73195-5 73195-5

No. 73195-5-I

COURT OF APPEALS
SUPERIOR COURT
OF THE STATE OF WASHINGTON

WARREN E. BOHON,

Plaintiff,

vs.

CITY OF STANWOOD,

Defendant.

BRIEF OF RESPONDENT

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I. INTRODUCTION

Plaintiff/Appellant Warren Bohon ("Plaintiff") was terminated from his employment with the City of Stanwood in January 2006 after repeatedly refusing to follow directives from City management to move his office to City Hall, where his Planning and Community Development Department (and his supervisor) were located.

He subsequently sued the City (first in federal district court and then in state superior court) claiming RCW 49.60 age discrimination, wrongful discharge, willful withholding of wages, negligent/intentional infliction of emotional distress, and breach of contract. Plaintiff voluntarily dismissed his federal action and, after six more years of delays and continuances and three trial dates, the state superior court granted the City's summary judgment in February of 2015—the week the matter was finally supposed to go to trial. CP 180-182, CP 5-7. Plaintiff now appeals. It has now been more than 11 years since Plaintiff was terminated and nearly a decade since he began litigating against the City.

Plaintiff's arguments on appeal are unsupported by the facts and law. To start, Plaintiff—for the first time after a year of appellate proceedings—now claims he never received the City's summary judgment materials at any point prior to the February 5, 2015, summary judgment hearing. This argument is belied not only by the numerous methods of service utilized by the City, but also by Plaintiff's own actions indicating he did have notice of the Motion. He received continuances—hearing was not held until nearly seven weeks after Plaintiff was served. Further,

regardless of the scope of evidence the appellate court chooses to review, dismissal was appropriate and should be affirmed.

II. STATEMENT OF THE CASE

Appellant's Brief is rife with unsupported factual statements with no citations to evidence to support them that are contrary to evidence, or are based on evidence not in the record; these statements should be disregarded. See, e.g. p.7, 37-40 (claiming Mr. Bohon had "just recently" reported other employees alleged misconduct) [1]; App. Brief, App. A, ¶5; p. 4, 7 (claiming Plaintiff made allegations "so striking" that it led to a "needs assessment").[2]

The key material facts were never in dispute: Mr. Bohon admits he refused every directive to move his office to City Hall where his department was located, that he sent and/or received all of the notices and memos referred to herein (he just disagrees with them), that he had the opportunity to present all of his historical complaints to the new Mayor, Dianne White prior to termination, that he did not have any reason to distrust her, and that he told her he would continue to refuse even

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[1] Plaintiff provides no evidentiary support for this notion.

[2] Had Plaintiff responded with such allegations in the trial court, the City would have provided additional excerpts from Plaintiff's deposition establishing the misleading nature of such assertions—these are references to alleged occurrences *years ago* that Plaintiff simply keeps repeating. *See, e.g., Appendix B, Vol. II*, p. 85-89 (Plaintiff allegedly confronted and complained of co-workers drinking in 1992—24 years ago); p. 103-111 (it was 2000-2001, when Stephanie Hansen first hired, that Plaintiff complained to her about Beckman drinking in 1992, John case not reading water meters *years before*, that he had "blown the whistle" on Gary Armstrong who had been fired years earlier). See also, CP 76-79. *See also, App. B, Vol. III*, p. 74-80 (Plaintiff complained to Hansen, Beckman, and Anderson in 2001 that Anderson should never have been hired as PW Director).

directives by her to move to City Hall. Appellant's brief selectively chooses to leave out numerous facts that are clearly undisputed based on Plaintiff's own testimony.

A. Factual Background[3]

Plaintiff Warren Bohon was hired by the City of Stanwood on October 20, 1992, at the age of 59, as a part-time Code Enforcement Officer, then also became a Building Inspector. CP 57-61, 66, 68. He was terminated from his employment on January 13, 2006 at the age of 72.[4] CP 57-61. *Id.* His job duties included performing a variety of tasks related to the interpretation and enforcement of building codes, and related rules and regulations. *Id.*, CP 135-138 (Plt. Dep., Ex. 10). The City of Stanwood is a noncharter code city, operating under a Council-Mayor form of government pursuant to Chapter 35A RCW; only the Mayor had authority to terminate Mr. Bohon's employment. CP 310-343.

1. In 2001, Stephanie Hansen Became Mr. Bohon's Supervisor.

In 2001, Stephanie Cleveland Hansen was hired as the Community Development Director for Stanwood and was Mr. Bohon's direct

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[3] Appellant's brief chooses to reference only the declarations of White and Hansen, ignoring that all facts were also supported by the deposition testimony and exhibits of the Plaintiff. CP 439-462. No citations to the Declarations of White or Hansen are made herein, nor are they needed to support a decision to affirm summary judgment dismissal. All cites to specific deposition page numbers are to the deposition of Plaintiff, the only deposition taken in this matter. Notably, despite claiming the City should have included more excerpts from Plaintiff's deposition and proceeding to offer new declarations, Plaintiff does not offer any additional deposition testimony that would change the outcome.

[4] As of September 2013 (date of his deposition), Plaintiff was 80 years old. CP 83 (p. 138:5-6). He is now 82.

supervisor over the next four years. CP 68 (p. 61:18-62:2), CP 76 (p. 105:5-10), CP 9 (p. 211:13-25). Mr. Bohon also worked closely with Tim Nordvedt, the Building Official, and Nancy Fullerton, who scheduled his inspection appointments. CP 76 (p. 105:11-20), CP 77 (p. 113:2-7), CP 78 (p. 115:15-116:5). Everyone in the Community Development Department (CCD) except Mr. Bohon had offices at City Hall. CP 67 (p. 59:15-20), CP 71 (p. 74:23-24). Unlike the rest of his department, Mr. Bohon's office was located in what is referred to as the "Lagoon Building," where the Public Works Department was housed. It is located approximately three quarters of a mile from City Hall. CP 67 (p. 59:25). Mr. Bohon never worked *for* the Public Works Department, nor was he ever supervised by the Public Works director (Les Anderson). App. B, Vol. III, p. 78:2-11.

2. In 2005, Plaintiff Was Directed to Move His Office From the Public Works Building to City Hall Where His Supervisor and His Department Were Located, but He Refused.

In November of 2005, Ms. Hansen directed Mr. Bohon to move his office from the Public Works Lagoon Building to City Hall where she and the rest of the Department were located. He refused. CP 93 (p. 211:13-25). On December 7, 2005, then-Mayor Herb Kuhnly issued a written directive to Mr. Bohon ordering him to comply with Ms. Hansen's directive to pack his office in preparation for moving it to City Hall no later than December 12th. CP 144 (Plt. Dep. Ex. 12). Mayor Kuhnly advised Bohon that he would face disciplinary action for intentional

insubordination if he did not comply with the directive and report to work at his new work station as of December 13th. *Id.* He also clarified that assistance would be provided to Mr. Bohon if any physical limitations made moving the office himself difficult and explained the decision. *Id.* Bohon still refused. *Id.*

Mr. Bohon took no steps to pack up his office. Instead, he called in sick, then failed to show up for scheduled building inspections. CP 150-155 (Plt. Exs., 14-15). He did appear to ask Ms. Hansen to sign several leave slips, and handed her a memo clarifying a vacation request. CP 156-160 (Plt. Dep., Ex. 16).[5]

3. Plaintiff's Supervisor Recommends Termination For His Continued Insubordinate Refusal to Move His Office To His Department; Plaintiff Responds With Accusations.

Given his continued refusal to comply with her and Mayor Kuhnly's directives, Ms. Hansen recommended to the Mayor that Bohon's employment be terminated.[6] Mayor Kuhnly advised Bohon that, due to his continued insubordination, he was considering terminating his employment, and notified him a pre-termination hearing would be scheduled in January 2006. CP 161-162 (Plt. Dep. Ex. 18).

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[5] In it, Mr. Bohon told Ms. Hansen that December "*...it is a pleasure to be able to work with you.*" CP 156-160 (Plt. Dep., Ex. 16). This was the person who recommended his termination.

[6] On December 20, 2005, Ms. Hansen wrote a memo to Mayor Kuhnly recommending the termination of Mr. Bohon's employment. CP 161-162 (Plt. Ex. 17). *See also*, CP 161-162, 104 (Plt. Dep. Ex. 17; p. 30-31:25) (Plaintiff admits receiving the letter but disregarded it because he claims that it "*is a fraudulent document*" and a "*criminal offense to have filed it*," though he does agree: "***Yes. I refused to move my office***.").

Still refusing to comply with the directives of his supervisor and the Mayor, and in response to the Mayor's pre-termination notice, Mr. Bohon attempted to appeal to Dianne White, the newly-elected Mayor of Stanwood slated to take office in January of 2006. His December 13, 2005 memo was titled "*Subject: Reporting Improper Governmental Action.*" CP 145-149 (Plt. Dep. Ex. 13). In it, he alleged that he *believed* the December 7th directive by Mayor Kuhnly to move his office was given in retaliation for his objections to the City's previous decisions to hire City Administrator Beckman and PW Director, Les Anderson years earlier (2001). He also stated:

> ***Stephanie you are aware of my age. It is important that you, as an involved party, ensure that Mayor Kuhnly and Bill Beckman are aware of it.*** *To terminate a person my age is the severest act an employer can do to an employee. If the City of Stanwood proceeds to terminate my employment I will be fully justified in seeking the severest of penalties to be assessed against all relevant parties.*
>
> ....
>
> *As I advised you two over two weeks ago, I am today submitting a request for approval of vacation.....For the City to disturb or relocate my office during the time I am away and/or to terminate my employment given the existing circumstances will be further proof of illegal, pretextual acts, done in BAD FAITH.*"

CP 145-149 (Plt. Dep. Ex. 13).

Bohon asserted that Bill Beckman (City Administrator) was, in his opinion, "unqualified" and should never have been hired and continued to express his disagreement with the City's decision to hire Les Anderson as the Public Works Director back in 2001.[7] Bohon attributed the November

[7] In fact, Plaintiff continues to assert in 2014: "*I had superior qualifications to practically everybody at the City of Stanwood because of my age and my credentials.*"). CP 73 p.

2005 decision and directive from Ms. Hansen to move his office to Mr. Anderson (the Public Works Director), stating additionally:

> ***In my meeting with you yesterday Stephanie I made it clear to you that*** *I was in no way being insubordinate to any order from you that was a result of Directions BB [Bill Beckman] or the Mayor [Herb Kuhnly] gave you. I advised you that I had been hampered by my injury, and all I was* ***seeking was a meeting with the incoming Mayor, Dianne White.***

CP 139-142 (Plt. Dep. Ex. 11) (emphasis added).[8]

After she was sworn into office, Mr. Bohon tried to convince Mayor White to meet with him "one-on-one" instead of proceeding with the pre-termination hearing "*because I thought she was not biased like everyone else.*" CP 106-107 (p. 41:9-42:18). Mayor White did not accept Bohon's attempts to meet with her alone, but proceeded with the scheduled pre-termination hearing. **Mr. Bohon admits he had no reason**

84:22-25) (he was more qualified for several jobs than others); CP 80, p. 127:2 ("*I was more qualified than any of them*"); CP 88 p. 167:17-24 ("*I told you they would never let me get any kind of a supervisory position...I was qualified to have any of them.*"); CP 103, p. 20:9-21:6 ("*I was more qualified"..."far more, far more qualified*" for the job of Community Development Director than Stephanie Hansen); CP 109-110, 71, p. 56:21-58:1, p. 75:9-24 ("*I was more qualified to ever have that job than* [Lynda Jeffries, City Clerk/HR Director]"); CP 82-83, p. 137:11-138:1 ("*I was more qualified for that job* [of City Administrator] *than he* [Bill Beckman] *was.*"); CP 90, p. 179:4-20 ("*I was better qualified than Gary Armstrong* [Public Works Supervisor]"); CP 89, p. 172:1-2 ("*they were all paid way better than I was and none of them were qualified to even still be there.*").

