

66626-6

66626-6

No. 66626-6-1

**COURT OF APPEALS, DIVISION I  
STATE OF WASHINGTON**

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REBA WEISS, a single person,

*Respondent,*

v.

JUDITH A. LONNQUIST, a single person, and LAW OFFICE OF  
JUDITH A. LONNQUIST, PS, a Washington professional services  
corporation,

*Appellants.*

FILED  
COURT OF APPEALS DIV I  
STATE OF WASHINGTON  
2011 AUG 26 PM 2:41

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**BRIEF OF RESPONDENT**

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## TABLE OF CONTENTS

	<u>PAGE</u>
<b>I. INTRODUCTION</b>	1
<b>II. PROCEDURAL BACKGROUND</b>	4
<b>III. STATEMENT OF THE CASE</b>	4
<b>IV. ARGUMENT</b>	7
<b>A. Lonnquist Cannot use the Shield of the Attorney-Client Privilege to Keep from the Jury the Crime and Fraud that she and Jane Doe were Perpetuating on the Thurston County Superior Court and the University.</b>	7
<b>B. The Attorney-Client Privilege May Not be Used to Cover Up a Fraud nor May it Be Used as a Shield to Hide Information Which is an Integral Part of the Issues in the Litigation.</b>	10
<b>C. The Trial Court Correctly Sanctioned Lonnquist for her Stubborn and Contemptuous Refusal to Comply with the Court's Discovery Orders.</b>	12
<b>D. Throughout the Litigation, Judge González Exercised Sound, Reasoned Discretion on the Discovery and Contempt Issues before him.</b>	13
<b>E. The Trial Court Properly Denied Defendants Motion to Amend Which was Untimely, Prejudicial and Lacked Merit.</b>	15
<b>F. The Court's In Limine Ruling Allowing Lonnquist Portions of Reba's Medical Records at and after the Time of the Wrongful Discharge was an Appropriate Discretionary Balancing.</b>	16

<b>G. The Trial Court’s Instruction with Regard to Discharge in Violation of Public Policy was an Accurate Recitation of Washington Law as Well as the Public Policy Embodied in the Rules of Professional Conduct.</b>	17
<b>H. Judith A. Lonnquist is Liable for Her Own Actions in this Intentional Tort Both as a Principal and Agent.</b>	19
<b>I. There is No Other Remedy Available to Reba to Fully Address the Tort and Wrong Other Than the Claim for Wrongful Discharge in Violation of Public Policy.</b>	21
<b>J. The Court Did Not Err in Doubling the Jury’s Verdict for Wages Lost.</b>	22
<b>K. Reba is Entitled to Reasonable Attorneys Fees and Costs on Appeal.</b>	22
<b>V. CONCLUSION</b>	23

## TABLE OF AUTHORITIES

### Washington State Cases

<u>CASES</u>	<u>PAGE</u>
<i>Carson v. Fine</i> , 123 Wn.2d 206, 226, 867 P.2d 610 (1994)	17
<i>Department of Labor &amp; Industries v. Overnight Transportation Co.</i> , 67 Wn.App. 24. 34-38 (1992)	22
<i>Doe v. Puget Sound Blood Center</i> , 117 Wn.2d 772, 781-782, 819 P.2d 370 (1991)	10
<i>Eriks v. Denver</i> , 118 Wn.2d 451, 824 P.2d 1207 (1992)	9, 18
<i>Gaglidari v. Denny's Restaurants, Inc.</i> , 117 Wn.2d 426, 451, 815 P.2d 1362 (1991)	20
<i>Gardner v. Loomis Armored, Inc.</i> , 128 Wn.2d 931, at 945, 913 P.2d 377 (1966)	18
<i>Gillett v. Conner</i> , 132 Wn.App. 818, ¶7, 133 P.3d 960 (2006)	12
<i>Heidebrink v. Moriwaki</i> , 104 Wn.2d 392, 401, 706 p.2d 212 (1985)	12
<i>Hubbard v. Spokane County</i> , 146 Wn.2d 699, 50 P.3d 602 (2002)	18
<i>In Re: Marriage of Eklund</i> , 143 Wn.App. 207, ¶19, 177 P.3d 189 (2008)	13
<i>John Doe v. Blood Center</i> , 117 Wn.2d 772, 777, 819 P.2d 370 (1991)	13
<i>Johnson v. Harrigan-Peach Land Development Co.</i> , 79 Wn.2d 745, 753, 489 P.2d 923 (1971)	20, 21
<i>Pappas v. Holloway</i> , 114 Wn.2d. 198, 787 P.2d 30 (1990) BAP 19	10, 11

<i>Physicians Ins. Exch. V. Fisons Corp.</i> , 122 Wn.2d 299, 338, 858 P.2d 1054 (1993)	13
<i>State v. Brown</i> , 130 Wash.App 767, 124 P.2d 663 (2005)	18
<i>Weiss v. Lonquist</i> , 153 Wn.App. 502, 224 P.3d 787 (2009)	3, 7

**Court Rules & Statutes**

RPC 1.6(b)(2)	8
RPC 3.1	19
RPC 3.3(a)(1),(2),(3) and (4)(c),(d) and (e)	8, 19
RPC 3.3(c)	19
RPC 4.1	9, 19
RPC 8.4(a),(b),(c) and (k)	9
RAP 9.2	4
RAP 9.2(c)	4
RAP 18.1	22
RCW 9A.72.010(1)	19
RCW 9A.72.020	19
RCW 9A.72, et sec.	19

RCW 49.48.030	20
RCW 49.52.070	23

**Other Authorities**

<u>Washington Court Rules Annotated</u> , 2 <sup>nd</sup> Edition, p. 315 (2007)	9
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**APPENDIX ..... A-1**

Appendix A:	Complaint for Damages and Other Relief dated June 2, 2005 [CP 1295-1298]
Appendix B:	Fax coversheet from Jane Doe of November 29, 2004 to Judith Lonnquist with 4 pages attached dated November 28, 2004 entitled, “Attorney Questions.”. [CP 1284-1288]
Appendix C:	Memorandum from Lonnquist to Weiss RE: Employment dated August 20, 2007 [CP 1479]
Appendix D:	“Sliding Scale Schedule effective 8/20/07 – 9/18/07” dated August 20, 2007 [CP 1481]
Appendix E:	Letter from Michael Shamseldin, M.D., dated August 27, 2007 [CP 1112]
Appendix F:	Deposition of Jane Doe dated July 24, 2006, pgs. 1, 25-29, 47-48, and 53 [CP 1290-1293]

## I. INTRODUCTION

This is a case of significant public importance. The Appellants (hereinafter collectively “Lonnquist”) knew that their client, Jane Doe, had not been wrongfully terminated by a Washington university for failure to accommodate a disability or retaliation for requesting one, but rather because of valid bonafide employment reasons of Doe’s employer having nothing to do with disability. Doe and Lonnquist attempted to perpetuate a fraud in the underlying matter in the Thurston County Superior Court through perjurious and false testimony. They falsely claimed that Doe was terminated for refusal to provide an accommodation and in retaliation for requesting a disability accommodation from the University.

Lonnquist’s associate lawyer employee, Respondent Reba Weiss (hereinafter “Reba”) was asked by Lonnquist to defend against the University’s summary judgment motion of dismissal. When reviewing Doe’s file, Reba discovered material falsehoods inherent in the litigation that Lonnquist had brought in the Thurston County action on behalf of Jane Doe.

Reba found a fax from Doe to Lonnquist dated November 29, 2004. This fax from Doe **preceded** her request for an accommodation and contained the truth that Doe was aware that the University planned to

dismiss her for bonafide reasons, having nothing to do with Doe's disability. Since the University planned to dismiss her **before** she even requested an accommodation, her termination could not have been in retaliation for her accommodation request. CP 1281-1282.

When Reba discovered this document and squared it against the litigation that Lonquist had brought in Thurston County, Reba recognized that the complaint drafted and filed by Lonquist contained material falsehoods and that Doe had testified falsely at her deposition with Lonquist's knowledge. Indeed, Lonquist herself made misleading and false statements in the course of the deposition. CP 1281-1282.

Reba explored the ethical quandary she found herself in with several ethics experts, including the WSBA ethics hotline and University of Washington Law School Professor, Thomas Andrews. They and Reba correctly concluded that she could not professionally or ethically work on the matter as it would perpetuate a lie and a blatant misrepresentation to the Thurston County Superior Court and the opposing party. When Reba brought this to Lonquist's attention, Lonquist was very upset. CP 1104-1105.

Exactly two weeks after Reba's appropriate refusal to work on Doe's matter, Reba was fired by Lonquist, pretextually, and her last paycheck withheld. CP 1105.

