

69420-1

69420-1

FILED  
COURT OF APPEALS DIV I  
STATE OF WASHINGTON  
2013 APR 24 PM 3:19

NO. 69420-1-I

RECEIVED  
COURT OF APPEALS  
DIVISION ONE

APR 24 2013

IN THE COURT OF APPEALS  
IN AND FOR THE STATE OF WASHINGTON  
DIVISION ONE

---

CITY OF SEATTLE, *Appellant*,

JAMES C. EGAN, *Appellant*,

v.

JAMES C. EGAN, *Respondent*

CITY OF SEATTLE, *Respondent*.

---

CONSOLIDATED BRIEF,  
REPLY TO CITY'S RESPONSE  
AND  
OBJECTION TO CITY'S MOTION FOR JUDICIAL NOTICE

---

JAMES C. EGAN  
*Pro Se Appellant*

The Law Offices of James Egan  
605 First Ave Suite 400  
Seattle, WA 98104  
(206) 749-0333  
(206) 749-5888  
[james@eganattorney.com](mailto:james@eganattorney.com)

FILED

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	EGAN’S RESPONSE TO THE UNSOLICITED REQUEST MADE BY THE CITY FOR THE COURT TO TAKE JUDICIAL NOTICE OF A LAWSUIT FILED IN KING COUNTY SUPERIOR COURT	1
	A. The City failed to make a RAP 9.11(a)(1) Motion	1
	B. Objection to Relevance of Relief Sought	3
III.	ARGUMENT	5
	A. EGAN’S REPLY TO THE CONSOLIDATED BRIEFING	5
	1. The KOMO litigation and now <i>Oregon</i> lawsuit have no bearing on the Trial Court’s finding of a CR 11 violation and the impositions of costs to Egan.	5
	2. The City Clearly Violated CR 11.	14
	3. The Trial Court erred when it Reduced the Amount of the Award by Almost Half of what the City Conceded was a Reasonable Amount of Time.	19
	a. The number of hours expended by Egan was reasonable. The Court erred in determining that only 49.75 were reasonable.	20
	b. There is no basis to reduce fees.	21
	c. Pro se fees are appropriate.	22
	4. The Trial Court Erred in not awarding attorney fees for the associates in Egan’s law firm that spent time defending the City’s completely unnecessary lawsuit.	23
IV.	CONCLUSION	26
V.	APPENDIX	
	A. Declaration of James C. Egan	

TABLE OF AUTHORITIES

CASES

*Biggs v. Vail*, 124 Wn. 2d 193, 197, 876 P. 2d 448 (1994).....15, 16, 18

*Bowers v. Transamerica Title Ins. Co.*, 100 Wn. 2d 581, 597, 675 P.2d 193 (1983).....19, 20, 21

*Christiansburg Garment Co., v. EEOC*, 434 U.S. 412, 420, 54 L.Ed 2d 648, 93 S. Ct. 694 (1978).....23

*Fisher Broadcasting (KOMO) v. City of Seattle*, No. 12-2-00938-4 SEA.....3, 5, 6, 7, 14

*In re Cooke*, 93 Wn. App. 526, 529, 969 P.2d 127 (1990).....15

*Leen v. Demopolis*, 62 Wn. App. 473, 815 P. 2d 269 (1991), review denied, 118 Wn. 2d 1022 (1992).....22

*Mahler v. Szucs*, 135 Wn. 2d 398 434, 957 P. 2d 632 (1998).....19, 20

*Miguel Oregon v. City of Seattle*, No. 12-2-38162 SEA.....1, 2, 3, 4, 5, 7, 11, 13

*Perry v. Costco Wholesale Inc.*, 123 Wn. App. 783, 808, 98 P. 3d 1264 (2004).....19

*Progressive Animal Welfare Society v. University of Washington*, 125 Wn.2d 243, 884 P.2d 592 (1995).....10

*Skimming v. Boxer*, 119 Wn. App. 748, 754, 82 P.3d 707 (2004).....15

*Spokane Police Guild v. Washington State Liquor Control Board*, 112 Wn. 2d 30; 769 2d. 283 (1989).....9

STATUTES

RCW 42.56.030.....10

RCW 42.56.540.....2, 4, 5, 6, 7, 8, 10, 11, 13, 14,  
16, 17

RCW 42.56.550.....11

OTHER AUTHORITIES

CR 11.....4, 5, 7, 8, 11, 13, 14, 15, 16, 18, 23, 15, 26

RAP 9.11.....1, 2

ER 201.....1

ER 401.....3

## I. INTRODUCTION

The Respondent, James Egan, first responds to the City's unsolicited request for the Court to take notice of *Miguel Oregon v. City of Seattle*, King County Superior Court Cause No. 12-2-38162 SEA.