[8] Bohon continued to assert his opinion that his office location in the Public Works Building was, in his opinion, "*more cost-beneficial to COS taxpayers,*" that no harm would come by delaying relocation until Mayor White took office and he could have a "one-on-one" meeting with her, and that "*in-no-valid-manner require that I be disciplined, in any way, by a reprimand letter or otherwise.*" CP 139-142 (Plt. Dep., Ex. 11). On December 21st, Ms. Hansen approved his vacation from December 19, 2005-January 6, 2006 and provided him a copy of her termination recommendation. CP 163 (Plt. Ex. 18). Consistent with Plaintiff's own request, pre-termination hearing was not scheduled until January 9, 2006 with Mayor White after she took office. CP 163 (Plt. Ex. 18).

at the time to suspect Mayor White was motivated by an intent to discriminate or retaliate against him (based on age or any other reason) before he met with her. CP 106-107 (p. 41:25-42:3). Bohon believed that she was untouched by the "rampant corruption and bias" he felt surely motivated the termination recommendations of Ms. Hansen and Mayor Kuhnly. *Id.* [9]

4. Following a Pre-Termination Hearing, Mayor White Terminated Plaintiff's Employment for Insubordination in January 2006.

On January 9, 2006, a pre-termination hearing was held at City Hall. Mayor White, the City Attorney (Grant Weed), and the City Clerk/HR manager (Linda Jeffries) attended, as well as Mr. Bohon and two of his friends—Erik Abrahamson and Randy Richards. *See*, *Dec. Grant Weed*, CP 105-108 (p. 35-49). Mr. Bohon proceeded to describe to Mayor White all of the historical disagreements he had with past hiring/firing decisions, and his long-held belief that nearly "everyone" who had worked at the City over the past two decades was "corrupt". CP 310-343 (Dec. of Weed); CP 65 (p. 47:17-48:11). He insisted that the reasons stated by Hansen and Mayor Kuhnly for his pending termination were all "lies" and "false statements." *Id.*; CP 78-79 (p. 117:13-118:3). He also, at this point, **he also told Mayor White that he refused and**

[9] Plaintiff further established he was unwilling to take directives from any of the number of mayors he served under. See, e.g., CP 85 (p. 147:19-150:30) former Mayor McCune was also "corrupt" and tried to "set him up" by insinuating he was doing his job wrong, and CP 86 (p. 150:4; 151: 16) Mayor Kuhnly must have "become" corrupt despite having no reason to think he was corrupt before he was elected to office by the citizens of Stanwood.

would continue to refuse to move his office to City Hall as directed—even if she were to direct him to do so then.[10] *Id.*

Ultimately, Mayor White decided to proceed with terminating Mr. Bohon's employment. On January 13, 2006, she issued a notice to Mr. Bohon that she had decided to terminate his employment for the reasons outlined in Ms. Hansen's recommendation, noting:

> *While any one of the reasons cited for your termination standing alone is a sufficient basis to take this action,* ***the fact that you were repeatedly given a clear directive to move your office and yet willfully refused to do so and even continue to resist that directive during the pre-termination hearing****, convinces me that your continued employment is not in the City's best interest.*

CP 164-165 (Plt Dep., Ex. 19). She noted that his persistent refusal to move his office, alone, constituted insubordination of a nature that could not be tolerated and was the primary reason she decided to terminate him. Mr. Bohon now alleges it must have been because of his age. CP 74 (p. 92:14-25).[11]

Plaintiff concedes he still does not have any actual evidence that Mayor White terminated his employment due to his age. As he testified at deposition:

> *Q: And what leads you to believe that the decision to terminate you in 2006 was because of your age?*

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[10] Mr. Bohon concedes he was asked during the hearing who had authority to tell him to move his office, and that he agreed Mayor White did, but then testified "*but my opinion is she did not have the authority at the time. None of them had the authority because they had abused their oath of office in a felony situation and they had forfeited their right...*". CP 108 (p. 48:12-49:7); see also CP 310-312 (Weed Decl.).

[11] This conduct violated the City's personnel policy 9.1.11 (insubordination, including a refusal or failure to perform assigned work).

> *A:* ***Oh, there's no question that it was because of my age because there's no other reason. There was a true reason, honest reason. They had a [pretextual] reason in there, but that wasn't why.***

CP 74 (p. 93:6-11) (emphasis added). He *believes* Bill Beckman, Stephanie Cleveland (Hansen), Mayor White, Mayor Kuhnly, and Linda Jeffries were all "responsible" for the decision to terminate him because of his age. CP 74 (p. 93:1-5).[12] However, he fails to identify any basis for this unilateral, personally-held belief or evidence suggesting any decision-maker was motivated to take an adverse action against him because of his age.

B. Procedural Background

Plaintiff initially filed suit against the City in 2007, litigating as a *pro se* Plaintiff in federal court. CP 174-177. He only hired his first attorney (Paultier) in 2007 when faced with a motion to compel discovery, then voluntarily non-suited the federal lawsuit. CP 180-182. The court allowed the voluntary dismissal but issued sanctions. *Id.*

In January 12, 2009, Plaintiff filed suit – again *pro se* – against the City of Stanwood in Snohomish County Superior Court, asserting the same claims and allegations as he had in the federal suit. CP 468-473. In May 2010, the Court issued its first Order to show cause as to why the

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[12] Mr. Bohon goes on to allege that acts of age discrimination occurred throughout his employment at the City, from 1992-2006. These included: Bob Donahue initially hiring a different candidate a few months before he was hired in 1992 CP 74 (p. 93:16-94:4); denying him the ability to join the Public Works Bargaining Unit denying promotions he did not apply for. CP 75 (p. 94:2-96:25). This discrimination came from "*everybody who had a chance to keep me down. Everybody that had a higher job of authority than me because they were striving to increase their retirement money and I was a threat to them. I was their nemesis because if they gave me the opportunity, I'd outbid them and get the job.*"

matter should not be dismissed for Plaintiff's failure to prosecute. CP 673. Attorney Jeffrey Wishko appeared on Plaintiff's behalf — solely to stave off dismissal. CP 664-672, CP 541-543. Plaintiff never intended for Mr. Wishko to represent him through trial, nor did he agree to, CP 565, 664-672 (limited retention and significant notice and opportunity to seek new counsel). In December 2010, Mr. Wishko moved to withdraw; the Court allowed Mr. Wishko to withdraw in January 2011 over Plaintiff's objection. CP 536, 539.[13]

Two years later, on January 13, 2013, the Court issued a second Order to Show Cause as to why the matter should not be dismissed for Plaintiff's failure to prosecute. CP 655. Plaintiff retained his third attorney, William Sullivan, who appeared on his behalf, again solely to stave off immediate dismissal; this time, by committing to set a trial date and move the litigation forward. CP 522-534. Again, Plaintiff retained this attorney only for the limited purpose of preventing immediate dismissal by the court. CP 566. Plaintiff never intended for this attorney to actually represent him through trial; nor did Mr. Sullivan agree to. CP 567, 576, 579.

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[13] Though Appellant's brief, p. 8, asserts Plaintiff's prior attorneys withdrew "after conflicts of interest and scheduling arose," in fact it was due to Plaintiff's continued disagreements regarding the viability of some claims, the nature and scope of permissible scope of discovery, scope of recoverable damages, and relevance of admissibility of evidence. As Mr. Wishko noted, "*Mr. Bohon, who relies on his considerable experience in litigation matters, as well as his own sense of his status as a legal scholar, continuously disagreed with, and appeared to disregard my advice and counsel...discussions became somewhat heated and...would have palpable ill effects on my state of health.*" CP 668-671 (Wishko Decl.); see, also, CP 562-593 (Sullivan withdrawal).

A trial date was first set for December 9, 2013 – seven years after Plaintiff's employment ended. CP 648. While Plaintiff was represented by Mr. Sullivan, the City's counsel deposed him, a process which was ultimately continued due to Plaintiff's disclosing a hearing problem. CP 604-609. As a result of the delay in scheduling Plaintiff's deposition, the parties agreed to request a continuance of the December 9, 2013 trial date three months, to March 2014. CP 508-509.[14]

In November 2013, Mr. Sullivan filed a Notice of Intent to Withdraw as counsel for Plaintiff. CP 502-505. Plaintiff opposed the Notice, despite having been warned for months it was coming. CP 500. The Court ultimately allowed Mr. Sullivan to withdraw on December 3, 2013, again over Plaintiff's objection and argument. CP 497-498, 556. Mr. Sullivan cited similar reasons for having to withdraw: fundamental disagreements regarding claims and discovery he wanted to pursue, and inability to accept Plaintiff's directives without violating ethics rules. CP 563, 568. Plaintiff refused to cooperate with his own attorneys regarding his obligation to produce and supplement discovery. CP 569.

By March 2014, Plaintiff still had not retained new counsel and was proceeding *pro se* (again). CP 53, 274-276[15] He stated he now needed more time in order to prepare for trial. *Id.* The City agreed to jointly request a trial continuance eight more months to November 2014 to

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[14] Unbeknownst to the City, at this point Mr. Sullivan had already begun notifying of plans to withdraw. CP 568.

[15] Throughout, Mr. Bohon retained copies of his own voluminous litigation files and only provided his own attorneys copies of certain materials. CP 571.

allow Plaintiff to retain new counsel and/or more time to prepare for trial. CP 288. Instead, the Court set the new trial date for February 2, 2015 – nearly an entire year away. CP 291-292, 554.

In the ensuing months, counsel for the City emailed and sent written correspondence by mail to Plaintiff (to his Camano Island address), who continued to proceed *pro se*, several times reminding him of the trial date and asking him if he had or intended to retain new counsel before trial. *See e.g.* CP 291 (May 2014), CP 294 (June 2014), CP 301 (October 2014). She advised him the City would be filing a motion for summary judgment dismissal of his lawsuit prior to trial. *Id.*

On October 7, 2014, counsel for the City, notified Plaintiff again that the City planned to file a motion for summary judgment:

> As I have indicated for some time now, the City plans to file a motion for summary judgment in this matter. Enclosed please find a Note for Motion setting the hearing on the motion for Tuesday, November 25, 2014 in Snohomish County Superior Court. I am sending this to you nearly two months in advance of the hearing to give you plenty of time to plan for it. The City will file its motion later this month in accordance with the civil rules.

CP 300-301.[16]

On December 19, 2014 the City filed its Motion for Summary Judgment, noting the hearing for January 16, 2015—two weeks before the trial,[17] six years after the case had been filed, and eight years after Plaintiff had been terminated. CP 439-463. The City served Plaintiff with its

[16] On November 11, 2014, counsel notified Plaintiff due to a federal trial conflict, the City had to strike the November date but that the City would be re-noting it before the February 2, 2015 trial. CP 305.

[17] Trial was scheduled to begin February 2, 2015.

Motion for Summary Judgment and supporting documents via three different methods: legal messenger, overnight mail, and email. The documents were delivered to Plaintiff's Camano Island residence where he resided throughout the litigation as well as the email address utilized by Plaintiff to communicate with defense counsel and the trial court. *See e.g.* CP 272-300.

A legal messenger attempted to personally serve Plaintiff at his Camano Island home on December 19, 2015. *See Appendix A (ABC Decl.)* The legal messenger left the documents on Plaintiff's porch at the address from where he continued to litigate this case *pro se*.[18] *Id.* The messenger also continued to attempt additional personal service on Mr. Bohon himself (though not required — but as a courtesy and to avoid any of the type of arguments now being raised for the first time on appeal) on December 20, 21, 22, and 26. CP 36-37; App. A.

The City *also* mailed copies of its Motion for Summary Judgment and supporting documents to Plaintiff's Camano Island residence on December 19, 2014. CP 39-41. On December 20, 214, the mail package was left on Plaintiff's porch. *Id.* Pursuant to the mailbox rule, this service became effective on December 22, 2014.

On December 19, 2014, the City *also* emailed the summary judgment documents to Plaintiff at wabacamo@yahoo.com, an email

[18] A trial court must hold pro se parties to the same standards to which it holds attorneys. *Westberg v. All–Purpose Structures, Inc.*, 86 Wn.App. 405, 411, 936 P.2d 1175 (1997).

address from which Mr. Bohon had communicated with Ms. Freeman in 2014 regarding this litigation (re-setting the trial date). CP 16.