After the institution of this lawsuit, Lonquist, unsuccessfully moved to have the matter put into arbitration based upon a written employment agreement with Reba that had expired. The Honorable Steven González denied Lonquist's request for arbitration and this Court affirmed Judge González in the published decision of *Weiss v. Lonquist*, 153 Wn.App. 502, 224 P.3d 787 (2009).

Judge González, on Lonquist's motion for summary judgment, dismissed Reba's claims for outrage and negligent infliction of emotional distress. Judge Gonzalez denied Lonquist's motion for summary judgment as to the remaining claims.

The case proceeded to trial on November 30, 2010. The jury returned a verdict on December 13, 2010 and concluded that Lonquist had willfully withheld wages from Reba in the amount of \$2,084.63; that Reba was wrongfully discharged by Lonquist in violation of public policy; that Reba's general damages as a result of the wrongful discharge in violation of public policy was \$16,250.00; and that Reba's wage loss, arising from the wrongful discharge was an additional \$8,204.00. CP 604-605.

Lonquist has appealed on a plethora of supposed legal errors made by the trial court. None of her shotgun approach has legal merit.

Judge González has recently<sup>1</sup> ordered an award of attorney's fees in favor of Reba in the amount of \$171,182.16 and costs of \$1,198.74. Judge Gonzalez also entered the following conclusion of law: "The Court concludes that Plaintiff's action served an important public policy issue that is preventing misrepresentation and material omissions to the Superior Court as is required by the Rules of Professional Conduct." CP 1962.

## **II. PROCEDURAL BACKGROUND**

After Lonquist commenced this appeal, Reba, pursuant to RAP 9.2, wrote Lonquist through counsel, demanding that the entire report of proceedings be transcribed. CP 1834.

Upon Lonquist's refusal, Reba brought a motion before the trial court seeking an order requiring Lonquist as the Appellant, to order out and pay for the entire report of proceedings. RAP 9.2(c). CP 1815-1858. The trial court denied Reba's motion. CP 1857-1858.

## **III. STATEMENT OF THE CASE**

Lonquist is a lawyer licensed to practice law in the State of Washington, WSBA no. 6421, and is the owner and controls the Appellant professional service corporation. CP 2. Reba is also a lawyer licensed to practice law in the State of Washington, WSBA no. 12876. CP 2. The

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<sup>1</sup> Oral argument was held on Reba's motion for an award of attorney's fees and costs on February 7, 2011. The parties received Judge González's Order dated August 11, 2011. Reba has denominated supplemental clerk's papers for these Findings of Fact and Conclusions of Law order. CP 1959-1963.

parties had a written employment agreement which expired on October 31, 2006. CP 3. Lonnquist was not only Reba's employer, but supervised her work. CP 3.

On August 1, 2007, Lonnquist delegated to Reba the task of preparing a response to a motion for summary judgment on behalf of a longtime Lonnquist client called Jane Doe. CP 4 (3.9).

When Reba examined Jane Doe's file, she found the complaint filed by Lonnquist on Jane Doe's behalf in the Thurston County Superior Court contained an allegation, ¶3.10, that Jane Doe was, "...terminated...without warning and without cause.". CP 4 (3.10), and 1295-1298. (App. A). In further review of Jane Doe's file in Lonnquist's office, Reba found a fax dated November 29, 2004 from Jane Doe to Lonnquist. CP 4 and 1284-1288. (App. B). The fax reflected that Doe was aware that the University was going to fire her for legitimate reasons **before** she requested an accommodation, and therefore knew it could not have been in retaliation for the request. CP 1281-1282, and 1284-1288. (App. B) Reba also found evidence that Doe had testified falsely at her deposition with Lonnquist's knowledge. CP 1104-1105. Upon finding this information, Reba consulted with the ethics advisor at the Washington State Bar Association, a/k/a Ethics Hotline (CP 3.13) and University of

Washington Law Professor, Thomas Andrews. Both advised Reba that she could not ethically work on the case. CP 1104-1105, and 1282.

On August 6, 2007, Reba told Lonquist of the material false testimony that she had discovered in Jane Doe's file and that Reba could not ethically work on the matter. CP 5 (3.14). Lonquist replied, "I am not happy about this." CP 5 (3.14) and 1105.

Precisely two weeks later on August 20, 2007, Lonquist delivered a memorandum to Reba advising Reba of her termination within thirty days or "...making September 18, 2007 your last day here." CP 5 (3.14) and 1479. (App. C). Two days later, Lonquist informed Reba that she was going to dock Reba's salary based on Lonquist's unilaterally imposing a "sliding scale schedule effective 8/20/07 – 9/18/07" that purported to change Reba's historical salary to billable hours of work performed by Reba. CP 5 (3.16), 1481. (App. D).

Reba's uncovering of the falsehood, together with Lonquist's notice of termination and supposed change in compensation, caused Reba significant physical and emotional pain. On August 23, 2007, Reba went to the Swedish Medical Emergency Room suffering from what she thought was a heart attack. CP 5 (3.17) and 1112. (App. E).

In May of 2008, Reba brought her complaint for wrongful termination in violation of public policy, outrage, recovery of unpaid

wages, statutory penalties, and attorney's fees, defamation and negligent infliction of emotional distress. CP 1-12.

Lonnquist, throughout the litigation, has attempted to place road block after road block in Reba's path. See e.g. CP 179-196, 201-205, 209-220, 253-255, 260-265, 305-310, 606-611, 616-624, 1408-1414.

From Judge González's denial of Lonnquist's attempt to place Reba's claims in arbitration, she appealed to this Court who denied that appeal. *Weiss v. Lonnquist*, 153 Wn.App. 502, 224 P.3d 787 (2009). From the jury verdict, Lonnquist has appealed, assigning error to nine of the trial court's decisions.

#### IV. ARGUMENT

##### **A. Lonnquist Cannot use the Shield of the Attorney-Client Privilege to Keep from the Jury the Crime and Fraud that she and Jane Doe were Perpetuating on the Thurston County Superior Court and the University.**

Lonnquist, relying upon the attorney client privilege, failed to respond to appropriate discovery concerning Lonnquist's dealings with Jane Doe. CP 120-129. As a result of this, plaintiff brought on a motion to compel her to respond. The Court, in a wise exercise of discretion that obtained throughout the balance of the litigation, ordered Lonnquist to respond to all of the discovery, but to redact Jane Doe's name and

identifying information.<sup>2</sup> The Court further ordered additional disclosures concerning Jane Doe and the underlying matter which are at the heart of this litigation. CP 253-255. This included Reba's ability to take Jane Doe's deposition. CP 209-213, 231-246, 251-252, 260-265, 272-302, 1262-1298, 1350-1351, 1365-1377.

It is axiomatic to point out to this Court, the fundamental duties and obligations of a lawyer as an officer of the court and as a member of this distinguished profession. Among those are to speak the truth and not to mislead or prevaricate to the court or opposing parties.<sup>3</sup> Our Supreme

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<sup>2</sup> "All with the client's name redacted". CP 158-159.

<sup>3</sup> **RPC 1.6:** "Confidentiality of Information

(b) A lawyer to the extent the lawyer reasonably believes necessary:...

(2) may reveal information relating to the representation of a client to prevent the client from committing a crime...". RPC 1.6(b)(2)

**RPC 3.3:** "Candor Toward the Tribunal

(a) A lawyer shall not knowingly:

(1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;  
(2) fail to disclose a material fact to a tribunal when disclosure is necessary to avoid assisting a criminal or fraudulent act by the client... unless such disclosure is prohibited by Rule 1.6:...

(4) offer evidence that the lawyer knows to be false....

(c) If the lawyer has offered material evidence and comes to know of its falsity, the lawyer shall promptly disclose this fact to the tribunal unless such disclosure is prohibited by Rule 1.6.

(d) If the lawyer has offered material evidence and comes to know of its falsity, and disclosure of this fact is prohibited by Rule 1.6, the lawyer shall promptly make reasonable efforts to convince the client to consent to disclosure. If the client refuses to consent to disclosure, the lawyer may seek to withdraw from the representation in accordance with Rule 1.16.

(e) A lawyer may refuse to offer evidence that the lawyer reasonably believes is false....". RPC 3.3 (a)(1)(2), and (4)(c), (d), and (e).

Court has told us that the RPC's are to be construed as a matter of law for the benefit of the public. *Eriks v. Denver*, 118 Wn.2d 451, 824 P.2d 1207 (1992) states,

"We have never addressed the question of whether the determination of a violation of the CPR [Code of Professional Responsibility - the predecessor to the Rules of Professional Conduct] is a question of law or fact. Since an attorney's fiduciary duty to a client arises from the same rules of conduct that proscribe an attorney from representing multiple parties with conflicting interests, it is logical to extend the holdings from *Marquardt* and *Stroud* to the determination of whether an attorney's conduct violates the relevant Rules of Professional Conduct. **Thus, we hold the question of whether an attorney's conduct violates the relevant Rules of Professional Conduct is a question of law...The purpose of the CPR and the disciplinary rules is to protect the public from attorney misconduct . . . We will construe the CPR broadly to achieve that purpose . . . Today, we reaffirm this court's commitment to interpreting attorney discipline rules for the benefit of the public.**" *Eriks, supra*, at 457, 459, 461. [Emphasis added].