Additionally, Egan replies to the City's brief submitted on March 25, 2013.

## II. EGAN'S RESPONSE TO THE UNSOLICITED REQUEST MADE BY THE CITY FOR THE COURT TO TAKE JUDICIAL NOTICE OF A LAWSUIT FILED IN KING COUNTY SUPERIOR COURT.

### A. The City failed to make a RAP 9.11(a)(1) motion.

Citing only Evidence Rule 201 and no Rule of Appellate Procedure, the City seeks to introduce evidence of a new lawsuit (*Miguel Oregon v. Seattle*) filed by Egan months after the appellate procedure began.

For the City to introduce additional evidence, the City must make a RAP 9.11 motion, which holds that:

## ADDITIONAL EVIDENCE ON REVIEW

(a) Remedy Limited. The appellate court may direct that additional evidence on the merits of the case be taken before the decision of a case on review if: (1) additional proof of facts is needed to fairly resolve the issues on review, (2) **the additional evidence would probably change the decision being reviewed**, (3) it is equitable to excuse a party's failure to present the evidence to the trial court, (4) the remedy available to a party through post judgment motions in the trial court is inadequate or unnecessarily expensive, (5) the appellate court remedy of granting a new trial is inadequate or unnecessarily expensive, and (6) **it would be inequitable to decide the case solely on the evidence already taken in the trial court.**

(b) Where Taken. The appellate court will ordinarily direct the trial court to take additional evidence and find the facts based on that evidence. (RAP 9.11, **Emphasis added**)

Even a properly filed motion under RAP 9.11 would fail because the existence of the *Oregon v. Seattle* lawsuit months after the appellate court took the *Seattle v. Egan* case has no bearing on the trial court findings. The Trial Court found the City failed to employ RCW 42.56.540 in the limited emergency circumstances articulated therein (“no evidence presented here on part 2,” that “non-disclosure would be in the public interest.”

CP 604). Further, the trial court found the City sought an injunction for an improper purpose, i.e. to obtain a more favorable decision for precedent in the *KOMO v. Seattle* case that was already pending when *Seattle v. Egan* was filed.

As Judge Lum noted: “This court cannot imagine any scenario where the Washington Supreme Court would encourage the filing of multiple lawsuits with the parties picking and choosing which to pursue depending on the judicial assignment.” CP 604 lines 1-3. Neither issue is changed by notice of an unrelated lawsuit.

**B. Objection to Relevance of Relief Sought.**

The City’s unsolicited insertion of the *Oregon v. Seattle* case into the mix for the Appellate Court review also fails under Evidence Rule 401, as it is not “evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” The Trial Court never inquired into whether Egan’s threat to sue the City were

genuine or hollow, as it was a complete non-issue to determination of facts before the trial court.

Instead, the City's request today for the Appellate Court to take judicial notice of the *Miguel Oregon* case actually supports further CR 11 sanctions against the City. The City continues to demonstrate ongoing and deliberate ignorance of the plain language of RCW 42.56.540 requirements that do not include liability, real or perceived. What led to CR 11 sanctions in the first place was the City's misrepresentation and misuse of RCW 42.56.540, which holds "the examination of any specific public record may be enjoined if....such examination would clearly not be in the public interest and would substantially and irreparably damage any person, or would substantially and irreparably damage vital government functions." Despite loss at the Trial Court, the City continues to adhere to a frivolous and meaningless argument about its own liability. The City continues to insist that the legislature must have meant something quite different from exactly what it

said, about agency and third party lawsuits against records requesters.

### III. ARGUMENT

#### A. EGAN'S REPLY TO THE CONSOLIDATED BRIEFING.

##### 1. **The *KOMO* litigation and now the *Oregon* lawsuit have no bearing on the Trial Court's finding of a CR 11 violation and the imposition costs to Egan.**

The crux of the underlying appeal is whether the City acted properly under RCW 42.56.540 in January 2012, filing a completely unnecessary lawsuit wherein the City avoided discussion of any of the elements of the injunction statute it employed to initiate the lawsuit. The issue is not whether a threat to sue materialized nearly a year after it was made.