Plaintiff never filed or served any documents in response to or requesting a continuance of the City's Motion for Summary Judgment. Thus, on January 9, 2015, defense counsel filed a declaration detailing the various (multiple) service methods, and the related USPS tracking information and documented no response had been received. CP 8-49. Plaintiff now claims – for the first time – that it was not until he received the January 9, 2015 Reply declaration that he first became aware of the summary judgment motion and hearing.[19]

Though Plaintiff now claims he *never* received the City's Motion or supporting documents, his actions are entirely inconsistent with this statement. Furthermore, while Plaintiff failed to tell anyone he allegedly never received the summary judgment documents, he *did* contact the Court, on January 15, 2015, the day before the scheduled hearing, to request a continuance due to a medical issue. CP 475. His request for a continuance had absolutely nothing to do with allegedly not having received the City's complete moving papers, nor was such an issue ever raised below.[20] The Court continued the City's Motion for Summary

[19] Plaintiff now declares he was only provided with the first page of the various documents at this juncture (the filing of the Defendant's reply declaration or January 9th). That is, of course, because service had already been effected (multiple times in multiple ways) and the declarations of service attached the face sheets of each document that had been previously (and timely) served. CP 8-49.

[20] It is difficult to understand how further continuance after February 5, 2015, would in any way assist Plaintiff when he now claims the he purportedly did not even have the moving papers in the first instance.

Judgment hearing to the week of January 27th and ordered Plaintiff to provide proof of the medical reason he was unable to attend the first hearing. CP 552-553.

Due to a clerical error, the re-noted motion was apparently not properly confirmed and was ultimately stricken from the Court's calendar. CP 480. Thus, the motion was re-noted further out, to February 5, 2015, and on January 26, 2015, counsel wrote Plaintiff explaining the further continuance of the motion (nearly seven weeks after the summary judgment and supporting papers were first served on Plaintiff). *Id.* Ms. Freeman closed by stating "*You already have copies of the City's Motion for Summary Judgment and related pleadings, which were served on you on December 19, 2014.*" *Id.* Again, Plaintiff did not respond or inform the City (or the Court) that he had supposedly never received the motion papers.

The inconsistent behavior continued. On January 27, 2015—more than a week before the summary judgment motion was finally argued, Plaintiff contacted defense counsel's office by telephone and again advised confirmed the motion had been confirmed to the following Thursday, February 5, 2015. CP 476. Again, at no time did Plaintiff indicate he had not received the City's Motion and supporting declarations, ask counsel for a continuance, or indicate he planned to file any responsive papers.

Plaintiff still filed nothing in response to the City's Motion for Summary Judgment — no substantive response and no request for an

additional continuance of the hearing, no request for continuance of the trial date, and no declarations.

Having *apparently* never seen the City's Motion documents, Plaintiff nonetheless appeared at the hearing on February 5, 2015 (at the correct place — at the correct time) with a "box" of documents. App. Brief, App. A. Those documents, according to Plaintiff, would have created an issue of material fact on summary judgment had they been considered. Again, setting aside the fact that those documents were never even filed with the court, it is again puzzling that Plaintiff claims to have compiled documents to oppose a Motion that he purportedly had never seen.

Following argument and questioning of both parties by the Court, the City's Motion for Summary Judgment was granted. CP 5-7. The City disagrees Plaintiff was not allowed to present "argument" to the Court (App. Assign. of error (c)); However, it is difficult to argue a double-negative such as this without a record.

Plaintiff filed his Notice of Appeal on February 5, 2015. CP 1. The Court of Appeals has since granted multiple continuances for deadlines to designate clerk's papers and file Appellant's Brief for more than a year (see appellate court record). Not once, despite various and sundry reasons he needed more time, did he ever suggest he had never even received the City's moving papers in the trial court below.[21]

[21] See, May 4, 2015 (medical issues for him and his "paralegal"); July 6, 2015 (just needs more time); October 16, 2015 (house was broken into and robbed of garden equipment; was caught in traffic and transmission failed, was summoned for jury duty, medical

Plaintiff finally filed his appellate brief on February 26, 2016—raising for the first time the new claim that he never received the City's Summary Judgment Motion and related pleadings *at all* back in 2015.

On appeal Plaintiff argues that (1) he was not timely served with the City's summary judgment materials; (2) evidence that he brought to the hearing was improperly excluded; (3) the Court improperly denied his request for a continuance; (4) the Court improperly considered unsigned declarations submitted by the City; and (5) the evidence submitted by the City created an issue of material fact as to his age discrimination claim.

III. STANDARD OF REVIEW

Plaintiff's assignments of error (a)-(d) are based on evidentiary decisions that are reviewed for an abuse of discretion. *Keck v. Collins,* 184 Wn.2d 358, 368, 357 P.3d 358 (2015). The trial court's order granting summary judgment dismissal and the substance of evidence are subject to *de novo* review. *Id., at* 370.

IV. ARGUMENT

A. Plaintiff Was Properly Served With the City's Motion for Summary Judgment Nearly Seven Weeks Before the Hearing.

CR 56 requires 28 days notice before a Motion for Summary Judgement is heard; Plaintiff had nearly seven weeks. With knowledge of the February 2, 2015 trial date and multiple notices that the City would be filing a Motion prior to trial, Plaintiff could have filed a notice of

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issues); November 30, 2015 (unusually complex corruption case requires more time); January 29, 2015 (found an attorney who will write brief if only court grants another continuance). This is similar to the circumstances under which Plaintiff retained the prior three attorneys.

unavailability with the Court and/or he could have informed the City that he would be unavailable on certain dates in the near term. He did neither. Nor has he ever issued a Notice of Change of Address in the decade this matter has been litigated. As a pro se, his home address is also his office.

The City filed its summary judgment motion on December 19, 2015; however, it was not argued or ruled upon until February 5, 2015, the week the trial was supposed to begin. The City went to great lengths to provide Plaintiff with notice of the summary judgment motion and related pleadings ***in every conceivable way***—precisely to avoid the type of arguments Plaintiff continues to make today. Only now, for the first time, does Plaintiff claim the City did not provide him with the requisite 28 day notice pursuant to CR 56. Even assuming validity of any of Plaintiff's arguments, the appropriate remedy would simply be for the court to grant a continuance of the summary judgment hearing, which occurred here—twice. See, *Cole v. Red Lion*, 92 Wn. App. 743, 969 P.2d 481 (1998) (CR 56 notice requirement of 28 days applies to the date on which the hearing actually occurs). The remaining service arguments are, therefore, moot.

1. **Plaintiff Was Properly Served by Legal Messenger on December 19, 2014.**

Plaintiff was properly and timely served with the City's summary judgment materials by way of legal messenger on December 19, 2014. See, CR 5(b)(1). Had Plaintiff at any point notified the City that he claimed to have not received the pleadings, the City could have re-served him. Having never raised this issue in the trial Court, however, the

Defendant was deprived of any opportunity to serve Plaintiff even more times to avoid this recently asserted claim. Plaintiff waived this objection by not raising it below.

"Washington courts... have held that substantial compliance may be sufficient to satisfy procedural notice requirements if the other party has actual notice ***or if the service was reasonably calculated to give notice to the other party.***" *Wilson v. Olivetti N. Am., Inc.,* 85 Wn.App. 804, 810, 934 P.2d 1231 (1997) (citing *In re Saltis,* 94 Wn.2d 889, 896, 621 P.2d 716 (1980)), *review denied,* 133 Wn.2d 1017 (1997) (emphasis added). Substantial compliance requires some level of actual compliance with the essential substance of a rule, even though a procedural fault renders the compliance imperfect. *Clymer v. Emp't Sec. Dep't,* 82 Wn.App. 25, 28–29, 917 P.2d 1091 (1996). Compliance in a manner that does not fulfill the objective of the rule cannot constitute substantial compliance. *Petta,* 68 Wn.App. at 409–10.

Here, the legal messenger left the summary judgment materials at plaintiff's residence on December 19, 2014 — 28 days before the initial hearing was set and 48 days before the Motion was ultimately ruled upon. *See, Appendix A.* Though Plaintiff now disputes actual notice, the service was reasonably calculated to give notice to Mr. Bohon and the requisite substantial compliance was achieved. This is the same address out of which he had been litigating this matter for most of the past nine years.

2. Plaintiff Was Also Served by Mail on December 22, 2014.

In addition to serving Plaintiff via messenger, the City *also*

served Plaintiff by U.S. mail. The City put the summary judgment documents to Plaintiff in the outgoing mail on December 19, 2014 and this additional service attempt became effective on December 22, 2014. CP 39. Plaintiff concedes the mailbox rule renders service effective three days after mailing. Plaintiff, however, now contends that the mailman should have left the package in the mailbox as opposed to on his porch and that he never received the documents. No authority suggests a party must dictate how the U.S. Postal Service conducts its delivery.

Plaintiff also now claims that he has defeated the rebuttable presumption created by the "mailbox rule." The City acknowledges that proof of mailing raises only a *presumption* of receipt, and that the presumption is rebuttable. However, even if the City had not effected service by messenger, mail service was effected – at the latest – on December 22, 2014. Return receipts confirm the documents were delivered to his residence on December 20, 2014. CP 39.

While Plaintiff now argues that the mail service *would have* afforded him less than the requisite 28 days' notice, they did not—it is undisputed that Plaintiff did have much more than 28 days to file something with the court before the February 5th hearing. Plaintiff directly contacted the Court requesting a continuance and the hearing was ultimately continued to February 5, 2015—45 days after service and the week the trial had been set for the *third* time. The mail service method became effective 53 days before the actual summary judgment hearing occurred.

3. <u>The City (As a Courtesy) Also Served Plaintiff by Email.</u>

The City never suggested there was a "formal" email service agreement between the parties. The email service of the documents was simply a courtesy to Plaintiff and yet another measure taken to ensure Mr. Bohon knew the pleadings were coming and could access the materials in multiple forms which he had been properly served with on 12/19 (by legal messenger) and again on 12/22 (by mail), as this had been the most recent method of communication Plaintiff had chosen for corresponding with counsel when re-noting the trial date.

B. The Trial Court Was Not Required to Engage in a *Burnet* Analysis Regarding Unfiled Documents.

Plaintiff relies on *Keck v. Collins,* 184 Wn.2d 358 (September 24, 2014) for the proposition that a trial court must consider the factors from *Burnet* on the record before excluding untimely disclosed evidence in the context of a summary judgment hearing. He suggests the Court denied his right to present declarations "and other admissible evidence" at the February 5th hearing. Assign. of error (c).

As a threshold matter, the summary judgment hearing and ruling in this case occurred on February 5, 2015. The *Keck* decision upon which Plaintiff so heavily relies was issued on September 24, 2015 — more than seven months *after* the hearing at issue in this case; neither the parties nor the court could have known this new theory may eventually develop. No case law pre-dating February 5, 2015 (the date of the summary judgment hearing) would have notified either the court or the parties that the *Burnet*

analysis might apply to untimely evidence a litigant never files but simply brings to a summary judgment hearing. Plaintiff's plea for application of case law that post-dates the hearing in this case should be rejected.

Significantly, even if the *Keck* rule were in place at the time of the summary judgment hearing in this case, application of the *Burnet* factors here would have yielded the same result—exclusion of the documents and/or disregarding them in the summary judgment analysis.

In *Keck,* the plaintiff filed a medical malpractice case against two doctors in which liability turned on the applicable standard of care. The doctors' motion argued plaintiff lacked a qualified medical expert who could provide testimony to establish her claim. In response to the motion plaintiff ***filed*** two timely affidavits and one untimely affidavit from her medical expert prior to the hearing. The trial court granted the defendant doctors' motion to strike the untimely affidavit and granted summary judgment for the doctors. The Court of Appeals reversed, holding the court should have considered the untimely affidavit. The Washington State Supreme Court held that an order striking untimely evidence at summary judgment requires a *Burnet* analysis and is reviewed for abuse of discretion. Specifically, the Court held:

> *While our cases have required the Burnet analysis only when severe sanctions are imposed for discovery violations, we conclude that the analysis is equally appropriate when the trial court excludes untimely evidence submitted in response to a summary judgment motion.*

Keck, 184 Wn.2d at 369.

The *Burnet* factors (traditionally and typically applied in the discovery context) include: whether a lesser sanction would probably suffice, whether the violation was willful or deliberate, and whether the violation substantially prejudiced the opposing party. *Jones v. City of Seattle*, 179 Wn.2d 322, 338, 314 P.3d 380 (2013). In applying those factors in this case, the box of documents Plaintiff claims he brought to the hearing should not have been considered.