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**RPC 4.1:** "Truthfulness in Statements to Others

In the course of representing a client a lawyer shall not knowingly:  
(a) make a false statement of material fact or law to a third person; or  
(b) fail to disclose a material fact to a third person when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless disclosure is prohibited by Rule 1.6." RPC 4.1

**RPC 8.4:** "Misconduct

It is professional misconduct for a lawyer to:  
(a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;  
(b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;  
(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;...  
(k) violate his or her oath as an attorney;..." RPC 8.4(a), (b), (c), and (k).

**B. The Attorney-Client Privilege May Not be Used to Cover Up a Fraud nor May it Be Used as a Shield to Hide Information Which is an Integral Part of the Issues in the Litigation.**

Lonnquist makes only passing inaccurate reference to the seminal case of *Pappas v. Holloway*, 114 Wn.2d. 198, 787 P.2d 30 (1990) BA 19. Indeed, as one commentator has said, “The purpose of the discovery rules is to provide litigants with the means of accessing the evidence necessary to effectively pursue their claims or present their defenses. The Washington Supreme Court has held that this right of access is a constitutional right.” *Doe v. Puget Sound Blood Center*, 117 Wn.2d 772, 781-782, 819 P.2d 370 (1991), Washington Court Rules Annotated, 2<sup>nd</sup> Edition, p. 315. (2007).

While *Pappas* arose in the different context of a legal malpractice case, its holding and *ratio decidendi* is equally applicable to the case at bar. *Pappas*, a former attorney, who was ultimately disbarred, sued his clients, Holloway. Holloway counterclaimed for legal malpractice and *Pappas* then responded to Holloway’s counterclaim by bringing third party complaints against successor attorneys to his former clients, the Holloways. *Pappas, supra*, p.200-201. *Pappas*, in discovery sought to compel significant information between his former clients, Holloways, and successor counsel, third party defendants. The trial court allowed such

discovery by Pappas, holding, *inter alia*, that there was a waiver of the attorney client privilege when Holloway counterclaimed for malpractice.

*Pappas*, appropriate for the case at bar, teaches us that, “Because the privilege sometimes results in the exclusion of evidence which is otherwise relevant and material, contrary to the philosophy that justice can be achieved only with the fullest disclosure of the facts, the privilege cannot be treated as absolute; rather, it must be strictly limited to the purpose for which it exists.”. *Id.* 203-204.

By hiding behind the purported attorney client privilege, Lonquist intended to prevent Reba from explaining her wrongful discharge in violation of public policy. As stated in *Pappas*, to allow Lonquist to shield this information from the jury, would in the words of *Pappas*, allow Lonquist, “to...in effect enable [her] to use as a sword the protection which the Legislature awarded them as a shield.”. *Id.* 208. *Pappas* further states that what Judge González did throughout the litigation in carefully balancing the “interests” of Jane Doe, Lonquist and Reba, was totally appropriate. “Whether a party has shown a substantial need within the meaning of CR 26(b)(3) is ordinarily vested in the sound discretion of the trial judge, who should look at the facts and circumstances of each case in arriving at an ultimate conclusion...to justify disclosure, a party must show the importance of the information to the preparation of his case and

the difficulty the party will face in obtaining substantially equivalent information from other sources if production is denied.” *Id.* Citing, *Heidebrink v. Moriwaki*, 104 Wn.2d 392, 401, 706 p.2d 212 (1985).

This is precisely the appropriate balance, the experienced trial judge sought and obtained. “A trial court has wide discretion in ordering a pretrial discovery; such orders are reviewed for manifest abuse of discretion. *Gillett v. Conner*, 132 Wn.App. 818, ¶7, 133 P.3d 960 (2006).

**C. The Trial Court Correctly Sanctioned Lonquist for her Stubborn and Contemptuous Refusal to Comply with the Court’s Discovery Orders.**

Lonquist in her opening brief, attempts to mislead this Court by stating that Judge González, “Did not conclusively resolve the RPC 1.6 issues”, and further states pretextually that she needed “guidance” and clarification of the Judge’s previous discovery orders.

One only need review the Court’s original Order compelling answers to discovery (CP 158-160) and it’s Order regarding defendants motion for “clarification” (CP 253-255) to see that Judge González meant what he said when he entered his original order of June 28, 2010. Indeed, Judge González went on to say that his Order of August 31, 2010 was, “...not a ‘clarification’ of a prior ruling. It is a new issue.”. Moreover, an ostensibly experienced lawyer such as Lonquist clearly knew that these

discovery orders rested on the sound discretion of the trial court which is not to be disturbed on appeal.

Such jurisprudence, relative to the discovery Orders, is equally applicable to the sanctions and Lonquist's contempt. "Within the generalities of the rule, it is the proper function of the trial court to exercise its discretion in the control of litigation before it." *John Doe v. Blood Center*, 117 Wn.2d 772, 777, 819 P.2d 370 (1991). "...decisions either denying or granting sanctions, under CR 11 or for discovery abuse, are generally reviewed for abuse of discretion." *Physicians Ins. Exch. V. Fisons Corp.*, 122 Wn.2d 299, 338, 858 P.2d 1054 (1993). "Generally, the appropriate punishment for contempt lies within the discretion of the trial court finding the contempt and we will not disturb its decision absent an abuse of that discretion." *In Re: Marriage of Eklund*, 143 Wn.App. 207, ¶19, 177 P.3d 189 (2008).

**D. Throughout the Litigation, Judge González Exercised Sound, Reasoned Discretion on the Discovery and Contempt Issues before him.**

On August 31, 2010, based on the continuing refusal of Lonquist to answer questions at her deposition, Judge González ordered that, "...the attorney-client privilege between defendant Judith A. Lonquist and her law firm and former client Jane Doe is waived [sic]. Defendant Lonquist

shall answer any and all questions propounded to her at the continuation of her deposition relating to Jane Doe. Defendant Lonquist shall pay the costs of the continuation of the deposition including the court reporter and transcript.” CP 251-252. By mutual agreement of the parties, Lonquist’s continuation deposition was scheduled for September 8, 2010. CP 260-265.

In the latter part of the underlying litigation, defendants Lonquist were represented by Portland, Oregon attorney, Thomas S. Boothe. In response to Judge González’s order just referenced, Mr. Boothe, her lawyer and speaking agent unequivocally stated the following: “Ms. Lonquist **cannot** answer questions about her conversations or other communications with Jane Doe until Ms. Doe either waives her appeal rights in writing or lets the 30-day appeal period pass without filing an appeal.”. [Emphasis added] .CP 139-170. This refusal was in the face of an agreement reached that Ms. Lonquist’s deposition would be held on September 8, 2010. CP 1373-1374. Reba responded to Lonquist’s lengthy excuses in her reply brief and with a motion to strike hearsay which was replete in Lonquist’s response. CP 297-300. The Court, by its Order of September 13, 2010, appropriately held Lonquist in contempt. CP 300-301.

Lonquist's motion for reconsideration from the contempt order incorrectly argued that she was not in contempt. Yet again, her speaking agent and attorney in fact, Mr. Boothe, on September 18, 2010, reiterated her position: "With regard to Ms. Lonquist's deposition, she will likely be unable to respond to your questions about her oral communications with Ms. Doe until (1) The 30-day appeal period runs, which I calculate as October 4, 2010; (2) Ms. Doe provides a written release to Ms. Lonquist permitting Ms. Lonquist to respond to questions about their conversations; or (3) Ms. Doe provides written statement that she is waiving such rights to appeal as she has with Judge González's ruling. If she does appeal the ruling, we will address that when it arises." CP 1441-1442.

**E. The Trial Court Properly Denied Defendants Motion to Amend Which was Untimely, Prejudicial and Lacked Merit.**

Lonquist sought, 66 days before the discovery cutoff, to promulgate a counterclaim for defamation against Reba. CP 179-196, 1247-1249. There was no evidentiary or factual support for such an amendment.

The trial court, on August 13, 2010, denied Lonquist's motion to amend and add a counterclaim stating in part, "Defendant had many opportunities to timely raise this issue, including May 21, 2010." CP 197-198.

In accordance with the scorched earth approach to litigation taken by Lonquist throughout the case, she moved for reconsideration. CP 214-220. Reba's response (1333-1337) addressed not only the laches and prejudice involved but that Lonquist's action was being done in a retaliatory manner. Moreover, Reba pointed out to the trial court by Lonquist's own testimony, that she had no factual basis, of any sort, to support the counterclaim. CP 1341-1346.