The City states the *Oregon* lawsuit shows it “had a legitimate rationale for pursuing a declaratory judgment.” The Trial Court in *Seattle v. Egan* already found the improper purpose or rationale was in seeking a quicker decision in *Seattle v. Egan* while the *KOMO v. Seattle* case was pending, for

apparent collateral estoppel purposes against KOMO. The Trial Court never inquired whether Egan's threat to sue was genuine or not, as that was irrelevant. It still is. The fact the threatened lawsuit materialized does not make the misplaced rationale legitimate; this is rather the City clinging to a non-issue in further attempt to distract the Appellate Court.

The City also states that the lawsuit "confirms that the *KOMO* case did not resolve the central issue in the City's declaratory judgment action." However, there is no *central* issue in *Seattle v. Egan* but rather a three-pronged analysis of the RCW 42.56.540 injunction action (clear exemption plus substantial harm plus no public interest). This is not a weighted analysis. Further, the City fails to state that a ruling by King County Superior Court Judge Rogers *did* predictably resolve that issue at the trial court level, and that its appeal is pending on the issue before the State Supreme Court. CP 388-401.

Whether there is "resolution" of a central issue of conflict of laws between the PRA and an "other" statute is also not

relevant to an agency's use of RCW 42.56.540, as yet another red herring by the City.

The City now states that “the existence of the *Oregon* lawsuit demonstrates that the City did not bring its declaratory judgment action to gain unfair ‘litigation advantage,’” without noting that the “litigation advantage” referred to by the Trial Court (Judge Lum) was the City's wrongful attempt to get a quick decision in the *Seattle v. Egan* case for apparent use as collateral estoppel in *KOMO v. Seattle*. The improper “litigation advantage” was not some kind of head start against Egan, but an ill-thought strategy against KOMO to treat Egan as a PRA guinea pig, unnecessarily duplicating litigation and cost to the trial court, Egan and KOMO, requiring substantial and unnecessary legal energies by all involved.

With no logical analysis, the City states that “the existence of the *Oregon* lawsuit shows that the City did not violate CR 11 when it filed its declaratory judgment action.” Under this reasoning, agencies can sue any records requester at

any time without regard to RCW 42.56.540 limitations, waltzing into CR 11 sanctions. If the requester then ever decides to follow through with exercising PRA rights to seek judicial review of the agency's purported exemption, CR 11 sanctions are somehow mooted, despite the agency's initial failure to read the statute's limitations on blocking production of records. To avoid negating CR 11 sanctions under the City's strange scenario, the records requester must forgo the right to pursue PRA penalties for the original record denial, simply because they were wrongfully sued in the first place.

CR 11 sanctions are for conduct *at the time of the signing of the pleading* that the argument “(1) [] is well grounded in fact; (2) is warranted by existing law or good faith argument for the extension, modification, or reversal of existing law or the establishment of new law [and] (3) it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation...” (emphasis added) See CR 11.

A subsequently filed lawsuit some 11 months later has no bearing on the City Attorney's poor choice in January 2012 to rush-file a voluminous injunction with a different purpose (blocking agency production of a record versus challenging an asserted exemption) with substantially greater legal barriers to success beyond litigating the "other statute" exemption – that there also be no public interest in the requested records *and* also that their release would cause substantial and irreparable harm to a person or an agency.

The PRA is a "strongly worded mandate for broad public disclosure," and thus it is not the two-way street the City would suggest for good reasons. *Spokane Police Guild v. Washington State Liquor Control Board*, 112 Wn. 2d 30, 33, 769 P. 2d 283 (1989). The construction of the PRA clearly holds that: "The people of this state do not yield their sovereignty to the agencies that serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to

know. The people insist on remaining informed so that they may maintain control over the instruments that they have created.” RCW 42.56.030. Further, “the stated purpose of the Public Records Act is nothing less than the preservation of the most central tenets of representative government, namely, the sovereignty of the people and the accountability to the people of public officials and institutions.” *Progressive Animal Welfare Soc’y v. University of Wash. (PAWS II)*, 125 Wn.2d 243, at 251, 884 P.2d 592 (1995).