Consideration of a lesser sanction. The *Burnet* factors should be viewed in light of Mr. Bohon's history of incredible and intentional delay in this case. As outlined above, Plaintiff had a long history of retaining attorneys for a limited purpose only to later rely on their withdrawals as an excuse to demand multiple trial and other continuances. Allowing Plaintiff to submit a miscellaneous heap of documents to the court on the day of the summary judgment hearing would have only further (and unjustifiably) delayed this case in which trial was supposed to start that week. If the case had not already been delayed and re-set for trial numerous times due to Plaintiff's repeated requests for continuance, perhaps a lesser "sanction" would be appropriate.

Willful or Deliberate. The evidence in this case further supports that Plaintiff's actions in not filing any response to the City's Motion over the seven weeks it was pending—while simultaneously failing to ever mention he never received the motion—was also willful and deliberate. While Plaintiff now argues on appeal he never actually received the City's motion and supporting declarations, his assertions are again belied by his

failure to notify anyone—including the Court—of that alleged fact, requesting a continuance due to a medical issue, and showing up to the hearing (right place and right time) with documents he now contends were responsive to the motion he had allegedly never seen. Plaintiff's documents were never filed, so neither the City nor the court ever had the opportunity to review and evaluate them, or to weigh factors related to admissibility. This Plaintiff is not the naïve, unfamiliar layperson that his newest attorney represents to the court; just ask his prior lawyers. See, CP 562-593 (Sullivan withdrawal dec.), CP 664-672 (Wishko withdrawal dec.). He continues to instead repeatedly assert the reason he cannot retain counsel and cannot move forward to trial is due to his own perceived "unusual complexity" of his case, *see e.g.* CP 659, and his serial inability to retain counsel, yet he also opposes efforts to effect dismissal.

Substantial Prejudice to the City. Finally, Plaintiff's failure to respond properly on summary judgment and in essence attempt to further delay the litigation would without a doubt have prejudiced the City. Because Plaintiff never served the City with the alleged new declarations and evidence, the City never had an opportunity to reply with, e.g., excerpts from Plaintiff's deposition that contradicted the assertions and evidence or legal and evidentiary argument to establish its immateriality. Litigation against the City had now been pending for more than ten years (including federal and state court litigation)—a never-ending carousel of strategic delays and maneuvers—and fair consideration of evidence would have required further delay. Here, the City never moved to strike any

documents offered by Plaintiff in the trial court; nothing was ever filed. Indeed, the first time counsel for the City ever saw them was this year with Plaintiff's final appeal. Continuing the summary judgment hearing yet again and adding more pleadings would have only allowed Plaintiff to continue to engage in his ongoing judicial filibuster. Even if the Court had engaged in a *Burnet* analysis, it would have reached the same decision.[22]

C. Plaintiff Was Not Entitled to Yet Another Continuance in 2015.

Plaintiff claims the trial court erred in failing to continue the summary judgment hearing (again). The hearing was already continued from January 16 2.5 weeks to February 5, 2015. This gave Plaintiff nearly seven weeks total to file something with the court. He filed nothing. The February 2, 2015, trial date—continued three times on demand of Plaintiff—had already arrived. CP 555.

If, by affidavit, the nonmoving party states reasons why he or she cannot currently present evidence opposing summary judgment, the trial court "may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just. CR 56(f). The trial court may deny the motion for continuance solely if "(1) the requesting party does not offer a good reason for the delay in obtaining the desired evidence; (2) the requesting party does not state what evidence would be established through the additional discovery; or (3) the desired evidence will not raise a genuine issue of

[22] Unlike *Blair v. Ta-Seattle East No. 176,* 171 Wn.2d 342 (2011), the City never moved to strike pleadings as none were ever served or filed; thus the City was deprived of any opportunity to argue weighing of the *Burnet* factors.

material fact." *Tellevik,* 120 Wn.2d at 90, 838 P.2d 111 (quoting *Turner v. Kohler,* 54 Wn.App. 688, 693, 775 P.2d 474 (1989)).

Plaintiff never filed the requisite affidavit, nor has he ever taken a single deposition or otherwise sought or pursued additional discovery. He failed to offer any good reason for the delay in obtaining the desired (or any) evidence to oppose the City's motion.

Continuing the hearing again would have simply invited Plaintiff to continue to engage in the familiar delay tactics—likely requesting yet more time to find (yet another) attorney. *See e.g.* CP 284 (2014) ("*I am certainly not a lawyer but I have subscribed to Gerry Spence's 'Warrior' Magazine for a considerable number of years. Jobs I have had required learning case law, and how to understand the workings of the law quite well, also having read almost all of the Gerry Spence's Books.*"); CP 659-660 (2012) (case is too complex for prior two attorneys; Plaintiff has been continually working to move this case forward and pledges to have case ready for trial by January 2013). He had already had more than an additional year (again) to retain new counsel and the third trial date had already arrived. The City would have been greatly and unfairly prejudiced. The City had waited long enough for a resolution of this case.

D. The Court Should Affirm Summary Judgment Dismissal Regardless of Plaintiff's Evidentiary/Procedural Objections.

Before the court reviews the Summary Judgment decision, it must determine what evidence is properly before it. *Keck, at* 368. Here, even if the court were to consider new evidence Plaintiff proffers and

reject evidence to which Plaintiff objects, summary judgment should still be affirmed based on admissible, material evidence.

1. Plaintiff Waived Any Objection to Unsigned Declarations; Summary Judgment Can Be Affirmed Absent Reference to These Declarations.

Where no objection or motion to strike is made prior to entry of summary judgment, a party is deemed to waive any deficiency in an affidavit. *Lamon v. McDonnell Douglas Corp.,* 91 Wash.2d 345, 352, 588 P.2d 1346 (1979); *Greer v. Northwestern Nat'l Ins. Co.,* 36 Wash.App. 330, 338, 674 P.2d 1257 (1984). Plaintiff never voiced or filed an objection to the affidavits at the hearing nor did he move to strike the declarations prior to the Court's entry of judgment--he raised this argument for the first time after a year on appeal. Thus, the City was precluded from immediately curing this clerical error. Plaintiff waived any alleged deficiency with regard to unsigned affidavits.

Nonetheless, even if the court disregards the Declarations of White and Hansen, the same evidence is also independently admitted into the record by virtue of Mr. Bohon's own deposition testimony and exhibits; thus, Plaintiff's arguments regarding these two declarations are immaterial. See, CP 64-172 (excerpts from Plaintiff's deposition and exhibits—all cites to pages of deposition testimony are cites to Plaintiff's 2013 deposition). Plaintiff's deposition and exhibits were cited throughout the trial Court motion. CP 439-462.

2. Even if the Court reviews Plaintiff's new evidence outside the record summary judgment is appropriate.

On review of an order granting or denying a motion for summary judgment, the appellate court will consider only evidence and issues called to the attention of the trial court. RAP 9.12. Further, RAP 10.3(a)(8) is clear: An appendix may not include materials not contained in the record on review without permission from the appellate court, except as provided in rule 10.4(c). Plaintiff's appendices do not include the text of a statute, rule, or jury instruction contemplated by 10.4(c). Plaintiff did not request permission from the appellate court and his appendices should be disregarded as they run afoul of the rules of appellate procedure, and thus the court should not consider materials filed for the first time in the appellate court. However, even if such new evidence is allowed, it does not create a question of material fact.[23]

3. The Court Can Only Consider Admissible Evidence on Summary Judgment; Even if Admitted Now, New Declarations Do Not Create A Question of Material Fact.

At summary judgment, the burden is on the non-movant to proffer admissible facts which, if believed, would support a verdict in its favor. *Building Industry Ass'n of Washington v. McCarthy*, 152 Wn. App. 720, 218 P.3d 196, 203 (2009) (must be "facts...not just mere speculation, not wishes, not thoughts, but facts that would be admissible at trial."). Inadmissible evidence is not considered. *See Jones v. State*, 140 Wn. App.

[23] The City has conditionally submitted two appendices only in response to new issues and evidence Plaintiff has attempted to raise on appeal in the event the Court considers Plaintiff's new evidence. See App. A and B.

476, 166 P.3d 1219 (2007), *rev. granted*, 164 Wn.2d 1019 (2008); In *Blomster v. Nordstrom, Inc.*, 103 Wn.App. 252, 259-60, 11 P.3d 883 (2000), the court made clear the requirements for submitting evidence on summary judgment:

> affidavits (1) must be made on personal knowledge, (2) shall set forth such facts as would be admissible in evidence, and (3) shall show affirmatively that the affiant is competent to testify to the matters stated therein.' When affidavits are offered to support the position of a party at summary judgment, the affidavits must conform to what the affiant would be permitted to testify to at trial. The court should not consider conclusory statements made by either party."

Blomster, 103 Wn.App. at 259-60 (quoting *Grimwood v. Univ. of Puget Sound, Inc.,* 110 Wn.2d 355, 359, 753 P.2d 517 (1988)).[24]

a. Declaration of Erik Abrahamson

The 2015 declaration of Erik Abrahamson's (App. Brief Appendix C) has nothing to do with Plaintiff's employment situation, nor does he have (or purport to have) personal knowledge of Plaintiff's employment situation. He is a citizen describing his own personal disagreement with state legislation (Growth Management Act) mandating certain requirements for local governments like the City of Stanwood. He attaches various notes or "letters"—that he admits were both "sent" and "unsent"

[24] A party cannot rely on inadmissible hearsay in response to a summary judgment motion. *Dunlap*, 105 Wash.2d at 535–36, 716 P.2d 842. Declarations must be based on personal knowledge, set forth facts that would be admissible in evidence and show the witness is competent to testify to the matters therein. *Davis v. Fred's Appliance, Inc.*, 171 Wash. App. 348, 358, 287 P.3d 51 (Div. 3 2012); *see also, Young Soo Kim v. Choong-Hyun Lee*, 174 Wash. App. 319, 300 P.3d 431 (Div. 1 2013) (statement that was submitted in opposition to summary judgment that was not in proper form of declaration or affidavit was not properly considered).

(unknown which or to whom) (p. 3, ¶3), possibly to various members of the city council or "others at the city". They all post-date Plaintiff's termination (Jan. 2006) and are therefore immaterial to any decisions made by the City. The material is also hearsay irrelevant and lacks foundation. ER 901, 801-802.

b. Declaration of Jerry Fure

The 2015 Declaration of Jerry Fure is likewise irrelevant and immaterial. This former Public Works employee's declaration solely asserts that, in 2000 (16 years ago), former city administrator Bill Beckman told him he did not intend to hire Les Anderson as Public Works Director. This has nothing to do with Plaintiff's employment performance or his refusal to follow his own supervisors' directives 5-6 years later resulting in his termination. Fure does not purport to have any personal knowledge of the facts/circumstances leading to Bohon's termination, nor would he have been privy to them.

c. Declaration of Randy Richards

Similarly Randy Richards, a former employee who signed a declaration in 2015, also does not purport to have or assert any personal knowledge of the facts/circumstances of Plaintiff's termination. He merely sets forth his own conclusory opinions regarding management of the Public Works Department (which Plaintiff never worked for) and his own employment through 2010—four years *after* Plaintiff's employment with the City ended. Even if this conclusory, hearsay allegation lacking foundation were in any way relevant or true, it would actually *contradict*

Plaintiff's claim that he was really terminated because of his age.[25] This conclusory opinion statement provides no admissible factual evidence, nor does it provide any relevant or material information.

d. January 2016 Declaration of Plaintiff Warren Bohon[26]

Plaintiff's new declaration provides no facts related to age. Had the City had an opportunity to response to the statements in paragraph 5-6 and Plaintiff's declaration, it would have filed additional excerpts from Plaintiff's deposition demonstration contradictions and misrepresentations. *See e.g. Appendix B.*[27]

Even assuming the court allows Plaintiff to add these new documents to the record for appellate review and considers these new declarations as part of its *de novo* review of the summary judgment ruling, nothing stated therein creates a question of material fact precluding

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[25] The declaration attaches an undated document identified as "Randall Richards letter to the EEOC" which also focuses solely on his own conclusions regarding his own employment, his distrust of various city officials over the past two decades, and his disagreement of the hiring of Anderson as PW Director in 2000 (again a department that Plaintiff never worked in), as well as his opinion regarding Anderson as his supervisor (focusing on the past several years after Plaintiff was gone from the City).Indeed, his only references to Plaintiff at all refer to conclusion that Anderson carried a grudge because Bohon refused to give citations to citizens for working on vehicles in their yards." App. C, "p. 3"

[26] Facts required by CR 56(e) to defeat a summary judgment motion are evidentiary in nature; ultimate facts and conclusory statements of fact will not suffice. *Grimwood v. Univ. of Puget Sound*, 110 Wn.2d 355,359-360, 753 P.2d 517 (1988).