Lonquist, in the course of her deposition of August 12, 2010, two weeks after her motion to amend and promulgate the counterclaim, did not, *inter alia*, know who the persons were from whom she learned of the alleged defamatory statements; (CP 1342-1343) that these were simply rumors (CP 1344); nor could she address when these alleged rumors from unknown persons were supposedly communicated to her. CP 1345.

The Court appropriately denied, on September 2, 2010, Lonquist's motion for reconsideration. CP 256-257.

**F. The Court's In Limine Ruling Allowing Lonquist Portions of Reba's Medical Records at and after the Time of the Wrongful Discharge was an Appropriate Discretionary Balancing.**

Reba, prior to her wrongful discharge in violation of public policy, had experienced normal psychological issues, involving marriage, relationships and her children which predated the wrongful discharge of

August, 2007. She also had suffered three bouts of cancer and other medical issues. CP 1873-1874. The Court, in exercising its discretion, allowed defendants to explore plaintiff's, "...medical records in calendar year 2007.", the year of the wrongful discharge and Reba's primary medical and emotional sequelae therefrom.

Such a decision was not only appropriate but, prevented Lonnquist from delving into preexisting conditions. "Because of the trial court's considerable discretion in administering Washington Rule of Evidence 403, reversible error is found only in the exceptional circumstance of a manifest abuse of discretion." *Carson v. Fine*, 123 Wn.2d 206, 226, 867 P.2d 610 (1994). Lonnquist, in her brief, has not shown any abuse of discretion, let alone a manifest abuse of discretion.

**G. The Trial Court's Instruction with Regard to Discharge in Violation of Public Policy was an Accurate Recitation of Washington Law as Well as the Public Policy Embodied in the Rules of Professional Conduct.**

Reba's proposed instruction no. 9 was taken from WPI 330.05 and was properly modified to comport with applicable case law.

Reba was required to show the existence of a clear public policy – the clarity element; that Lonnquist's actions toward Reba requiring Reba to continue to perpetuate a fraud on the Thurston County Superior Court

would jeopardize public policy – the jeopardy element; and, lastly, that there was a linkage between the public policy and the cause of the discharge – causation element. E.g., *Hubbard v. Spokane County*, 146 Wn.2d 699, 50 P.3d 602 (2002).

For the clarity issue, Reba had to, “...establish a clear statement of public policy **not** that the plaintiff [Reba] demonstrate that the public policy was violated.”. [Emphasis added]. *Hubbard, supra*, p. 708-709, citing *Gardner v. Loomis Armored, Inc.*, 128 Wn.2d 931, at 945, 913 P.2d 377 (1966).

The jury found the requisite linkage between the public policy, the jeopardizing of public policy and the cause of the discharge.

As this Court is well aware, jury instructions are to provide the jury with the applicable law to be applied in the case. *State v. Brown*, 130 Wash.App 767, 124 P.2d 663 (2005). As earlier referenced, the holding in *Eriks, infra*, pgs. 457, 459, 461, the Rules of Professional Conduct and applicable criminal law prohibiting perjury and subornation of perjury are all the law.

Indeed, Judge González entered the following conclusion of law that conclusively establishes the wrongful discharge claim: “The Court concludes that Plaintiff’s actions served an important public policy issue that is

preventing misrepresentation and material omissions to the Superior Court as is required by the Rules of Professional Conduct.” CP 1962.

The Court’s Instruction no. 10 (CP 1866) is a clear exposition of the RPC’s and the criminal law applicable to the case. RPC 3.3(a)(1), RPC 3.3(a)(2), RPC 3.3(c), RPC 4.1, RPC 3.1, RCW 9A.72.010(1), RCW 9A.72.020, RCW 9A.72, et sec. (CP 567). Lonquist cannot and has not demonstrated why the trial court’s fair and neutral exposition of applicable law, obtained in the Court’s Instructions no. 9 and 10 were anything but a fair and neutral summary of the law.

**H. Judith A. Lonquist is Liable for Her Own Actions in this Intentional Tort Both as a Principal and Agent.**

The Court gave instruction no. 8 (CP 1864-1865). This was taken verbatim from WPI 50.04 and plaintiff’s proposed instruction no. 6. CP 562. Reba cannot affirmatively represent to this Court, absent the report of proceedings, whether or not Lonquist, through counsel, did or did not except from the Court’s Instruction no. 8.

Moreover, Lonquist further ignores the fact that she is the sole owner of her legal professional services corporation.

The jury found in its verdict that the discharge was a willful, intentional act in violation of public policy on the part of defendant Lonquist. CP 604-605.

Our Supreme Court has taught us in *Johnson v. Harrigan-Peach Land Development Co.*, 79 Wn.2d 745, 753, 489 P.2d 923 (1971), as follows:

“Incorporation does not in law shield the actor from the legal consequences of his own tort. Where the individuals carry on a business or enterprise by means of a corporate structure but in such relationship to the corporation that it can be said as a matter of fact that the acts of the corporation are the acts of the individuals and vice versa, then the same conclusion should be reached as a matter of law, I.e., that the acts of the corporation are in law as well as fact the acts of the individuals and vice versa...This court has adopted that principle in other contexts but nevertheless so as to make it the law of this jurisdiction...The liability of an officer of a corporation for his own tort committed within the scope of his official duties is the same as the liability for tort of any other agent or servant...An officer of a corporation, consequently, is liable for a tort committed in the courts and within the scope of his official duties to the corporation the same as any other agent or servant is liable for his torts...”  
*Johnson, supra*, pgs. 752-753.

The law is still developing in the area of discharge in violation of public policy.

However, in the context of wrongful discharge under RCW 49.48.030, our Supreme Court in *Gaglidari v. Denny's Restaurants, Inc.*, 117 Wn.2d 426, 451, 815 P.2d 1362 (1991) held, *inter alia*, “...under RCW 49.48.030, attorneys fees are recoverable in actions for wrongful discharge where back pay or front pay is recovered as lost wages.”. Of course the jury found that Reba had incurred lost wages as a direct and

proximate result of the discharge in violation of public policy.

Accordingly, based on *Johnson, supra*, coupled with the liberal construction that is to be given discharge in violation of public policy, the Court was legally appropriate in finding Lonquist, individually liable for her own intentional tort.<sup>4</sup>

**I. There is No Other Remedy Available to Reba to Fully Address the Tort and Wrong Other Than the Claim for Wrongful Discharge in Violation of Public Policy.**

Lonquist argues, (BA pgs. 41-42), that Reba, "...is unable to show that there was no alternative means other than this litigation adequate to safe guard the public policy on which she relies...". Without saying it, as extensively argued to the trial court, Lonquist is referring to the Washington State Bar Association disciplinary function.

While it is absolutely true that the Bar has authority and "jurisdiction" to take **disciplinary action** against Lonquist, the Bar has absolutely no jurisdiction or authority to address the tort of wrongful discharge in violation of public policy itself. The **only** entity that allows plaintiff full redress is the judicial system.

---

<sup>4</sup> This issue is further discussed in Chapter 5 of the WSAJ Deskbook on Employment Law, 2007, edited by Appellant, Judith Lonquist,, the Tort of Wrongful Discharge and Violation of Public Policy, pgs. 8-9.

**J. The Court Did Not Err in Doubling the Jury's Verdict for Wages Lost.**

RCW 49.52.070 provides for exemplary damages against an employer who willfully pays a lower wage than is required by law. *Department of Labor & Industries v. Overnight Transportation Co.*, 67 Wn.App. 24, 34-38 (1992). The jury made a specific finding in its verdict that Lonquist had willfully withheld wages from Reba after she was terminated and Reba lost wages in the amount of \$8,204.00. CP 605. Therefore, pursuant to the liberal construction required under RCW 49.52.070, Reba is entitled to the doubling of her wage loss damages as was done by the trial court.

**K. Reba is Entitled to Reasonable Attorneys Fees and Costs on Appeal.**

As earlier discussed (see *infra* pgs. 4 and 21), Reba was awarded attorneys fees at trial. Pursuant to and consistent with RAP 18.1 and RCW 49.52.070, Reba seeks an award of reasonable attorney's fees and expenses before this Court.

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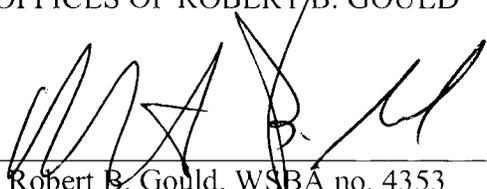
V. CONCLUSION

Reba has been unable to find any reported Washington appellate court decision on the issue of a senior attorney discharging an associate for the associate's unwillingness to perpetuate a fraud. As found by the trial court, this is a case of significant public importance. This Court should affirm the jury's verdict and Judge González's Orders in a published decision.

DATED this 26<sup>th</sup> day of August, 2011.