From the outset, the City has operated as if the construction and mandate of the PRA ensuring public access to records are empty words, and that the agency is entitled to foist substantial litigation against a public records requester, at the requestor’s own expense, for invented reasons that do not fit either the spirit or language of the PRA. The City’s current backpedaling and explanation that “temporary prohibitions” (an arguable oxymoron) somehow automatically satisfies every element of RCW 42.56.540 without inquiry is a new, baseless

argument that should be ignored. The simple failure to read the statute first and the legal time wasted for that decision is the reason for CR 11 sanctions.

In backhanded logic, the City now suggests that “taking judicial notice that the *Oregon* case exists will prevent Egan from gaining unfair litigation advantage against the City.” Somehow, the City sees it as inherently unfair that a records requester might disagree with its broad view of exemptions of public records; never minding the PRA clearly authorizes and anticipates such actions by records requesters under RCW 42.56.550, even describing a penalty analysis. Had the City properly read RCW 42.56.540 in advance of filing an injunction against Egan, and therefore not filed the suit because of its clear inability to articulate actual harm to persons or agencies and *also* to show absence of public interest in specific requested records, the City would then wait for Egan’s lawsuit whenever filed and defend against it, without any “litigation advantage” allegation. However, if the City does what it did here, filing a

“completely unnecessary” lawsuit against Egan, and then rightfully loses because Egan elected to fight the unlawful injunction, any follow up action by Egan as promised is Egan “gaining unfair litigation advantage against the City.” The City’s current “sour grapes” position merely supports Egan’s contention that the City filed its ill-thought injunction statute to prevent Egan from ever filing a suit of his own; obviously, if its argument today has any weight, the net effect would be to do precisely that in deterring such action by Egan and his client, as the City’s unlawful lawsuit would create a conflict between Egan’s interests as PRA defendant and his client’s interests in obtaining records. Even in the wake of defeat, the City seeks to use Egan’s actual filing of the threatened lawsuit today as evidence its own injunction lawsuit was well-grounded at the time it filed it over a year ago. This makes no sense.

The City’s request for the Court to take judicial notice that the lawsuit Egan threatened to file ultimately *was* filed is wholly irrelevant to whether there was no public interest in the

records in dispute, a core deficiency of the City's action found by the Trial Court. Whether or not a perceived risk of liability materializes has no place in any RCW 42.56.540 analysis. The City's attempt to insert the Oregon lawsuit into the record only further supports CR 11 sanctions, because the City continues to recklessly disregard its plain burden *to enjoin* a records requester only in those rare emergency circumstances contemplated by RCW 42.56.540.

Instead, the City plainly attempts to distract the Court by discussing its rationale for the injunction lawsuit, quite apart from the legal hurdles it failed to even acknowledge in doing so. From the outset, the City has sought to shift discussion away from the statute, and thus CR 11 sanctions are appropriate both at the Trial Court and now at the Appellate Court.

Indeed, where the Court in *Seattle v. Egan* "must dismiss this lawsuit on procedural grounds without resolving the 'other statute' issue," the filing of *Oregon v. Seattle* lawsuit puts that same issue of the City's claimed exemption of RCW

9.73.090(1)(c) before a court for proper consideration whether it applies. CP 604.

For continuing in its reckless misrepresentation of the PRA injunction statute (RCW 42.56.540), CR 11 sanctions are warranted, as the City has failed to articulate a basis in fact or law, and/or did in fact file the injunction action against Egan for an improper purpose, with unnecessary litigation where the City's loss was predictable barring Egan's default, and/or to obtain an advantage in pending *KOMO 4* litigation, where the issue the City ostensibly sought to address with Egan was in fact addressed before a different Trial Court.

The *KOMO* case is relevant only insofar as CR 11 sanctions apply on improper purpose or litigation misconduct grounds, as the *KOMO v. Seattle* case was potentially jeopardized by the City's litigation shenanigans against Egan.

## **2. The City clearly violated CR 11.**

The Trial Court did not err when it found *sua sponte* that the City violated CR 11.

If a filing is signed in violation of the rule, the court "may impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or legal memorandum, including a reasonable attorney fee." CR 11(a).