[27] A party cannot create an issue of fact and prevent summary judgment simply by offering two different versions of a story by the same person. *McCormick v. Lake Washington School Dist.*, 99 Wash. App. 107, 992 P.2d 511, 141 Ed. Law Rep. 352 (Div. 1 1999); *Selvig v. Caryl*, 97 Wash. App. 220, 983 P.2d 1141 (Div. 1 1999). A party who gave the deposition cannot create an issue of fact simply by submitting an affidavit contradicting his or her own deposition. *Robinson v. Avis Rent A Car System, Inc.*, 106 Wash. App. 104, 22 P.3d 818 (Div. 1 2001); *Marshall v. Bally's Pacwest, Inc.*, 94 Wash. App. 372, 972 P.2d 475 (Div. 2 1999).

summary judgment—either because they contain otherwise inadmissible evidence and should be disregarded or because they simply do not create a question of material fact as to Plaintiff's claims. *Compare, Keck, at 372* (late-filed expert declaration established the applicable standard of care in medical malpractice case and that defendants breached it).

E. Plaintiff Fails to Establish a Question of Material Fact Precluding Summary Judgement Dismissal; the Trial Court's Decision Should Be Affirmed

1. To the extent they are based on events occurring prior to January of 2006, Plaintiff's claims are barred by the statute of limitations.

Plaintiff was terminated on January 13, 2006, and he filed this lawsuit on January 13, 2009, alleging claims of RCW Ch. 49.60 age discrimination, wrongful termination, negligent/intentional infliction of emotional distress, wrongful withholding of wages, and breach of contract. *CP57-63.* Except breach of contract,[28] all the claims are subject to a three-year statute of limitations. See, RCW 4.16.080 (torts); *see also, Douchette v. Bethel Sch. Dist. No. 403,* 117 Wash.2d 805, 809, 818 P.2d 1362 (1991) (RCW Ch. 49.60 discrimination claims). Thus, Plaintiff's claims should be limited to those based on his termination in January of 2006.[29]

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[28] The nature of the "contract" Plaintiff claims was breached by the City is still unclear; Plaintiff never entered into any written employment contracts with the City.

[29] For example, Plaintiff made requests for pay raises in 2000, 2001, 2002, and 2005, and that he was "retaliated" against for the requests. *CP91* (p. 195:22-197:4). He repeatedly asserted his belief that numerous employees the City should have never been hired or should have been fired based on ancient events, either because he feels they were "not qualified" or were "corrupt." CP 81-82 (p. 133:13-134:5) (*i.e.*, that Bill Beckman was "unquestionably" not qualified "from the very beginning" in 1992 to serve as Public Works Supervisor or City Administrator); p. 93 (age discrimination started in 1992,

2. Plaintiff Was Replaced By an Employee in The Same Protected Age Class, and Cannot Otherwise Establish That His Age Was a Factor In The Termination Decision.

To establish a prima facie case of discharge on the basis of age using circumstantial evidence, a plaintiff must demonstrate that he was (1) member of a protected class (at least forty years of age);[30] (2) performing his job satisfactorily; (3) discharged; and (4) replaced by substantially younger employees with equal or inferior qualifications. *Grimwood v. University of Puget Sound, Inc.,* 110 Wash.2d 355, 362, 753 P.2d 517 (1988).[31] Plaintiff cannot establish these elements.

First, Plaintiff was not within the age class protected by RCW Ch. 49.60, nor was he replaced by a "substantially younger" employee. He was 72 years old when was terminated and the City hired a 56 year old man to replace him. *See, Dec. of Jeff Foss.*[32] That alone forecloses Plaintiff's age discrimination claim. *See Griffith, at* 446 n. 4 (WLAD

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before he was hired); p. 95:9-18 (believes he was made to crawl under a building in 1992 because of his age); p. 96-98("everybody" kept me down because of my age from 1992-2006); p. 98-99 (money not in budget for historical raises because "I was a threat to everybody"); p. 99-101(never applied for promotions).

[30] In fact, according to *Scrivener v. Clark College*, 181 Wn.2d 439, 334 P.2d 541 (Sept. 2014), Plaintiff here would actually fall outside the age range protected by RCW 49.60.180(1) and therefore cannot recover on an age discrimination claim at all (employee must be "within the protected class of individuals between the ages of 40 and 70,") *citing Griffith v. Schnitzer Steel Indus., Inc.*, 128 Wn.App. 438, 446-447, 115 P.3d 1065 (2005), providing separate grounds for dismissing plaintiff's RCW ch. 49.60 age discrimination claim. However, Plaintiff's claim should be dismissed on the merits as well.

[31] *See also Kuyper v. Dep't of Wildlife*, 79 Wn. App. 732, 735, 904 P.2d 793 (1995), *review den'd*, 129 Wn.2d 1011 (1996); *Chen v. State of Wash.*, 86 Wn. App. 183, 189, 937 P.2d 612 (1997).

[32] Mr. Bohon conceded he was never even aware of the age of the new employee who was hired to fill his position after he was terminated (Jeff Foss). CP 72 (p. 80-81:1); nor does he know the ages of the Mayors involved in the termination decision or City Administrator (62) at the time of his termination. CP 86(p. 146-147).

requires that the position went to a *significantly* younger person); *Brady v. Daily World*, 105 Wn.2d 770, 777, 718 P.2d 785 (1986) (replacement must be outside the protected age group).[33]

Second, it is undisputed Plaintiff was not performing his job satisfactorily and had been repeatedly insubordinate in the face of reasonable work-related directives. See, CP 161-162 (Recommendation for Termination). Plaintiff concedes he repeatedly refused directives from his Department Director and two mayors to move his office to City Hall where his supervisor (Stephanie Hansen) and the rest of the Community Development Department resided—this has never been in dispute. CP 161-162, 104 (Plt. Dep. Ex. 17; p. 30-31:25)(Plaintiff admits receiving the letter but disregarded it because he claims that it "*is a fraudulent document*" and a "*criminal offense to have filed it*," though he does agree: "***Yes. I refused to move my office***.").

Even assuming Plaintiff established a prima facie case of age discrimination, the undisputed basis for Mr. Bohon's termination—insubordination--was sufficient to meet the City's burden of producing evidence of a legitimate, non-discriminatory basis for discharge. *See Robinson v. Pierce Cty.,* 539 F. Supp. 2d 1316, 1328 (W.D. Wash. 2008).

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[33] Further, Plaintiff was expressly advised by the EEOC that many employees in the protected age group still worked for the City; Plaintiff concedes he knew this but chooses to ignore it because "*none of them were as old as I was. None of them had the credentials that I had. They weren't a threat. And again my threat was because I was older. I had accumulated more credentials than any of those people....because I was older.....the experience increases exponentially....*" CP 92, 133-134(p. 202:10-203:2).

Mr. Bohon insists Mayor Kuhnly's directive to move his office to join his Department for "proper restructuring for better efficiency" *could not* have been based on legitimate business interests because, in his opinion, "*my record shows the building department was the most efficient*" and that the City was obviously not interested in "efficiency" because it had not terminated people he *thought* should have been terminated 5-14 years prior (between 1992-2001). CP 93 (p. 210:12-211:9). Plaintiff admitted "*I could have moved my office*" but he unilaterally assumed he would eventually be fired anyway and he did not want to work in close proximity to women:

> "*.... everything I saw in the City of Stanwood with women working, and then this has been proven, and I don't mean to be knocking women, but in general, it's recognized women sometimes have worse trouble getting along than men together. And I had seen this happen where they'd be badmouthing each other when I'd go in there just to get my job done and get out of there.* ***That's why I didn't want to be there*** [in City Hall]."

CP 93 (p. 225:10-22) (emphasis added).

Finally, Plaintiff has not created a question of material fact that the reason given for the City's termination decision was actually pretext for **age discrimination.** The ultimate question is whether there is sufficient evidence to reasonably conclude that *age discrimination* was a substantial factor in the employee's discharge. *Roeber,* 116 Wash.App. at 136, 64 P.3d 691.[34] An employee's subjective beliefs and assessments as to his

[34] However, the mere existence of a *prima facie* case based on the minimum evidence necessary to raise a presumption of discrimination is insufficient to raise a genuine issue of material fact as to pretext. *Wallis v. J.R. Simplot Co.,* 26 F.3d 885, 890 (9th Cir.1994); *Balkenbush v. Ortho Biotech Products, L.P.,* 653 F. Supp. 2d 1115, 1121-22 (E.D. Wash. 2009).

own performance are irrelevant. *Hill,* 144 Wash.2d at 190 n. 14, 23 P.3d 440 ("[C]ourts must not be used as a forum for appealing *lawful* employment decisions simply because employees disagree with them."); *Renz v. Spokane Eye Clinic, P.S.,* 114 Wash.App. 611, 623, 60 P.3d 106 (2002); *Griffith v. Schnitzer Steel Indus., Inc.*, 128 Wash. App. 438, 447, 115 P.3d 1065, 1070 (2005).

The City does not dispute that *Scrivener v. Clark College*, 181 Wn.2d 439 (Nov. 2014) clarified a new standard for establishing the "pretext" prong of the *McDonnell Douglas* burden-shifting framework in RCW 49.60 discrimination cases, ruling that a plaintiff can now satisfy the pretext prong by offering sufficient evidence to create a genuine issue of material fact *either* (1) that the defendants' reason is pretextual, or (2) that although the employer's stated reason is legitimate, [age] discrimination nevertheless was a substantial factor motivating the employer. *Id.,* at 446-447.

Both *Scrivener* and *Rice v. Offshore Systems, Inc.*, 167 Wn.App. 77, 272 P.2d 865 (2012), cases upon which Plaintiff heavily relies, are distinguishable. Significantly, in both cases decision-makers had made numerous age-related remarks related to hiring decisions or the plaintiffs themselves suggestive that each of the plaintiffs' ages actually *was* likely to be a substantial factor in the hiring and termination decisions of 55 and 59 year-old employees, respectively.[35] It was this evidence, in part, that

[35] *See, Scrivner*, at 449(college president responsible for hiring/promotional decision declared, in the midst of the hiring process in which he rejected the more-experienced Plaintiff on the same day as she was interviewed in lieu of younger employees, that the

led to the court's conclusion that each plaintiff had created a material question as to whether the plaintiffs' ages may have actually been a "substantial motivating factor" for the employment decisions, as permitted by the *Scrivener* decision.

But that was not the only distinguishing factor. In both *Scrivener* and *Rice,* the plaintiff-employees *also* presented *evidence* that raised questions about the real reason for the employment decisions. In *Scrivener*, the colleges stated reason that much less qualified (and much younger) applicants were the "best fit" was vague, particularly in light of the plaintiff's success as a full-time professor in that very department for more than seven years. *Id.*, at 448. Further, the record reflected that the same president had filled faculty positions with more people under age 40 than in the protected age class during his tenure, and that he mocked the plaintiff directly regarding generational familiarity with a television show. *Id.*, at 450.

In *Rice*, the supervisor gave conflicting and inconsistent reasons for terminating the plaintiff's employment, 167 Wn.App. at 872-873, giving rise to an inference that perhaps those were not the reasons at all. Significantly, the plaintiff in *Rice* also *factually disputed that he had engaged in the underlying conduct* that the employer used as the basis for his termination and the ageist supervisor who was not present during the

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college had a glaring need for "younger talent" due to a workforce primarily over 40 and advocating for requiring "zero experience" for college level instructors); *Rice*, at 81-82(employer hired 25 year-old to supervise experienced stevedore, who frequently referred to Plaintiff, in his mid-50's, as an "old goat," said he was "too old to stay on the job," and encouraged and tolerated other age-derogatory comments to and about him).

incident in question never even spoke to him (or several other witnesses) to learn his version of events, which ostensibly could have been a reasonable explanation for his conduct. *Id.*, at 85, 92.