*Respectfully submitted,*

LAW OFFICES OF ROBERT B. GOULD

By: 

Robert B. Gould, WSBA no. 4353

LAW OFFICE OF ROBERT B. GOULD

2100 North Pacific Street, Suite 100

Seattle, WA 98103

(206) 633-4442

*Attorney for Respondent*

**DECLARATION OF SERVICE**

On August 26, 2011, I caused to be delivered via email a true and accurate copy of the attached document, to the following:

Thomas S. Boothe, WSBA No. 21759  
7635 SW Westmoor Way  
Portland, OR 97225-2138  
[tsb@boothehouse.com](mailto:tsb@boothehouse.com)  
*Co-counsel for Petitioners Judith A. Lonquist and the Law Offices of Judith A. Lonquist, PS*

Judith A. Lonquist  
Law Offices of Judith A. Lonquist, PS  
1218 – 3<sup>rd</sup> Avenue, Suite 1500  
Seattle, WA 98101  
[lojal@aol.com](mailto:lojal@aol.com)  
*Co-counsel Appellants Judith A. Lonquist and the Law Offices of Judith A. Lonquist, PS*

The original and one copy of this document were also sent via legal messenger to be filed in the Court of Appeals.

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

  
\_\_\_\_\_  
Nicole Jones, Paralegal  
LAW OFFICE OF ROBERT B. GOULD

## Index To Appendices

- Appendix A: Complaint for Damages and Other Relief dated June 2, 2005 [CP 1295-1298]
- Appendix B: Fax coversheet from Jane Doe of November 29, 2004 to Judith Lonnquist with 4 pages attached dated November 28, 2004 entitled, "Attorney Questions.". [CP 1284-1288]
- Appendix C: Memorandum from Lonnquist to Weiss RE: Employment dated August 20, 2007 [CP 1479]
- Appendix D: "Sliding Scale Schedule effective 8/20/07 – 9/18/07" dated August 20, 2007 [CP 1481]
- Appendix E: Letter from Michael Shamseldin, M.D., dated August 27, 2007 [CP 1112]
- Appendix F: Deposition of Jane Doe dated July 24, 2006, pgs. 1, 25-29-47-48, and 53 [CP 1290-1293]

# **Appendix A**

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

Redacted

Plaintiff,

NQ 5 - 2 - 01070 - 1

v.

COMPLAINT FOR DAMAGES  
AND OTHER RELIEF

STATE OF WASHINGTON, d/b/a  
CENTRAL WASHINGTON UNIVERSITY,

Defendant.

INTRODUCTION

This action is brought pursuant to common law and RCW 49.60 to redress acts of disability discrimination. Plaintiff seeks lost pay, benefits and employment opportunities, emotional distress damages, attorneys' fees and costs, injunctive and other relief.

I. JURISDICTION AND VENUE

1. A Venue in Thurston County is appropriate pursuant to RCW 4.92.010 (5). A
2. A This court has jurisdiction pursuant to common law and Chapter 49 RCW.

EXHIBIT 1

COPY

1  
2 II. PARTIES

3 3. Plaintiff Redacted resides in King County, Washington. At all relevant  
4 times, she worked as the Development Director for Central Washington University  
5 ("CWU") in its University Relations Department.

6 4. A Defendant CWU is an instrumentality of the State of Washington, operating as  
7 an institution of higher education in Ellensburg, Washington. CWU employs more than  
8 eight employees.

9 IV. STATEMENT OF CLAIMS

10 5. D Plaintiff suffers from severe osteoarthritis. At all relevant times, Plaintiff has  
11 walked with a pronounced limp. Since approximately September 23, 2004, at the  
12 direction of her physician, Plaintiff had been using a cane to assist her in walking.  
13 Thereafter, in the Fall, 2004, the exact date is unknown to Plaintiff, CWU Vice  
14 President Paul Baker inquired of Plaintiff: "What's with the cane?" Plaintiff explained  
15 that she has severe osteoarthritis and had one hip replaced.

16 6. A Also during the Fall of 2004, due her disability, Plaintiff requested and received  
17 a special office chair with ergonomic adjustments.  
18

19 7. J At all relevant times, Defendant had knowledge of Plaintiff's disability.  
20

21 8. J On November 30, 2004, Plaintiff applied for extended sick leave in order to  
22 have surgery to replace her other hip. Plaintiff had approximately 580 hours of accrued  
23 sick leave at the time. Plaintiff's request for sick leave was received by Defendant's  
24 Human Resources Department at approximately noon on November 30, 2004.

25 9. J At approximately 2:30 p.m. on November 30, 2004, Defendant notified Plaintiff  
26 that her request for sick leave was denied.  
27  
28

1 10. At approximately 4:30 p.m. on November 30, 2004, Defendant terminated  
2 Plaintiff without warning and without cause. No reason was given for the discharge or  
3 the denial of sick leave.  
4  
5 11. Defendant's action exacerbated Plaintiff's disability and left her unable to seek  
6 other employment, ineligible for unemployment compensation, and without income and  
7 employment benefits.  
8  
9 12. As a result of the Defendant's discriminatory conduct, Plaintiff suffered and  
continues to suffer severe economic loss and emotional distress.

10 COUNT I

11 Defendant has discriminated against Plaintiff because of her disability, in  
12 violation of RCW 49.60.180.

13 COUNT II

14 Defendant failed to accommodate Plaintiff's disability, in violation of RCW  
15 49.60.180.

16 COUNT III

17 Defendants have retaliated against Plaintiff, in violation of RCW 49.60.210.

18 WHEREFORE, Plaintiff respectfully requests the following relief:  
19

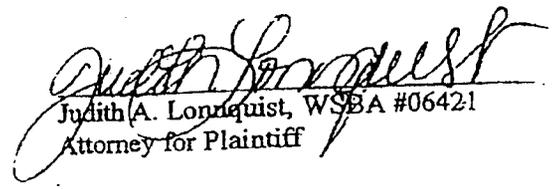
- 20 A. Back pay and other economic damages;
- 21 B. Emotional distress damages;
- 22 C. Pre-judgment interest;
- 23 D. Reasonable attorney's fees and litigation expenses pursuant to RCW  
24 49.48.030 and/or RCW 49.60.030(3);
- 25 E. Injunctive relief;
- 26
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- 28

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- F. Tax relief;
- G. Costs;
- H. Such other relief as the Court deems appropriate.

Dated this 2<sup>nd</sup> day of June, 2005.

LAW OFFICES OF JUDITH A.  
LONNQUIST, P.S.

  
Judith A. Lonquist, W.S.B.A. #06421  
Attorney for Plaintiff

# **Appendix B**

11/29/04

To JUDITH LONNQUIST

From Redacted

206-527-5237 Seattle

509-899-1770 Cell

RE URGENTLY NEED TO SPEAK TO YOU

JUDITH,

I am facing a layoff tomorrow and need to delay so that I can take sick leave/medical leave for surgery. I use a cane now & need surgery. Attached is information & my questions.

Please call. I am in Seattle and can meet with you by phone or in your office at your earliest convenience.

Thank you.

FAXED: 5 PAGES TOTAL

11/28/04

**Attorney Questions**

Who: Judith Lonnquist Redacted  
 What: Meeting  
 When: Monday, 29 November 2004  
 Where: Phone or at Judith's office  
 Why: Ask questions regarding CWU and WS policies on severance and medical leave  
 Outcome: Questions answered  
 Possibly retain Judith as my attorney

**Questions:**

1. Given that Julie Cloninger sent me home on administrative leave and warned me that a strong option they are exploring is giving me 3-months severance, and given that I need to have hip replacement surgery as soon as possible per my doctor, how can I ensure that I will be able to use my sick leave (580 hours) BEFORE they ever instigate the severance?

How should I handle the notice of medical leave with CWU—registered letter? -- to avoid having a termination letter handed to me?

2. Given that I was offered a one-year contract to move here from Los Angeles and take this fund raising job at Central WU in Ellensburg, and given that I have performed exactly as I was instructed and with success, how can I ensure that I will be "restored" to my former career path with more than just a 3-month severance of salary?

3. If I go out on medical leave starting December 7 in order to have the pre-surgery tests required, have surgery January 12, 2005, and then need about 6 weeks for recovery and physical therapy to get back on my feet (March 1?), how can I expect CWU to approach me on the severance? Is there some way to communicate with them during that period to start negotiating or must they wait until I return to work in order to start the severance process?