The purpose of CR 11 is to deter baseless filings and curb abuses of the judicial system. *Skimming v. Boxer*, 119 Wn. App. 748, 754, 82 P.3d 707 (2004) (citing *Biggs v. Vail*, 124 Wn.2d 193, 197, 876 P.2d 448 (1994) (*Biggs II*)). Because CR 11 sanctions may have a chilling effect, a Trial Court should impose them "only when it is patently clear that a claim has absolutely no chance of success." *Skimming*, 119 Wn. App. at 755 (citing, *In re Cooke*, 93 Wn. App. 526, 529, 969 P.2d 127 (1990)).

Several times during argument, the City contended that the suit against Egan was simply to gain "judicial guidance"

based on its perceived liability from Egan's threat to sue in the public records requests.

Neither "judicial guidance" nor potential liability are factors in RCW 42.56.550(4); the City simply did not read nor even quote the plain language of the injunction statute (RCW 42.56.540) before filing a time-consuming lawsuit against this records requester.

Where RCW 42.56.540 plainly requires a showing by plaintiff of a clear exemption, no public interest in the requested records, and substantial and irreparable harm to an agency, the City never acknowledged this language nor offered argument for good faith extension of the clear requirements in its initial claim. Rather, the City merely filed a hasty lawsuit which incorrectly asserted a "right" to seek "judicial guidance" whenever faced with potential liability from a records requester.

A trial court imposing CR 11 sanctions must specify the sanctionable conduct in its order. *Biggs II*, 124 Wn.2d at 201. "The court must make a finding that either the claim is not

grounded in fact or law and the attorney or party failed to make a reasonable inquiry into the law or facts, or the paper was filed for an improper purpose." *Id.*

The Trial Court made very specific findings as to the CR 11 violation. CP 601-606; CP 1011-1015.

A reasonable inquiry into RCW 42.56.540 would have found that "the examination of any specific public record may be enjoined if, upon motion and affidavit by an agency... the superior court... finds that such examination would clearly not be in the public interest and would substantially and irreparably damage any person, or...vital government functions." In the plain language of the statute, agencies are not exempt from RCW 42.56.540. The City made no attempt to meet the burdens expressly set forth in RCW 42.56.540 for its action against Egan, especially that burden regarding proof of no public interest whatsoever in specific records requested by Egan.

CR 11 is not meant to act as a fee shifting mechanism, but rather as a deterrent to frivolous pleadings. *See Biggs II*. Courts should employ an objective standard in evaluating an attorney's conduct, and the appropriate level of pre-filing investigation is to be tested by "inquiring what was reasonable to believe at the time the pleading, motion or legal memorandum was submitted". *See Biggs II*. The Trial Court found the suit filed against Egan completely unnecessary and only used to increase the cost and expense to Egan.

This blatant misrepresentation and abuse of the injunction statute by the City amounted to an unwarranted legal action in an attempt to forum shop to gain a litigation advantage, requiring CR 11 sanctions against the City.

The plain language of the Court Rule allows the Court to *sua sponte* issue sanctions. No notice is required. Having said that, the City was well aware of the avenue the Trial Court was going down since the City filed unsolicited briefing regarding CR 11 sanction.

The City even in the Appellate Court has continued submitting unsolicited briefing in its latest attempt to distract the Court of the true issue at hand. The City's filing of the motion for the Appellate Court to take judicial notice of a pending lawsuit in the King County Superior Court is completely in violation of RAP and didn't even demonstrate the relevance of a Superior Court lawsuit to this matter.

**3. The Trial Court erred when it Reduced the Amount of the Award by Almost Half of what the City Conceded was a Reasonable Amount of Time.**

The reasonableness of attorney's fees is guided by the "lodestar" determination, whereby the court multiplies the number of hours worked by the attorney's reasonable hourly rates. *Bowers v. Transamerica Title Ins. Co.*, 100 Wn. 2d 581, 597, 675 P.2d 193 (1983); *See also Mahler v. Szucs*, 135 Wn. 2d 398 434, 957 P. 2d 632 (1998). The "lodestar" figure "is the market value for the attorneys' services calculated by the hours reasonably expended in the litigation by the reasonable rate of compensation." *Perry v. Costco Wholesale Inc.*, 123 Wn. App.

783, 808, 98 P. 3d 1264 (2004). The burden of justifying any deviation from this established hours times rate amount rests on the party proposing the deviation. *See Bowers*, 100 Wn. 2d at 598.