None of the *Rice* or *Scrivner* factors are present here, regardless of the scope of evidence the court chooses to consider. First, Plaintiff concedes none of the decision-makers at Stanwood ever made any ageist comments regarding him or anyone else. CP 111 (p.143:17-144:7); Bohon concedes Mayor White had no reason to be biased against him. CP 106-107 (p. 41:9-42:18). Second, as the EEOC explained to him, the City had more employees *in* the protected age group than not and no history of favoring younger workers. CP 92, 133-134 (p. 202:10-203:2).[36] Third, the reason for the termination decision was consistent—Mr. Bohon's repeated refusal to move his office to the Community Development Department, despite directives from his supervisor and two Mayors—this has never been disputed. CP 144 (Kuhnly letter), 164-165 (White termination letter). Finally, Mr. Bohon does not and never has disputed that he did, in fact, engage in the insubordinate conduct alleged; in fact, he concedes that, even when a new Mayor (Dianne White) took office in January of 2006, reviewed the termination recommendation from Ms. Hansen and outgoing Mayor Herb Kuhnly, and listened to Mr. Bohon explain for hours all of his

[36] See also, CP 378 (when Bohon was terminated, Bill Beckman was 62 years old and many other employees at Stanwood were in his age range); CP 344-346 (Jeff Foss still employed by the City at age 65 at time of filing); CP 86(p.151:4-16))(admits Mayor Kuhnly, who originally tried to enforce directive to move Plaintiff's office and made pre-termination decision, was an "elderly man" whose wife died after 65-year marriage).

disagreements with the City's historical hiring decisions, he expressly told her that he would *still* refuse to move his office even at that point even if the new Mayor also directed him to do so. CP 161-162, 104 (Plt. Dep. Ex. 17; p. 30-31:25)(Plaintiff admits receiving the letter but disregarded it because he claims that it "*is a fraudulent document*" and a "*criminal offense to have filed it*," though he does agree: "***Yes. I refused to move my office***."). Not surprisingly, Mayor White found that level of insubordination unacceptable.

Here, Mr. Bohon's repeated mantra that all City documents are "fraudulent" and "false," that all former City employees and officials are "corrupt" and "unqualified," and his post-insubordination of discrimination does not create a question of fact as to whether the reasons stated for his termination in 2006 were really a cover-up for *age discrimination*.[37] There is no evidence whatsoever that Mr. Bohon's age was factor at all in the termination decision.[38]

3. Plaintiff Provides No Evidence of Age-Based Harassment and Therefore Cannot Establish a

[37] For example, Plaintiff asserts that even documents as innocuous as the notice scheduling a pre-termination hearing was "*a false document*" and a "*criminal offense*" by the Mayor for "*filing a false document of a record in a public office*." CP105 (p. 35:5-19). During his deposition, Plaintiff further illustrated his perception of "*corruption*." CP 102(p. 14:17-15:14)(taking his deposition in this civil lawsuit is a means of "*protecting the corruptors*"); CP 81-82 (p. 133:25-135:9(accusing defense counsel of "*violating the Rules of Professional Conduct*" and "*frivolous action*" for merely representing Defendant City of Stanwood in this matter). He testified he is determined to "*ferret out*" all the "*crooks*" who, in his opinion, are not doing their jobs right. CP 83-84 (p. 141:23-144:4; p. 145:24-147:18). Such conclusory allegations do not constitute evidence.

[38] See, *Grimwood*, 110 Wn.2d at 365 (Plaintiff's conclusory opinions that incidents were "nothing but pretexts" do not amount to material facts admissible to show a genuine issue for trial on his age discrimination claim).

Claim of Discrimination Based on Harassment in violation of RCW Ch. 49.60.

Plaintiff alleges the City of Stanwood engaged in "harassment" in violation of RCW Ch. 49.60 (WLAD). CP 59-60 (Cmplt. ¶3.4). Mr. Bohon fails to establish a claim of unlawful harassment based on age: that (1) he was subjected to verbal or physical conduct *of an ageist nature*; (2) the conduct was unwelcome; and (3) the conduct was so *severe or pervasive* as to alter the conditions of employment and create an abusive environment. *See Washington v. Boeing*, 105 Wn. App. 1, 9-10 (2000) (emphasis added).[39]

Here, Mr. Bohon does not allege anyone at Stanwood ever made derogatory remarks or otherwise engaged in harassment of him due to his age. CP 111(p. 143:17-144:7) (*i.e.,* not supervisors Stephanie Hansen or Bill Beckman). Rather, he consistently and unilaterally characterizes his various disagreements with management decisions and the City's failure to adhere to his demands to hire or fire other employees of his choosing as "harassment." These allegations are not sufficient to establish a claim of harassment. *See, Daniel v. Boeing Co.*, 764 F. Supp. 2d 1233, 1245 (W.D. Wash. 2011) (Plaintiff failed to identify any discriminatory conduct or statements in the workplace other than reassignment);[40] *Domingo v.*

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[39] To determine whether the conduct affected the terms or conditions of employment, courts look for conduct that is frequent, severe and pervasive, and physically threatening or humiliating rather than merely offensive. *Id.* "Casual, isolated, or trivial manifestations of a discriminatory environment" are insufficient. *Id. Robinson v. Pierce Cnty.,* 539 F. Supp. 2d 1316, 1329-30 (W.D. Wash. 2008).

[40] In *Daniel*, supra, the court noted that Plaintiff has not cited any cases in which the adverse employment action giving rise to a disparate impact claim also serves as the sole basis for a hostile work environment claim.

Boeing Employees' Credit Union, 124 Wash. App. 71, 88-89, 98 P.3d 1222, 1230-31 (2004) (denial that he engaged in the alleged behavior or disagreement with management's decisions is insufficient to raise a question of fact; nor was there evidence that various stray remarks related to age were tied to the termination decision).

4. The Court should affirm dismissal of Plaintiff's remaining claims.

On appeal, Plaintiff suggests the City provided "little briefing" on Plaintiff's other claims but fails to provide any legal or factual basis for reversing the trial court's decision. Plaintiff fails to identify any contract that would give rise to a **breach of contract** as alleged at CP 59 (¶3.10). CP 69 (p. 68:5-13) ("*never gave me a contract*").[41] He also fails establish how or when the City allegedly "**willfully withheld wages**" to which he was entitled under a statute, ordinance or contract in violation of RCW 49.52.050. CP 59 (¶3.5). He was an at-will employee and was provided all compensation due him when he was terminated.[42]

Dismissal of Plaintiff's **negligent infliction of emotional distress** claim (CP 60, ¶3.5) should be affirmed because an employer does not owe a duty to avoid emotional distress employment relationships (*Bishop v. State,* 77 Wash.App. 228, 234-35, 889 P.2d 959 (1995)) and his **"outrage"**

[41] To the extent Plaintiff may be referring to a Collective Bargaining Agreement, he concedes (by virtue of his position) was never a party to nor covered by any such agreement. CP 69-70 (p.67:11-11; p. 69:21-p.73:21) (not part of Public Works contract because he was not a Public Works employee)

[42] In discovery, Plaintiff was unable to identify the basis of this claim, but made reference to "collective bargaining agreements"; Plaintiff's Building Inspector/Code Enforcer positions were never part of a bargaining unit or subject to a CBA. CP 124. (Plt. Dep. Ex. 4: Plt. Response to Interrog. No. 13, RFP Nos. 14-15).

claim (CP 59 ¶3.7-3.9) does not meet the legal standard. *See, Dicomes v. State,* 113 Wn.2d 612, 630, 782 P.2d 1002 (1989) (employment terminations do not rise to level of outrage). Both claims are also barred as duplicative of his discrimination claim. *See*, *Francom v. Costco Wholesale Corp.,* 98 Wash.App. 845, 866, 991 P.2d 1182 (2000), rev. den. 141 Wn.2d 1017 (2000); *Compare*, *Robel v. Roundup Corp.,* 148 Wash. 2d 35, 52, 59 P.3d 611, 620 (2002) (Robel was called *in her workplace* names so vulgar that they have acquired nicknames).

Finally, Plaintiff claims the City wrongfully terminated his employment "in **violation of statute and public policy**."[43] CP 58 (¶3.2). He appears to claim he "blew the whistle" on **"corruption"** at the City in April of 2005—eight months before he was asked to move his desk-- by meeting with a "personnel committee" along with a number of other City employees. CP 94, 97 (p. 214, 217, 227:19-228:2; p. 230:9-231:13). What he describes he and the other employees complained about was 1) Plaintiff's opinion that Les Anderson should not have been hired in 2001 CP 97 (p. 231:14-17), CP81(p. 131-133); 2) Plaintiff's opinion that Bill Beckman should not have been hired CP 97 (p. 231:18-23) because he should have been fired in 1992 (App. B), and 3) that Les Anderson issued a written reprimand to Patricia Madden, a Public Works employee CP 97-

[43] As the only "statute" to which Plaintiff refers is RCW Ch. 49.60, and Plaintiff's Complaint already set forth a claim based on alleged violation of this statute, this claim is also duplicative of his discrimination claims. *See, Anaya v. Graham,* 89 Wn. App. 588, 950 P.2d 16 (1998).

98 (p. 232:8-13; p. 233:12-237:10).[44] He claims Mr. Beckman (City Administrator) and Mayor Kuhnly called him into a meeting two days later (in April of 2005) and "that's where the retaliation started." Though he cannot remember what was said in the meeting, he felt "confidentiality had been breached" because a "complaint about public corruption" had been *revealed* to City administration. CP 199-100 (p. 240:3-242:5).[45] He also cannot explain why he would allegedly be singled out for retaliation when none of the other employees joining him in similar "complaints" were terminated. CP 87 (p. 157:7-14) ("*everybody*" complained about "*corruption*" together); CP 96 (p. 227:23-228:1 ("*I didn't blow it [the whistle] alone...I blew it with a group of four or five people after work*").

As required by RCW 42.41.050, the City of Stanwood has a local policy for preventing retaliation against protected "whistleblower" reporting "improper governmental action." CP 341-343 (*Dec. of Weed, Ex. B--Section 10 of the Stanwood Employment Manual*). However, **"improper governmental action" does not include employment decisions such as "hiring, firing, complaints, promotions, and reassignment**." *Id.* Though repeatedly termed as complaints about

[44] Plaintiff claims that it was not until two years after he was terminated, that another former allegedly employee related to him that Ms. Madden had been scared of Anderson in the past. CP 98-99 (p. 237:11-239:12). This was not something Bohon "reported" in 2005.

[45] Plaintiff concedes he did not "claim protection" against the whistleblower law until after he had been notified Ms. Hansen recommended his termination. CP 104 (p. 33:18-34:11) and then unilaterally determined that he could not be fired if he "stated" he was a "whistleblower" He also claimed it was "absolute retaliation" when City administrators told him not to go back to his office while he was on vacation pending his pre-termination hearing. CP104-105 (p. 33:24-34:15).

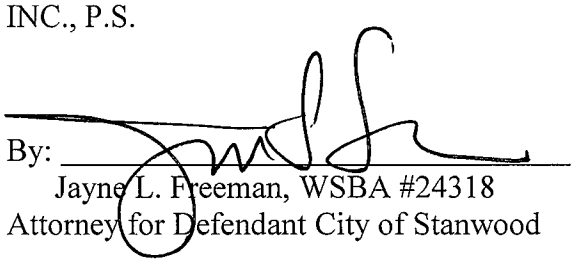
"corruption," Plaintiff's sole and repeated focus (for years on end) was to repeatedly tell everyone and anyone how much he disagreed with prior Mayor's decisions to hire and promote Bill Beckman (to Public Works Supervisor then City Administrator), to hire Les Anderson (as Public Works Supervisor), to hire Gary Armstrong (as Public Works supervisor), and the City's failure to fire these and many other City employees (all of whom he similarly and unilaterally deemed "part of the corruption"). See, CP 81(p. 131-133)(Plaintiff continued in 2001 and beyond to voice his opposition to the hiring of Les Anderson); See also, App. B (Plaintiff repeating issues that allegedly occurred in 1992- mid-1990's).[46]

V. CONCLUSION

Based on the foregoing, the Court should affirm Summary Judgment dismissal of Plaintiff-Appellants.