11/28/04

### **Background & Situation**

1. **August 9, 2004—started new job at CWU University Relations—a new position as fund raiser for College of Business (Dean Roy Savoian) and Brooks Library (Dean Tom Felschel). Supervisor at that time was VP Dr. Paul Baker, who hired me.**
2. **First 6 – 8 weeks were spent getting a desk, computer, computer system, etc. My position was the first (and is to this day the only) position to not be housed within University Relations in Barge Hall. One-on-one meetings took place between Paul and me which included homework assignments and training. This culminated when he “rewarded” me with a trip to a CASE conference in Minneapolis, “Fund raising for Newcomers,” September 27 – 30, 2004.**
3. **October 7, 2004—I returned to work to have Julie Cloninger, the new Director of Development (new hire for vacant position), as my new boss. She started to develop the team of fundraisers, have us define our work plans for the year ahead. We set up weekly meetings at which I reported weekly progress, asked questions about CWU infrastructure issues, and generally reported progress in my work at the College and Library.**
4. **November 15, 2004—Julie and I met with Dean Savoian to go over my work plan which she and I and she and Roy had discussed privately prior to the meeting.**
  - a. **Contrary to Julie’s work directive to me, Dean Savoian stated he does not want me talking to donors, advisory board members, or any potential new donors, that those are “his” to work with. He wants me to follow up with alumni that give at the \$25 to \$500 level and focus on starting up an accounting alumni group out of the Lynnwood campus working with the accounting chair, Mike Ruble. He also wants me to handle events for him.**
  - b. **Julie pushed back, saying that this was not what development officers were hired to do and wanted to know what Roy saw as my activity if not to go out to talk with people to raise money.**
  - c. **Roy revoked the open-ended travel authorization right there, and said I was not to go out again without going over everything I was going to say and why I was going at all. Julie let that go and we all agreed that I would communicate with both of them on future donor visits.**

*Lawren S. Fortune—1*

That same day, I complied by e-mailing a lot of information to Roy and Julie regarding phone conversation appointments that were already set up. I alerted Julie that I already had a travel visit set up for Thursday, which she advised me to go on (by Tuesday, I rescheduled that appointment because I did not feel it was prudent to cross Roy in that way, despite Julie's approval).

At 3 p.m., Julie and I had our weekly meeting. She started out by saying Roy was a total bully. I told her that I could do everything he wanted even though it was conflicting with what she was telling me: to go out on at least 12 visits a month. She said I was doing everything right and that she and Paul were completely behind me.

a. Then she asked me if I thought that in the long run, Roy was someone I could work with, especially once the campaign starts. She said Dean Savoian, of the College of Business, and Dr. Baker, VP of UR, had never agreed on my job description and that I was experiencing the fallout. (I had two bosses who couldn't agree on what I should be doing. Each boss pays 50% of my salary.)

b. At that meeting, Julie recognized the no-win situation for me and told me that she and Paul were discussing restructuring assignments and I might be assigned to the College of Arts and Humanities. She asked how I felt about that. I told her good.

4. November 19, 2004—I was at the central development office and Julie and I had a brief conversation in her office. She told me that she had a conversation with Paul (on vacation during this time) and with Roy and was moving forward with the reassignment. She had already placed a call to the other dean and would let me know. She advised me that I did not have to attend the College of Business half-day retreat that afternoon. I told her that I thought I should, since Roy was expecting me. She said, "Really, you don't have to go." So I didn't go.

5. November 22, 2004—a. At my weekly meeting with Julie, I had an itinerary and got started on our meeting. Then I asked her if she had an update for me on what she told me on Friday about the reassignment. Julie said that it wasn't going to work. The other dean was just getting used to the development officer already assigned and was unwilling to make a change. Julie said it's nothing about me, just wasn't going to happen.

Lauren S. Fortune—2

- b. Then she told me she wouldn't be being honest if she didn't let me know she and Paul were exploring options, one of which was severance. That was a shock, I told her, and asked how that could be with all the work that needed to be done in the development area. She told me that Paul and Roy had never fully ironed out what a d.o. would do for Roy and that disagreement was at the forefront. Since Roy was paying half my salary, not working for Roy meant central would have to carry my full salary. Julie said there is no money to do that.
- c. Julie brought out a State of Washington code for severance which she had highlighted and gave it to me to show that a 3-month severance was totally within their right to implement. Then she told me she wanted me to meet with her and Paul on Monday, 11/29 at 9 a.m. and had her secretary immediately set up the meeting.
- d. I asked Julie what I should do. She told me just to take administrative leave the next two days, to not go back to the College of Business.
6. With the advice of a colleague who is a college president, I called in sick this a.m. so that I might confer with you (see questions on separate page).

*Lauren S. Fortuno-3*

# Appendix C

## MEMORANDUM

TO: Reba Weiss  
FROM: Judith A. Lonquist   
RE: Employment  
DATE August 20, 2007

.....

On behalf of the Law Offices of Judith A. Lonquist, P.S., I hereby provide you with 30 day notice of termination of your "of counsel" relationship with LOJAL, making September 18, 2007 your last day here.

There are several projects I want you to accomplish for me during the remaining thirty day period. Please prepare a detailed written report on the status of each case that you are handling and provide it to me by noon on Wednesday, August 22. Your report should identify the legal issues involved, the status of discovery, whether you have been in contact with the client, and if so, the date and nature of your last contact, any information that you have about opposing counsel, any work you have in progress, your assessment of the strengths/weaknesses of the case, and any ideas that you have about next steps. After I have had time to review your report, I want to meet with you to discuss your cases. Please mark your calendar for a meeting with me at 2 p.m. on August 22.

I will be assuming sole responsibility for collection of the costs owed by ~~██████~~ and ~~██████~~. If either contacts you, please refer them to me. To insure that we have all the necessary information from you regarding that case, by Friday, August 24, please provide Judy Z. and Linsey with the details that the clients requested about your costs and expenses.

I wish you good luck in your future endeavors.

WEISS 00057

# **Appendix D**

**SLIDING SCALE SCHEDULE**  
**EFFECTIVE 8/20/07 - 9/18/07**

Performance Standard – Minimum Billable Hours per week = 32

Billable Hours	Gross weekly salary
32 or more	100% = \$1,666.67
29-31.9	91% = \$1,516.66
26-28.9	81% = \$13500.00
23-25.9	72% = \$1,200.00
20-22.9	63% = \$1,050.00
17-19.9	53% = \$883.33
14-16.9	44% = \$733.33
11-13.9	34% = \$566.67
8-10.9	25% = \$416.66
Less than 8	18% = \$300.00
None	\$0.00

# **Appendix E**



## SWEDISH PHYSICIAN DIVISION

### Swedish Physicians - Greenlake Clinic

---

7210 Roosevelt Way NE, Seattle, WA 98115 • Ph: (206) 320-3400 • Fax: (206) 320-5773

8/27/2007

To Whom It May Concern:

Reba Weiss is under my care for health problems related to her work environment. I have advised her that for her own health and welfare, she should not return to her current place of employment (the Law offices of Judith A Lonnquist) for at least the next month and to be re-evaluated after this time. It is my Medical opinion that it would be detrimental to Ms. Weiss' health to return to work at the Lonnquist law firm at this time. Thank you and feel free to call for clarification once proper release of medical information forms have been signed.

Sincerely

  
Michael Shamseldin MD

8/27/07

# **Appendix F**



1 you know, going to go well. And I was -- my office I was  
 2 housed in, that's actually in that college. My office was  
 3 next to his office, so I felt things were going to go very  
 4 well.  
 5 However, I should add that I don't think that he was  
 6 completely happy with me getting dual messages from my other  
 7 boss Julie Cloninger when she came on board.  
 8 Q I didn't understand your last answer. Can you elaborate?  
 9 A Julie came on board and wanted -- when she started at the  
 10 end of September or early October, she asked me to raise  
 11 money for major gifts, definition \$10,000 and up.  
 12 Q When you say that the dean was not happy that you were  
 13 getting dual messages, what do you mean by that?  
 14 A I don't know if he was happy or not. I can't say that for  
 15 sure, but I felt that he asked me to do -- meet with alums,  
 16 meet with their board, with the board of College of Business  
 17 and meet with the department heads, which I did. And he  
 18 actually, you know, put me in charge of -- in November put  
 19 me in charge of contacting a specific unit, Mike Ruble's --  
 20 he was the chair of -- I think it was electrical. I'm not  
 21 sure. I don't know. I'll have to figure out what exactly  
 22 Mike Ruble -- he was the chair of something, one of the  
 23 College of Business --  
 24 Q How do you spell his last name?  
 25 A R-u-b-l-e. Working with those alums, that specific area,

1 MS. LONNQUIST: Savoian.  
 2 A Savoian.  
 3 Q I don't know why I said that. I guess my mind is somewhere  
 4 else, sorry.  
 5 MS. LONNQUIST: Not French.  
 6 Q Did Julie Cloninger ever give you any feedback about your  
 7 performance, that you needed to improve it in any way?  
 8 A No.  
 9 Q Did the dean give you any feedback?  
 10 A We had -- we had a work plan meeting in early November that  
 11 Julie and Roy Savoian and I were -- we all -- they  
 12 collaborated because there was -- they needed to figure out  
 13 what exactly they agreed on that I should do. I didn't -- I  
 14 was not privy to that conversation. We -- we agreed on a  
 15 work plan; we had a meeting. And so my work plan was set,  
 16 and at that meeting we -- I was told that that would be my  
 17 work plan until the end of June of 2005 when the campaign  
 18 was really rolling and then there might be, you know,  
 19 changes to it, but we had -- that was in November that we  
 20 set the work plan.  
 21 Q Did the dean ever give you any feedback regarding your  
 22 performance in terms of needing to improve it?  
 23 A No.  
 24 Q Did Dr. Baker, Paul Baker, ever give you any feedback  
 25 regarding your performance and a need to improve it?