Under the lodestar analysis, the first task for the Court is to assess the reasonably hourly rate for the work of Egan. Egan has described the professional credentials and qualifications of all counsel in this case and their current rates. CP 961-964. There is a presumption that an established billing rate is a reasonable rate. *See Bowers*, 100 Wn. 2d at 597. (“Where the attorneys in question have an established rate for billing clients, that rate will likely be a reasonable rate.”).

- a. The number of hours expended by Egan was reasonable. The Court erred in determining that only 49.75 hours were reasonable.

The next step in the lodestar analysis is to determine the “reasonable number of hours” counsel expended in “securing a successful recovery for the client.” *Mahler*, 135 Wn. 2d at 434.

Egan has provided detailed billing records demonstrating every task performed in the case and its duration. CP 965-982.

All fee entries were a direct result of the actions taken by the City in its unnecessary lawsuit and forcing Egan to engage in the litigation activities undertaken.

The City as much conceded that the reasonable amount of hours would be at a minimum 100 hours. CP 992 at line 19. At a minimum the Trial Court should have awarded Egan \$29,500 as conceded by the City.

The Trial Court made findings that the City's suit was brought to gain an improper litigation advantage and to increase cost to Egan. CP 603 lines 21-22. The lawsuit had that effect, and cutting in half the City's proposed self-penalty does not serve the purposes of CR 11.

b. There is No Basis to Discount Fees.

The City must justify any deviation from the lodestar amount. *Bowers*, 100 Wn. 2d at 598. ("The party requesting a

deviation from the lodestar bears the burden of justifying it.”).

The City has not shown any justification for any deviation.

c. Pro Se Attorney Fees are Appropriate.

In *Leen v. Demopolis*, 62 Wn. App. 473, 815 P. 2d 269 (1991), review denied, 118 Wn. 2d 1022 (1992) Division One considered whether an attorney appearing pro se could recover attorney fees in responding to an appeal. The *Leen* Court held that pro se attorneys could recover attorney fees where fees are otherwise justified because they must take time from their practices to prepare and appear as any other lawyer would. *Id.* at 487. Although *Leen* concerned appellate attorney fees, its reasoning is sound and we must extend the analysis to the present case to explain why the Trial Court fees awarded are warranted. Knowing Egan was an attorney with associates, Egan was sued by the City. The Trial Court found the lawsuit brought by the City “completely unnecessary” and at increase cost to Egan.

Some courts have awarded attorney fees to lawyers who have represented themselves when the award would further the policy of discouraging frivolous or harassing litigation. See *Christiansburg Garment Co., v. EEOC*, 434 U.S. 412, 420, 54 L.Ed 2d 648, 93 S. Ct. 694 (1978).

The Trial Court ordered attorney's fees to be paid by the City. The Trial Court also made the findings that the City had violated CR 11 by trying to obtain a litigation advantage by suing Egan.

**4. The Trial Court erred in not awarding attorney fees for the associates in Egan's law firm that spent time defending the City's completely unnecessary lawsuit.**

Civil Rule 11 clearly holds that:

If a pleading, motion, or legal memorandum is signed in violation of this rule, the court, upon motion or upon its own initiative, may impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the **reasonable expenses incurred** because of the filing of the pleading, motion, or legal memorandum, including a reasonable attorney fee."

The proper analysis is not strictly whether the time of Wilkinson and Bettinger should be regarded as a “reasonable attorney fee,” but rather whether their time is included as “the amount of reasonable expenses incurred because of the filing of the pleading.” After all, each hour spent by Bettinger and Wilkinson in defending against the lawsuit at Egan’s direction was an hour the same associate lawyers could not bill a paying client, to Egan’s benefit. The time of Associates Bettinger and Wilkinson spent on defending Egan was a larger operating cost of Egan’s personally to the detriment of income from Egan’s other clients besides himself. Egan personally suffered the expense of lost business income of Bettinger’s and Wilkinson’s hours because of the City’s suit, of which the City was well aware, and those hours are among the “reasonable expenses incurred because of the filing of the pleading.”

Still, the City continues to submit unsolicited pleadings which have required additional time researching and responding to the requests. By necessity of his own limited time, Egan still

directs his associates to respond at his own business loss. This unsolicited pleading has been addressed in the beginning of this pleading. See pages 1-3.