Respectfully submitted this 28th day of March, 2016.

KEATING, BUCKLIN & MCCORMACK, INC., P.S.



By: _____
Jayne L. Freeman, WSBA #24318
Attorney for Defendant City of Stanwood

[46] CP 84 p. 142:14-143:16) (Plaintiff also thinks Nancy Fullerton, a co-worker who scheduled his inspections, "*was in the corruption ring*"; he would not have survived working next to her because he felt she was "*in the closest proximity to the most corrupt, to the godfather of corruption in the City of Stanwood which was Bill Beckman*"); CP 85-86 (p. 149:7-150:1) (former Mayor McCune "*was part of the corruption circle...he was in cahoots with Bill Beckman and was in cahoots with Les Anderson*"); CP 86 (p. 150:6-151:16) (former Mayor Kuhnly "*didn't know the corruption that was going on*" when he was elected..."*because he hadn't had the influence of the corrupt people that were there*" but then Plaintiff speculated that Bill Beckman "*unduly influenced Herbert Kuhnly*").

DECLARATION OF SERVICE

I declare that on March 10, 2015, a true and correct copy of the foregoing document was sent to the following parties of record via method indicated:

Attorney for Plaintiff

Michele Earl-Hubbard, WSBA #26454
Allied Law Group
6351 Seaview Avenue NW
Seattle, WA 98107

Email: Michele@alliedlawgroup.com

T: (206) 443-0200
F: (206) 428-7169

☑ E-mail ☐ United States Mail ☑ Legal Messenger

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COURT OF APPEALS DIV I
STATE OF WASHINGTON
2016 MAR 28 PM 4:34

DATED this 28th day of March, 2016.

LaHoma Walker, Legal Assistant

APPENDIX A

SUPERIOR COURT, IN AND FOR THE COUNTY OF SNOHOMISH, STATE OF WASHINGTON

WARREN E. BOHON, Plaintiff, vs. CITY OF STANWOOD, Defendant.	Cause No. 09-2-01891-8 DECLARATION OF MELISSA ROOT RE: SERVICE OF PROCESS OF: CALENDAR NOTE; DEFENDANT CITY OF STANWOOD'S MOTION FOR SUMMARY JUDGMENT DISMISSAL OF PLAINTIFF'S CLAIMS; PROPOSED ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT; DECLARATION OF STEPHANIE HANSEN IN SUPPORT OF THE CITY OF STANWOOD'S MOTION FOR SUMMARY JUDGMENT; DECLARATION OF WILLIAM BECKMAN IN SUPPORT OF CITY'S MOTION FOR SUMMARY JUDGMENT; DECLARATION OF DIANNE WHITE IN SUPPORT OF THE CITY OF STANWOOD'S MOTION FOR SUMMARY JUDGMENT; DECLARATION OF GRANT WEED IN SUPPORT OF CITY OF STANWOOD'S MOTION FOR SUMMARY JUDGMENT; DECLARATION OF JEFF FOSS IN SUPPORT OF CITY OF STANWOOD'S MOTION FOR SUMMARY JUDGMENT; DECLARATION OF JAYNE

ABC Legal Services, Inc.
633 Yesler Way, Seattle, WA 98104
Phone 206.521.9000 - Fax 206.382.1717

1 I, Melissa Root, declare and state as follows:

2 1. At all times herein mentioned I was: An employee of ABC Legal Services, Inc., and
3 am authorized to make this declaration on its behalf. I am over the age of eighteen, a
4 resident of the State of Washington, not a party to nor interested in the above captioned
5 matter. If called upon to testify in this action, as to the matters set forth in this declaration, I
6 could and would competently testify thereto since the facts herein set forth are based upon
7 my personal review of the records of ABC Legal known by me to be accurate and true.

8 2. I am responsible, among other things, for the oversight of process servers contracted
9 with ABC Legal to effect service in Island County.

10 3. The information contained in this declaration is based upon the business records of
11 ABC Legal and the business processes development by ABC Legal which are within my
12 custody and control or to which I have access.

13 4. On or about December 19, 2014, ABC Legal received a request to serve the above
14 captioned documents on WARREN E. BOHON. ABC Legal was also instructed to leave
15 one (1) true and correct copy of the above captioned documents at the front door.

16 5. It is the regular course of ABC Legal's business for a contracted process server to
17 update each service of process attempt, bad address determination, or completed service
18 (collectively known as "event" or "service event") via an ABC Legal mobile software

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application developed by ABC Legal and deployed on contracted process servers Apple (iOS) or Android operating system devices.

6. Latitude and longitude coordinates are recorded when an event is submitted via the ABC Legal mobile software application. ABC Legal's software uses GPS functionality made available by the iOS or android operating system location interfaces. These systems use any combination of network carrier (cell tower triangulation), wireless network, and/or GPS technology to determine a latitude and longitude for that device.

7. Three separate date and time records are made when an event is submitted via the ABC Legal mobile software application: 1) the date and time when the event occurred, 2) the date and time when the event was submitted via the ABC Legal mobile software application, and 3) the date and time when the event was received by ABC Legal's secure, central database server.

8. ABC Legal's database records document that a service attempt on Defendant WARREN E. BOHON was made on December 19, 2014 at 7:05 pm at 881 E PORT SUSAN TERRACE RD, CAMANO ISLAND, WA 98292 by John Massingale, a process server previously contracted with ABC Legal and assigned to serve the above captioned documents for ABC Legal tracking number 5577986. During this service attempt, the process server provided the following details: "No answer at door, no noise inside, no movement inside and no lights."

9. Details regarding the above mentioned service event were submitted via the process server's device on December 19, 2014 at 7:05 pm. The latitude and longitude coordinates recorded during this event submission on the process server's device of 48.125023,-122.431212 place the device within 40 feet from the latitude and longitude coordinates of the service address.

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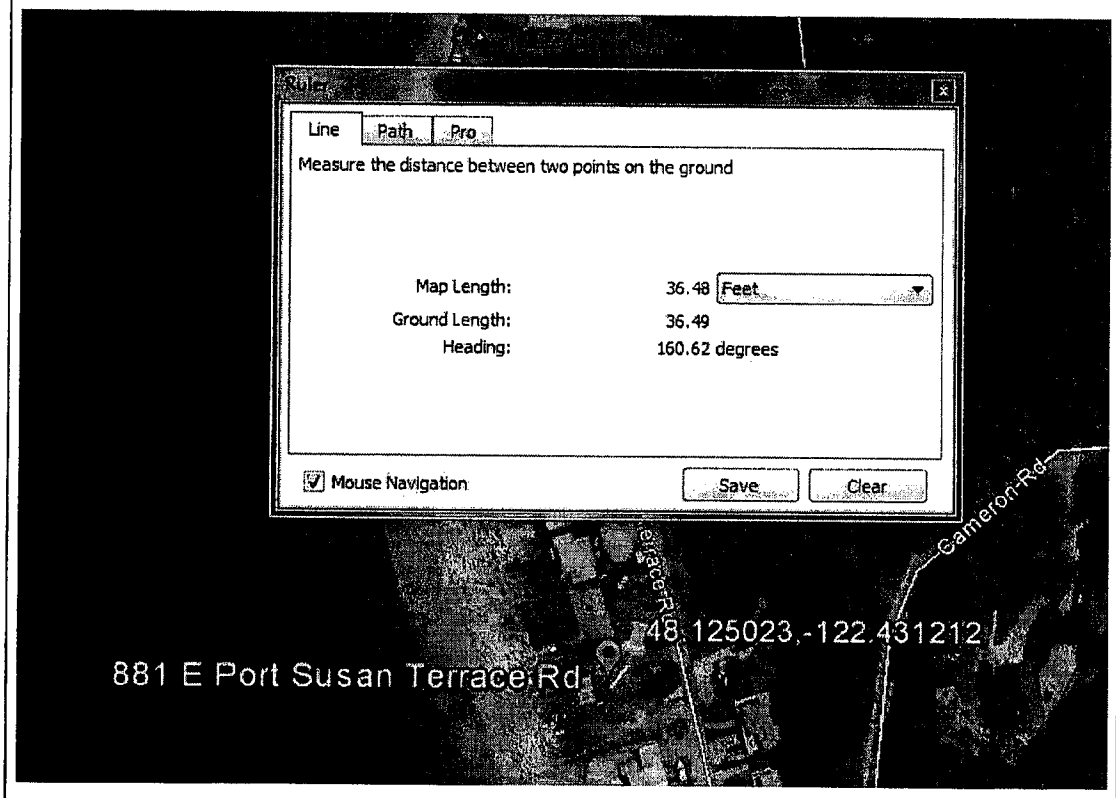
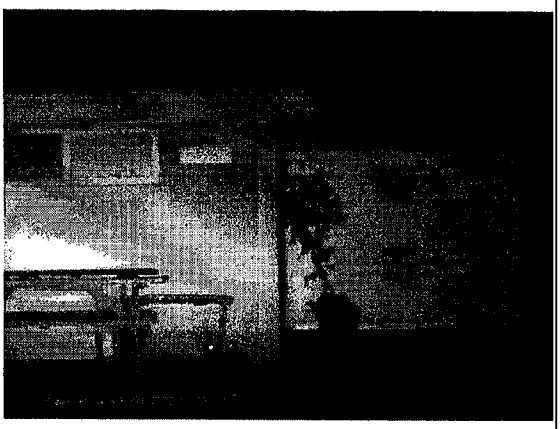
10. A graphical record of the distance between the property address of 881 E PORT SUSAN TERRACE RD, CAMANO ISLAND, WA 98292 and the GPS coordinates of 48.125023,-122.431212 is displayed below:



11. It is the regular course of ABC Legal's business for contracted process servers to photograph locations where service attempts occur. ABC Legal's database records document that the following photographs were submitted at the time of the above service attempt:

ABC Legal Services, Inc.
633 Yesler Way, Seattle, WA 98104
Phone 206.521.9000 - Fax 206.382.1717



12. ABC Legal's database records indicate one (1) true and correct copy of the above captioned documents was left at 881 E PORT SUSAN TERRACE RD, CAMANO ISLAND, WA 98292 on December 19, 2014. A true and correct copy of a special delivery invoice is attached hereto as EXHIBIT A.

13. Separately, ABC Legal continued to attempt personal service on WARREN E. BOHON at the address of 881 E PORT SUSAN TERRACE RD, CAMANO ISLAND, WA 98292. ABC Legal's database records document the following additional attempts to serve WARREN E. BOHON at the address of 881 E PORT SUSAN TERRACE RD, CAMANO ISLAND, WA 98292:

- December 20, 2014 5:14 PM: "No answer at door, no noise inside, no movement inside and no lights."
- December 21, 2014 9:04 AM: "No answer at door, no noise inside, no movement inside and no lights."
- December 22, 2014 7:17 PM: "No answer at door, no noise inside, no movement inside and no lights."
- December 26, 2014 8:05 PM: "No answer at door, no noise inside, no movement inside and no lights."

ABC Legal Services, Inc.
633 Yesler Way, Seattle, WA 98104
Phone 206.521.9000 - Fax 206.382.1717

ABC separately charged $145.00 for the above mentioned service attempts which is documented on the Declaration of Non-Service dated January 2, 2015. A true and correct copy of the Declaration of Non-Service is attached hereto as EXHIBIT B.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge on the date herein noted.