1 which I was going to do. Meanwhile Julie would have  
 2 meetings with all of us development officers throughout the  
 3 college, all the different colleges and asked us to work on  
 4 major gifts and distributed names of alums from the  
 5 different schools and colleges to the development officer in  
 6 that school and college. And for me that meant alums of the  
 7 College of Business, asked me to start fund-raising with  
 8 them specifically for \$10,000 gifts and therein was  
 9 possibly -- I don't know -- a problem, but I don't know.  
 10 Q Did Julie Cloninger supervise you?  
 11 A When she started, yes. Paul Baker -- she was not when I was  
 12 hired. Paul Baker hired me.  
 13 Q Dr. Baker, okay. And then from the time Julie Cloninger was  
 14 hired into her role, was she your supervisor --  
 15 A Yes.  
 16 Q -- for the remainder of your employment at Central?  
 17 A Yes.  
 18 Q Were you also supervised by the dean of the College of  
 19 Business?  
 20 A Yes. And also by the library school -- library director,  
 21 Peischl. What's his name?  
 22 Q Peischl?  
 23 A P-e-i-s-c-h-l.  
 24 Q Am I pronouncing the dean's name correctly? I said  
 25 Sauvignon, but I'm thinking that's not right.

1 A No. In fact, he was so happy with my performance that he  
 2 rewarded me by sending me to a conference in September in  
 3 Minneapolis. And when I came back I provided him with his  
 4 own manual of the handout and a written report which he  
 5 distributed to others.  
 6 Q The written report was on what topic?  
 7 A On the -- on the conference.  
 8 Q What type of conference was it?  
 9 A A fund-raising conference.  
 10 Q When you say he distributed it to others, others within the  
 11 university?  
 12 A Oh, in the -- in the development area because Paul was --  
 13 Dr. Baker was running all the development officers until  
 14 Julie, you know, started her job. She was the director of  
 15 development overall, I believe.  
 16 Q Do you know why you were terminated from Central Washington  
 17 University?  
 18 A I don't -- I really was not exactly given a reason. I  
 19 believe it had nothing to do with any performance issues. I  
 20 think it had to do with my disability and my request for  
 21 four -- four to six weeks off to have hip replacement  
 22 surgery.  
 23 Q Do you know who made the decision to terminate you from  
 24 employment at Central Washington University?  
 25 A All I know is I received a phone call. I found out I was

1 terminated by a phone call, a message that was left on my  
 2 telephone in Ellensburg on November 30th at 4:30 p.m., and  
 it said you are terminated effective immediately, and that's  
 4 the first I knew about it.  
 5 Q Who left you that message?  
 6 A Paul Baker.  
 7 Q Do you remember anything else about the phone message that  
 8 he left you on that day?  
 9 A Not that -- that was a stunning blow. That's really --  
 10 that's what I remember, but we have it. I mean, I -- I  
 11 still have it. You can listen to it.  
 12 Q You've listened to that message since receiving it on  
 13 November 30th?  
 14 A (Witness nods head affirmatively.)  
 15 Q Is that a "yes"?  
 16 A Yes.  
 17 Q Have you listened to it more than once?  
 18 A I have moved so many times, the phone is -- has been packed,  
 19 but probably more than once. I just don't recall right now.  
 20 I haven't listened to it in the last while like -- it's a  
 21 painful thing to listen to.  
 22 Q On the day of your termination, were you off work on sick  
 23 leave?  
 24 A I was in a lot of pain.  
 25 MS. LONNQUIST: You have to respond "yes" or "no."

1 employment because of your request for time off related to a  
 2 need to have hip surgery?  
 3 A I don't know if the dean terminated me or -- I thought Paul  
 4 Baker did, but, yes, that would be it.  
 5 Q You think it was Paul Baker that made the decision to  
 6 terminate your employment?  
 7 A The only -- I don't know. All I know is that he's the one  
 8 who called and he hired me. He left the voice mail and he  
 9 signed the letter that I eventually got the following  
 10 like -- I don't know -- at the end of the same week that I  
 11 got the voice mail.  
 12 Q Do you know what role, if any, that the dean had in the  
 13 decision to terminate your employment at Central Washington  
 14 University?  
 15 MS. LONNQUIST: By "the dean," you're talking  
 16 about Roy Savoian?  
 17 MS. SUTTON: Yes.  
 18 A I -- I don't know.  
 19 Q Do you know what role Julie Cloninger had in the decision to  
 20 terminate your employment at Central Washington University?  
 21 A I really don't know.  
 22 Q Are you contending that Dr. Paul Baker terminated your  
 23 employment -- or at least was the one that advised you that  
 24 it was terminated -- because you had requested hip surgery  
 25 and time off related to the need to have that surgery?

1 A Yes.  
 2 Q Had you called in sick the one or two days before that?  
 3 A The week before it was Thanksgiving and it was during that  
 4 time that I was -- you know, I really was in excruciating  
 5 pain. And Monday I called in sick because I wasn't able to  
 6 drive over to Ellensburg. I had been to see my doctor prior  
 7 to that and I was just too -- just not feeling well enough  
 8 to do that. But I did let them know that -- that's when I  
 9 put together the note, the letter, to Dr. Baker and also  
 10 the -- sent along Dr. Clark's letter requesting time off for  
 11 surgery in January.  
 12 Q Do you know when you provided the note from Dr. Clark to the  
 13 college --  
 14 A On --  
 15 Q -- to the university?  
 16 A On the 29th.  
 17 Q Who did you provide it to?  
 18 A I sent it to the human resources department, Tracy Kline.  
 19 She's the rep -- she was our rep for development. Each of  
 20 them handles different departments, and I sent her a note  
 21 that said please pass this along to Dr. Baker.  
 22 Q When I asked you earlier to describe the reason why you were  
 23 terminated, you referred to the fact that you had a  
 24 disability that required hip surgery. My question to you  
 25 is, are you claiming that the dean terminated your

1 A That's the only connecting logical thing that I can  
 2 conclude, yes.  
 3 Q Did you have a good working relationship with Dr. Baker  
 4 during your employment at Central?  
 5 A Yes. I thought I did.  
 6 Q When you say you thought you had a good relationship, what  
 7 was it about your relationship that led you to believe that  
 8 you had a good relationship with him, with Dr. Baker?  
 9 A Well, from the time I was recruited to work there and leave  
 10 the job that I had at Loyola to come up to Central, he was  
 11 very cordial. He -- he personally coached me in his office.  
 12 He called it development 101. So he took me on as a mentor  
 13 to a new development officer. He felt -- I took it -- I  
 14 know that he felt confident in my work and rewarded -- it  
 15 was a reward to be sent to that conference. Following that,  
 16 like I said, I was -- the information I brought back and my  
 17 report on the conference was well-received.  
 18 In October I went to the -- what's called the Battle in  
 19 Seattle when Central plays Western Washington University.  
 20 And, you know, everything was just great. I mean, even with  
 21 Roy Savoian, and we all -- all of the alums were there. We  
 22 had a suite in the stadium.  
 23 Q This is football?  
 24 A Uh-huh.  
 25 Q Dr. Baker was there too?

1 Q You said you were a runner?  
 2 A Yes.  
 Q Was that on a daily basis?  
 4 A No. Like two or three times a week just for the aerobic  
 5 exercise.  
 6 Q What other athletic activities did you do before severe --  
 7 A Tennis --  
 8 Q -- osteoarthritis?  
 9 A Tennis, skiing, hiking.  
 10 Q You said that you saw Dr. Clark the week of Thanksgiving  
 11 '04. The date I have here is November 24th. Do you recall  
 12 when you scheduled that appointment with him?  
 13 A Probably in September. I'm just guessing because he's got a  
 14 very busy schedule.  
 15 Q When you called in sick during that week of Thanksgiving --  
 16 A No. It was -- it was the following week. I was at work  
 17 during Thanksgiving week. It was the following Monday.  
 18 Q The 31st?  
 19 A I think it was the 29th and 30th, Monday and Tuesday  
 20 following -- the week following Thanksgiving.  
 21 Q You're right on the dates. Did you call in sick on the 29th  
 22 or 30th?  
 23 A I -- I think so.  
 24 Q Who did you call to report that?  
 25 A Probably Julie's office.

