/20/2009	2009.035	Show Cause hearing in King County Superior with Commissioner Watness. Hearing continued by Commissioner due to Plaintiff's failure to obtain Order to Show Cause, failure to provide proof of service of process, and failure to provide proof of service of Notice of Intent to Terminate Lease.	3.6	\$5.00 Parking
5/25/2009	2009.035	Draft Declaration of Jennifer Napier and Declaration of Elisio Perez.	1.2	
5/26/2009	2009.035	Draft Defendant's Request for Dismissal and Sanction against Plaintiff, Declaration of David Napier, and Proposed Order of Dismissal and Sanctions. Fax copies to Plaintiff.	4.2	
5/27/2009	2009.035	File Request for Dismissal and Declarations with the Court. Deliver Judge's working copies to the Judge's Mailroom. Research and print past case history for cases brought by Peter J. Lange in King County Superior Court and Federal Court.	2.2	\$4.25 Parking \$2.45 Copies
5/28/2009				

	2009.035	Review of Lange prior lawsuit materials and prep file and materials for hearing on 5/29.	0.5	
5/29/2009	2009.035	Show Cause hearing in King County Superior with Commissioner Bradburn-Johnson. Lawsuit dismissed by the Court. Verbal order that April 2009 rent withholding was valid under the LTA. Final order dismissing case without prejudice on basis of faulty summons. Additional order that eviction was found to be retaliatory and that Defendant is awarded fees under the lease, the LTA, and for violations of CR 11 by the Plaintiff. Mailed a copy of the Order to Plaintiff as requested by the Court.	4.3	\$5.00 Parking \$0.44 Postage
6/2/2009	2009.035	Phone call with Client regarding receipt of a 3-day pay or vacate notice from Plaintiff. Fax from Client with copy of notice received.	0.3	
6/3/2009	2009.035	Phone call and email with Client regarding new 3-day pay or vacate notice attached to front door of rental by Plaintiff. Fax from Client with copy of new 3-day notice. Client also indicates Plaintiff has turned off power. Draft and fax letter to Plaintiff regarding new notice.	1.8	
6/8/2009	2009.035	Phone calls and emails to client regarding actions of Lange. Issues regarding stalking and violations of civil rules. Draft and fax letter to Plaintiff after phone call.	1.2	
6/9/2009	2009.035	Phone calls with client regarding stalking/harrassment by Plaintiff. Advised client to contact Police who arrived and assigned incident # 09198718. Police said to call them if Plaintiff shows up again. Advised client to go to Court and secure a restraining/no-contact order on 6/10.	0.6	
6/12/2009	2009.035	Phone call with Plaintiff regarding settlement of fees issue.	0.3	
6/17/2009	2009.035	Draft Motion and Declaration for Award of Fees and Entry of Judgment against Plaintiff. Draft fee statement. Draft Proposed Order and Judgment against Plaintiff. Fax Motion and associated documents to Plaintiff. Deliver Originals and Working copies to the Court.	3.4	
6/23/2009	2009.035	[ESTIMATED] Attend 8:30 am Show Cause hearing on issuance of the Protection Order. Attend 9:00 am hearing on Motion for Attorney Fees and Judgment.	3.5	

		Total Hours Billed for File # 2009.035	37.1	\$20.98
			<u>X \$200</u>	Costs Adv
			\$7,420.00	
		Total Costs Advanced on File # 2009.035	<u>(+) \$20.98</u>	
		Total Charges for File #2009.035	\$7,440.98	
8/26/2009	2009.035	Receive and review Notice of Appeal from Lange. Review file and contact Francis Whelan. Draft and fax letter to Lange regarding appeal and violations of the RAP's.	1.2	
9/17/2009	2009.035	Draft and mail out Designation of Clerk's Papers for pleadings not included by Lange.	0.8	\$0.88 Postage \$69.00 Clerk's Papers
11/16/2009	2009.035	Review appellate materials (brief, transcripts, etc) from Lange and begin drafting Motion on the Merits.	4.5	
11/17/2009	2009.035	Finish review of materials and continue drafting Motion. Summary of Facts completed with revisions.	5	
11/18/2009	2009.035	Continue Drafting motion, majority of argument section completed with some revision and formatting still required.	2.3	
11/19/2009	2009.035	Complete Motion on the Merits, draft Declaration for Atty Fees, prep all materials for mailing on November 20, 2009.	3.5	
1/7/2010	2009.035	Draft Brief of Respondent. Copy, fax, and mail brief to Appellant and send for filing.	2	
	2009.035	Attend Oral Arguments on Appeal of Peter J. Lange. (estimated)	3	
		Total Hours Billed for File # 2009.035 [APPEAL]	22.3	\$69.88
			<u>X \$200</u>	Costs Adv
			\$4,460.00	
		Total Costs Advanced on File # 2009.035 [APPEAL]	<u>(+) \$69.88</u>	
		Total Charges for File #2009.035 [APPEAL]	\$4,529.88	