The mere fact that Egan did not file a Notice of Appearance as the Law Offices of James C. Egan but simply a *Pro Se* notice should have no effect on the award of fees from the associates in his office.<sup>1</sup> To have had his law firm associates individually file Notices of Appearance would be a distinction without a difference; the work performed in substantial briefing by Egan's lawyers, reviewed and relied upon by the City and the Trial Court, was identical regardless of how a notice of appearance was filed.

To now expect zero compensation for their time is to cheat them and Egan of his necessary reliance on them, contrary to the spirit of CR 11 sanctions imposed against the

---

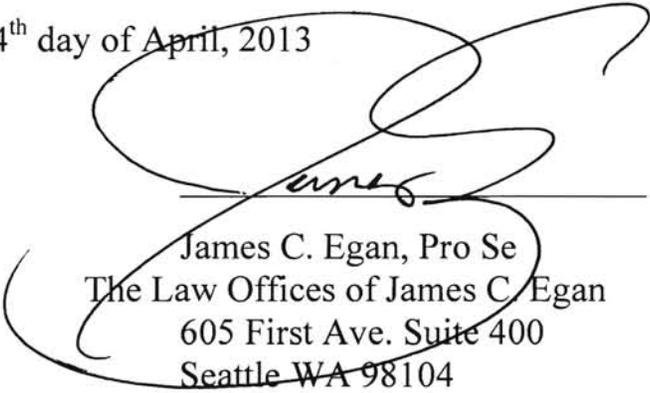
<sup>1</sup> Remaining as a *pro se* defendant highlights the nature of James Egan as a records requester and not an attorney, and emphasizes the absurdity of the City's legal action, which by their argument can equally be taken against any other *pro se* records requester. However, the costs to Egan are equivalent to the hiring of any expert lawyer to defend him.

city. Both equitably, and as a tangible and “reasonable expense incurred” by Egan, the City is obligated to pay for their time.

#### IV. CONCLUSION

The Trial Court’s finding that the City violated CR 11 should be upheld. The case should be remanded with instructions to the Trial Court to enter an order recognizing that Egan has prevailed in the amount to be awarded for the CR 11 violation be minimally \$29,500, and that associate attorney fees should be likewise compensated as they were clearly and actively involved. This Court should make an award of fees for Egan’s successful appeal.

DATED this 24<sup>th</sup> day of April, 2013



James C. Egan, Pro Se  
The Law Offices of James C. Egan  
605 First Ave. Suite 400  
Seattle WA 98104  
(206) 749-0333  
(206) 749-5888 (fax)  
[james@eganattorney.com](mailto:james@eganattorney.com)

# APPENDIX A

Affidavit by James Egan

I hereby assert under penalty of perjury, in Seattle, Washington, as follows: I do not believe the Appellate Court has cause to inquire into my reasoning and timing of the *Oregon v. Seattle* lawsuit to recognize it is irrelevant to any issue of *Seattle v. Egan*. However, if the Appellate Court has any concern, I filed the *Oregon* lawsuit when I did because I had an ethical obligation to do so. My Hispanic clients Miguel Oregon and Hugo Perez hired me in late 2011 to investigate the racially charged and demeaning atmosphere of their arrest, where SPD officers said (among other things) “Fuck Yakima,” “I’ll break your fucking neck, homeboy” “If it weren’t for my badge I’d skull-fuck you and drag you down the street,” “Don’t suck my dick,” and “You made the mistake [of looking bad] the moment you crossed the City line.” Three officers detained and manhandled the passenger without cause and accused him of being responsible for “driving like assholes,” needling him to fight them. Two of these officers were also involved in

dragging another one of my minority clients out of his car in the middle of his 911 call in fear for his safety from those officers, where the encounter started with the Officer saying “Roll the fucking window down” on a traffic stop.