1 on or about November 22nd '04 to talk about your job?  
 2 A No. He was on vacation. I don't know that that could have  
 3 happened. He was in Arizona, as far as I know.  
 4 Q Do you recall Dr. Baker trying to reach you by phone and  
 5 leaving you messages asking that you contact either he or  
 6 Julie directly?  
 7 A Absolutely not.  
 8 Q Around the time the week or so before your termination --  
 9 A No, absolutely not.  
 10 Q -- do you recall Dr. Baker trying to reach you and  
 11 indicating that you should call him or Julie Cloninger and  
 12 speak with either one of them?  
 13 A No, I do not recall that. I was in the office the week --  
 14 the days before Thanksgiving. As far as I know, he was on  
 15 vacation. I don't know how long or whatever, but I believe  
 16 he was -- had taken off. But, you know, I had a cell phone.  
 17 I had my work phone and I have messages, a message machine  
 18 on my phone in Ellensburg, and the only message that I  
 19 received was on Tuesday the 30th at 4:30. At 2:30 actually  
 20 Tracy Kline called and left a message saying that my request  
 21 that they had received at noon that day based on a tracking  
 22 record, UPS or whatever, FedEx tracking record, that it was  
 23 denied. My request for leave for surgery was denied.  
 24 And then later that afternoon Paul Baker's voice mail  
 25 was there, but since I was over in Seattle, I didn't get

1 Q Was it a voice message that you left?  
 2 A I can't remember. I really can't remember.  
 3 Q Whether it was voice mail or whether you actually contacted  
 4 a person, do you remember explaining to them why you were  
 5 taking sick leave on the 29th and then on the 30th as well?  
 6 A I really -- I really can't remember. Honestly I just don't  
 7 recall.  
 8 Q Did you ever have a conversation with anybody in human  
 9 resources -- and your contact was Tracy Kline and her boss  
 10 was Carla Schugard -- about the need to have hip replacement  
 11 surgery?  
 12 A No. I would have no reason to talk to them about that.  
 13 Q Did you ever talk with anybody else at Central Washington  
 14 University about the fact that you were going to have to  
 15 have hip replacement surgery?  
 16 A Not really. The job -- I mean, it was a new job. I was  
 17 very excited about it. We were building a professional  
 18 relationship. We talked about donors a lot. We talked  
 19 about our colleges. We talked about deans. We talked about  
 20 getting out and seeing people. And we just -- talking about  
 21 your health just isn't part of that frame usually.  
 22 Q Do you recall a meeting with Julie Cloninger and Dr. Baker?  
 It would have been on or about November 22, 2004.  
 24 A With Julie, no.  
 25 Q Do you recall a meeting with Dr. Baker and Julie Cloninger

1 that. Well, I got it on Tuesday. I was back over on  
 2 Tuesday, but not until in the evening because I was planning  
 3 on going to work the next day, and that's when I got the  
 4 voice mail.  
 5 Q Do you recall on November 29th Dr. Baker trying to reach you  
 6 and indicating that you should speak with either he or  
 7 Julie?  
 8 A I don't -- I didn't get any voice mail like that.  
 9 Q Do you recall the next day, November 30th, Dr. Baker trying  
 10 to reach you and again indicating you should speak with  
 11 either he or Julie?  
 12 A The only voice mail that's on that -- that I got was at 4:30  
 13 where he said you're -- we're terminating you effective  
 14 immediately. So I didn't -- there was nothing. I didn't  
 15 hear from him prior to that. That -- to my -- I can just  
 16 say I didn't hear from him prior to that.  
 17 Q You mentioned that you had asked for and received an  
 18 ergonomic chair when you worked at Central?  
 19 A Yes.  
 20 Q When did you make that request for an ergonomic chair?  
 21 A I can't exactly -- I would think it was right at the  
 22 beginning, like August or early September. Like right at  
 23 the beginning when my office was getting set up, but I  
 24 didn't get it for quite a while because they had -- we tried  
 25 to get one through surplus.

1 And I know the man came to measure for the ergonomic  
 2 chair who knows a lot about it when they were setting up my  
 3 furniture, you know, for height and everything. And he  
 4 really tried to get something that accommodated and  
 5 eventually ended up ordering a new chair -- I believe it  
 6 was new -- so it took a while to get.  
 7 Q Who did you make the request of to be provided an ergonomic  
 8 chair?  
 9 A Roy Savoian's assistant.  
 10 Q Did you explain why you needed the chair?  
 11 A I think so. I mean, it was an expensive piece of equipment  
 12 for -- I mean, it wasn't -- I mean, if you -- I just -- I  
 13 think so, yeah. I think she understood, you know, and I was  
 14 using the cane. I started using the cane in September  
 15 so ...  
 16 Q When you said you think she understands, you're referring to  
 17 Roy's assistant?  
 18 A Yeah.  
 19 Q What do you believe that she knew about the reasons why you  
 20 needed an ergonomic --  
 21 A That I --  
 22 Q -- chair?  
 23 A -- had a hip problem, and I couldn't sit unless I could  
 24 adjust the chair in certain ways that made it more  
 25 comfortable for me. It had to do with tilting the seat.

1 The seat has to be tilted. Like these chairs are pretty  
 2 uncomfortable. And the back has to -- and there has to be  
 3 lumbar and the, you know, your armrest. So those are the  
 4 things that really have to be adjustable for an ergonomic  
 5 chair for what I had.  
 6 Q At Loyola who was your direct supervisor?  
 7 A A woman named Jennifer Warwick.  
 8 Q Can you spell her last name?  
 9 A W-a-r-w-i-c-k, Jennifer. And she was the assistant vice  
 10 president for -- for advancement and university relations.  
 11 Q Did you have other work issues at Loyola-Marymount  
 12 University?  
 13 A No.  
 14 Q Did you ever advise Roy as to why you preferred to use your  
 15 own car for work-related travel?  
 16 A Well, I know that I told him it was more comfortable for the  
 17 adjustable seats, getting in and out of. And then once  
 18 you're in, adjusting the seat and having the lumbar control  
 19 in the back and all that.  
 20 Q Any other reason that you gave him for why you preferred  
 21 using your own car?  
 22 A No. Not that I can think of.  
 23 Q Do you recall discussing with Julie why you preferred using  
 24 your own car for work-related travel?  
 25 A No.

1 Q Did you have that conversation with Dr. Baker?  
 2 A I don't think so. It never -- it wasn't something that was  
 3 coming out of their budget, so it was something that -- if  
 4 it was -- if I turned in mileage for my car for business  
 5 use, it came out of the College of Business budget. So it  
 6 wouldn't, to my knowledge, have been anything that I would  
 7 have discussed with Julie unless she brought it up, but I  
 8 don't believe she did.  
 9 MS. SUTTON: Do you want to have a short break for  
 10 lunch? I'm probably pretty close to being done.  
 11 (Recess.)  
 12  
 13 EXAMINATION (Continuing)  
 14 BY MS. SUTTON:  
 15 Q Did you have a meeting with Julie Cloninger before you  
 16 received the voice message from Dr. Baker that you were  
 17 going to be terminated? Right before that time, did you  
 18 have a meeting with Julie Cloninger about your employment?  
 19 MS. LONNQUIST: You mean on that day?  
 20 MS. SUTTON: No. Earlier.  
 21 A About my employment?  
 22 Q Yes.  
 23 A I had a -- I remember the week before Thanksgiving, I had a  
 24 meeting with her prior -- just kind of a weekly meeting, and  
 25 I went over -- we went over my work with the library and

1 what I was doing with Peischl at the library. I reported  
 2 to -- or the director of library is who I reported to, and  
 3 also the progress I'd made on major gift contacts.  
 4 And I remember, you know, talking about Mr. Dooley -- I  
 5 can't think of his first name right now -- but who is a  
 6 graduate and retired and living in California or Oregon,  
 7 somebody named Tyrell. I mean, I can remember some specific  
 8 names. And following up on with -- also with her on Pomer  
 9 Sather and somebody Norby and these people she'd given me to  
 10 follow up with.  
 11 I mean, I remember that kind of reporting back to her,  
 12 and that's why I think that -- that's why I'm recalling  
 13 earlier I said -- made a reference to I thought Paul Baker  
 14 was on vacation because I think it was during that meeting  
 15 before Thanksgiving that, you know, there was a reference to  
 16 him being -- you know, oh, Paul's already gone or something.  
 17 But that's what I remember we met about.  
 18 Q Prior to the time that you were informed that your  
 19 employment was being terminated, did you have a meeting with  
 20 Julie Cloninger in which she discussed that they were  
 21 looking at options regarding your employment, and one of  
 22 those options may be termination?  
 23 A I don't recall that.  
 24 Q Do you recall a meeting with Julie and Paul in which that  
 25 was the tenor of the discussion?