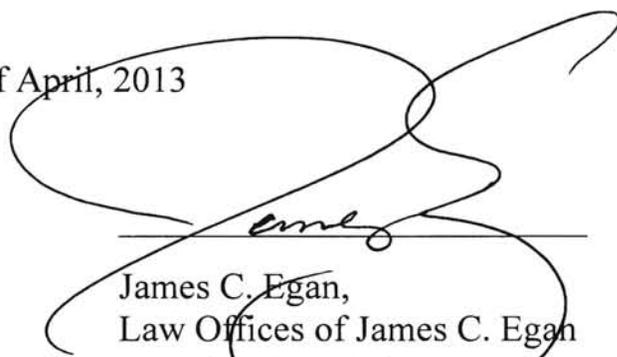
Both Oregon and Perez were aware I could request 36 in-car videos reviewed by the Seattle Police Internal Investigations Unit (OPA) involving possible misconduct of these four officers, so I was hired in part to obtain those videos and investigate possible federal section 1983 claims. When I took the clients on, I was ethically obligated to research their claim; to not have ever filed any suit exposed me to a potential malpractice claim from those clients.

Further, the circumstances of February 2013 when I served the *Oregon* claim were quite distinct from those of January 2012 (when the City filed the injunction action against me). In the interim between those events, KOMO 4 waged a compelling battle before King County Superior Court Judge Rogers, and KOMO is now on a fast track for argument before

the State Supreme Court, in May. I have followed and conferred with the KOMO 4 and other PRA expert lawyers, and after research and rumination concluded that there are a host of reasons why RCW 9.73.090(1)(c) is not an “other statute” requiring exemption of in-car videos. That realization took months of study and was colored by the substantial briefing by KOMO 4 and the City’s woeful response to KOMO on that legal front.

So, where the City would imply I was “lying in wait” until the last day to sue them, and then doing the same to serve them, in reality I was pondering whether I had grounds to win any Oregon lawsuit and before time ran out, I made that decision to do it. While I would have liked to wait longer for a binding KOMO 4 Supreme Court outcome, doing so would have meant missing a statute of limitations and losing any issue by default.

DATED this 24<sup>th</sup> of April, 2013

A large, stylized handwritten signature in black ink, appearing to read 'J. Egan', is written over a horizontal line. The signature is highly cursive and loops around the text below it.

James C. Egan,  
Law Offices of James C. Egan  
605 First Ave. Suite 400  
Seattle WA 98104  
(206) 749-0333

2013 APR 24 PM 3:19

IN THE COURT OF APPEALS  
IN AND FOR THE STATE OF WASHINGTON  
DIVISION ONE

---

CITY OF SEATTLE, *Appellant*,

JAMES C. EGAN, *Appellant*,

v.

JAMES C. EGAN, *Respondent*.

CITY OF SEATTLE, *Respondent*.

---

CERTIFICATE OF SERVICE

---

JAMES C. EGAN  
*Pro Se Appellant*

The Law Offices of James Egan  
605 First Ave Suite 400  
Seattle, WA 98104  
(206) 749-0333  
(206) 749-5888  
[james@eganattorney.com](mailto:james@eganattorney.com)

Alyssa Nava states and declares as follows:

1. I am over the age of 18, am competent to testify in this matter, am a Legal Assistant at the Law Offices of James C. Egan, and make this declaration based on my personal knowledge and belief.

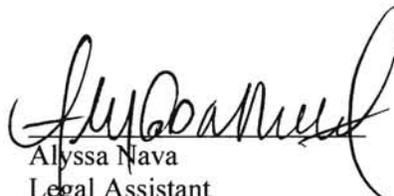
2. On April 24, 2013, I delivered a copy of Consolidated Brief, Reply to City's Response and Objection to City's Motion for Judicial Notice to:

Mary F. Perry  
Assistant City Attorney  
Seattle City Attorney's Office  
600 Fourth Avenue, 4th Floor,  
Seattle, WA 98124-4769

Washington State Court of Appeals Division 1  
600 University St  
One Union Square  
Seattle, WA 98101-1176

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

SIGNED in Seattle, Washington, this 24<sup>th</sup> day of April, 2013.



Alyssa Nava  
Legal Assistant

Beth A. Hinkle states and declares as follows:

1. I am over the age of 18, am competent to testify in this matter, am a Paralegal at the Law Offices of James C. Egan, and make this declaration based on my personal knowledge and belief.

2. On April 24, 2013, I mailed a copy of Consolidated Brief, Reply to City's Response and Objection to City's Motion for Judicial Notice to:

Phil Talmadge

Talmadge/Fitzpatrick  
18010 Southcenter Pkwy  
Tukwila, WA 98188

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

SIGNED in Seattle, Washington, this 24<sup>th</sup> day of April, 2013.



Beth A. Hinkle  
Paralegal