Dated this 28th day of March, 2016

Melissa Root

Melissa Root

ABC Legal Services, Inc
633 Yesler Way, Seattle, WA 98104
Phone 206 521 9000 - Fax 206 382.1717

EXHIBIT A

2722 Colby Ave #714 Everett, WA 98201 abclegal.com
Phone: 425 2584591 Fax: 206 2529322 Fed Tax ID#: 91-1153514

SPECIAL DELIVERY INVOICE

Firm: **Keating, Bucklin, Et Al**
800 5th Avenue Suite #4141
Seattle WA 98104

Account #: **91660**
Caller: **LAHOMA**
Phone: **6238861**

ORDER #: **20824230**

20824230

DATE: March 16, 2016
CLIENT REF: 1002-059
AMOUNT DUE: $ 350.95

Case: Bohon v City of Stanwood
Cause Number: 096-2-01891-8
Order Date: December 19, 2014 2.43 PM
Documents: MSJ; Note; prop Order; Dec of: JSF, SH, DW, WB, JF, GW

SERVICE DESCRIPTION
Pickup: ABC Everett 2722 Colby Ave #714 Everett
Destination: SNOHOMISH COUNTY SUPERIOR COURT 3000 Rockefeller, Mail St Everett
Destination: SNOHOMISH COUNTY SUPERIOR COURT 3000 Rockefeller, Mail St Everett
Destination: null 881 E. Port Susan Terr Rd Camano Island
Destination: ABC Everett 2722 Colby Ave #714 Everett

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COURT OF APPEALS DIV I
STATE OF WASHINGTON
2016 MAR 23

SERVICE PERFORMED	TOTAL
Miscellaneous Service	$195.00
Legal Messenger Delivery	$155.95
Subtotal	$ 350.95
Sales Tax	$0.00
Total	$ 350.95
Prepaid Amt	
Amount Due	**$ 350.95**

CHECK STATUS & ORDER ON-LINE @ ABCLEGAL.COM

EXHIBIT B

IN THE SUPERIOR COURT, IN AND FOR THE COUNTY OF SNOHOMISH, STATE OF WASHINGTON

WARREN E. BOHON Plaintiff/Petitioner vs **CITY OF STANWOOD** Defendant/Respondent	Cause No.: 09-2-01891-8 Hearing Date DECLARATION OF NON-SERVICE OF: **CALENDAR NOTE; DEFENDANT CITY OF STANWOOD'S MOTION FOR SUMMARY JUDGMENT DISMISSAL OF PLAINTIFF'S CLAIMS; PROPOSED ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT; DECLARATION OF STEPHANIE HANSEN IN SUPPORT OF THE CITY OF STANWOOD'S MOTION FOR SUMMARY JUDGMENT; DECLARATION OF WILLIAM BECKMAN IN SUPPORT OF CITY'S MOTION FOR SUMMARY JUDGMENT; DECLARATION OF DIANNE WHITE IN SUPPORT OF THE CITY OF STANWOOD'S MOTION FOR SUMMARY JUDGMENT, DECLARATION OF GRANT WEED IN SUPPORT OF CITY OF STANWOOD'S MOTION FOR SUMMARY JUDGMENT; DECLARATION OF JEFF FOSS IN SUPPORT OF CITY OF STANWOOD'S MOTION FOR SUMMARY JUDGMENT; DECLARATION OF JAYNE L. FREEMAN IN SUPPORT OF THE CITY OF STANWOOD'S MOTION FOR SUMMARY JUDGMENT**

The undersigned hereby declares: That s(he) is now and at all times herein mentioned was a citizen of the United States, over the age of eighteen, not an officer of a plaintiff corporation, not a party to nor interested in the above entitled action, and is competent to be a witness therein.

Declarant states s(he) attempted to serve **WARREN E. BOHON** at the address of: **881 E. PORT SUSAN TERRACE RD., CAMANO ISLAND, WA 98282** and was unable to effect service for the following reasons:

12/19/2014 7:05 PM: No answer at door, no noise inside, no movement inside and no lights.
12/20/2014 5:14 PM: No answer at door, no noise inside, no movement inside and no lights.
12/21/2014 9:04 AM: No answer at door, no noise inside, no movement inside and no lights.
12/22/2014 1:17 PM: No answer at door, no noise inside, no movement inside and no lights.
12/26/2014 8:05 PM: No answer at door, no noise inside, no movement inside and no lights.

Service Fee Total: $ 145.00

ORIGINAL PROOF OF NON-SERVICE

For: Keating, Bucklin, Et Al
Ref #: 1002-059

Tracking #: 0085682758

Declarant hereby states under penalty of perjury under the laws of the State of Washington that the statement above is true and correct.

DATED this 2nd day of January, 2015.

John Massingale, Reg. # 2002-10, Snohomish County, WA

ORIGINAL PROOF OF NON-SERVICE

For: Keating, Bucklin, Et Al
Ref #: 1002-059

Tracking #: 0005682798

APPENDIX B

Transcript of the Testimony of

Warren E. Bohon, Volume II

September 25, 2013

Warren E. Bohon v. City of Stanwood

No. 09-2-01891-8

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1 something you've read somewhere that the -- that the
2 position was budgeted to go to full time?
3 **A I don't know any more about it outside of what it was,**
4 **and I see his car was -- seemed -- looked like when I'd**
5 **drive by because I go by there a lot. It looked like his**
6 **car is gone during normal working hours. The car that**
7 **was bought for my job. And so I'm assuming he's out**
8 **doing code enforcement or he's doing building inspection**
9 **because his car is out roaming around.**
10 Q And are you also assuming that he was -- his job was
11 budgeted for full time as of 2007 because you've seen him
12 out driving in the community?
13 **A That's all I can tell you. I don't know any more. I**
14 **can't specifically tell you for sure I know beyond any**
15 **shadow of a doubt. You have the records. I'm just**
16 **telling you based on what I saw as far as his budget**
17 **story, and I think -- I don't remember now if somebody**
18 **had told me he's working full time. So I can't honestly**
19 **tell you I know for sure he was working full time.**
20 **You'll have to go to the record for that.**
21 Q Since you left your employment with the City of Stanwood
22 in January of 2006, have you attended any city council
23 meetings?
24 **A No.**
25 Q Have you ever looked at the City of Stanwood budget from

1 year to year that's been adopted by the city council
2 since 2006?
3 **A Yeah. I got a copy of the budget in 2011. All you've**
4 **got to do is write for it. They'll give you a budget.**
5 **You can walk in there and ask them for a budget copy.**
6 Q Did you ever ask for copies of the City of Stanwood
7 budget prior to 2011?
8 **A No.**
9 Q Did you ever ask for or obtain copies of the City of
10 Stanwood budget adopted by the city council during the
11 time you had worked for the city?
12 **A No. We're going to ask for that from you. I don't know**
13 **what -- if that was included in our first. We're going**
14 **to ask for every budget that you have and every contract**
15 **that you have in our second request.**
16 Q Okay. What I want to know is while you were working for
17 the City of Stanwood, did you ever either ask for a copy
18 of the budget or review budget documents that the City --
19 **A I saw.**
20 Q -- sorry. Let me finish.
21 **A Okay.**
22 Q That the city council adopted during the time you were
23 working there?
24 **A Yes. They never gave them to me, but they gave them to**
25 **Kevin Hushagen. They gave them to John McGill. Kevin**

1 **Hushagen showed them to me.**
2 Q Okay. So do you recall what years that -- what years --
3 what budget years you read the city's budget -- adopted
4 budget documents while you were still working there? Not
5 afterwards but while you were still working there.
6 **A No. You've asked for that information, and what I find**
7 **we're going to give to you. We're going to give you that**
8 **stuff, as much as I've got copies of.**
9 Q Okay. But what I'm asking you, as you sit here today, do
10 you recall whether or not while you were still working
11 for the City of Stanwood you ever had budget documents in
12 your hand and looked at them and read to see what budget
13 the city council had adopted?
14 **A Yeah. I saw -- I saw lots of people's salaries that were**
15 **better than mine, way better than mine. That's when I**
16 **went and asked, "What's going on here? How come I'm not**
17 **paid?"**
18 Q So is that where you got the information about people's
19 salaries was from looking at the city's budget documents?
20 **A Yes. It's listed right there. Their job, their**
21 **position, their name.**
22 Q You mentioned a couple of times that you felt you were
23 more qualified for several jobs at the City of Stanwood
24 than other people were.
25 **A Yes.**

1 Q Were there any other positions that you ever applied for
2 while you worked for the City of Stanwood?
3 **A You need to know the city didn't make them open. When**
4 **they -- when Bill Beckman was made Public Works Director,**
5 **nobody was given the water manager job. When he -- then**
6 **he went to Public Works Director/City Administrator so**
7 **nobody could ever move behind into the Public Works**
8 **Director job. They give him incompatible offices. So in**
9 **essence, he's covering three offices. You know why?**
10 **Because he didn't want nobody behind him because they'd**
11 **discover the corruption and they might be honest and try**
12 **to blow the whistle. Same with Gary Armstrong.**
13 Q Gary Armstrong did the same thing?
14 **A Yes. He went from Public Works Director to City**
15 **Administrator. And then I blew the whistle on what was**
16 **going on and they terminated him. And I blew the whistle**
17 **to Bill Beckman. So Bill Beckman wound up with the**
18 **Public Works Director job and the City Administrator job.**
19 **And Bill Beckman should have been fired clear back in**
20 **1992.**
21 Q Why should Bill Beckman have --
22 **A Because --**
23 Q Let me finish my question. Sorry.
24 **A Okay.**
25 Q Why should Bill Beckman have been fired in 1992?

1 A Because he was caught -- I saw him drinking. I saw him
2 drinking with John Case. That's why the building -- my
3 office was in the most efficient place for the whole City
4 of Stanwood because all of the corruption was going out
5 of that building. The ring leader was right down below
6 me within 30 seconds. That was Bill Beckman.
7 Q Bill Beckman was the ring leader of something back in
8 1992?
9 A He's the corruption ring leader.
10 Q So back in 1992 when you first started working at
11 Stanwood, you caught Bill Beckman drinking with Bill
12 Case?
13 A I saw Bill Beckman come in drinking. I grew up with an
14 alcoholic father. I was the designated driver in the
15 service for the guys that got drunk. I know -- I know
16 about drinking and how to recognize a drinking person.
17 John Case used to come to work having been drinking. And
18 Bill Beckman would come to work the same time, basically,
19 and they both had been drinking.
20 One time -- one time John Case come to me and
21 started giving me a hard time when he had been drinking.
22 I said, "John, you've been drinking. If I ever catch you
23 drinking in this city again, I'm going to call up the
24 city police department. I'm going to have them come down
25 and give you a breathalyzer test and you're going to be

1 out of here." I remember he stopped drinking.
2 Q And was this back within the first few years that you
3 worked at the City of Stanwood?
4 A Yes. The other thing -- the other thing --
5 Q Sorry. Let me -- I want to finish up with my questions.
6 A Okay. I'm sorry.
7 Q You said that you observed Bill Beckman drinking back in
8 1992. Did you talk to Mr. Beckman about that back in
9 1992?
10 A I talked to John McGill who was his closest -- right in
11 the office next door to him. Been with the city the same
12 amount of time.
13 Q And what was Mr. McGill's position at the time?
14 A Mr. McGill says, "Well, John" --
15 Q What was Mr. McGill's position at the time?
16 A He was -- he was in charge of the street and sewer -- the
17 street and sewer department and the parks department.
18 "Parks, Streets and Sewer" I think was the title.
19 Q And what was Mr. Beckman's position at this time in 1992?
20 A He was manager, water department.
21 Q Just the water department manager?
22 A Yes.
23 Q Okay. So you said you went and talked to John McGill
24 about Mr. Beckman in 1992?
25 A I said, "It looks to me and I'm almost positive Bill

1 Beckman is showing up here been drinking and also John
2 Case." And he said, "Well, Bill has got a medical
3 problem." He says, "He's on some sort of medicine." And
4 then he told -- and then John McGill said, you know,
5 "Yeah, Bill and those guys drink," but he says, "I was
6 drinking a lot myself." He said, "I had two sons killed
7 one right after the other and I went to drinking," but he
8 said, "I've got that problem under hand." He admitted to
9 me right then. He said, "Yes. I drank here on the job."
10 And I can understand why he would if he had two sons
11 killed in car accidents.
12 Q Did you --
13 A But he wasn't drinking when I was there.
14 Q Mr. McGill wasn't drinking while you were there?
15 A No. I never saw him drink.
16 Q How many times did you see Mr. Beckman drinking on the
17 job in 1992?
18 A Oh. There was several times probably that I saw -- I'm
19 sure I saw him more than one or two. At least three or
20 four times and John Case until I said something to him.
21 And I think when I mentioned it to John Case, I don't
22 think I saw Bill after that either drinking because he
23 knew that, you know, sooner or later the whistle is going
24 to get blown on him.
25 And the other thing about that, when I told -- in

1 about 1996 or 1997, in the Lagoon Building, I told Bill
2 Beckman about the corruption that was going on with the
3 City Administrator/Public Works Director joint job.
4 Q And at that time, it was Gary Armstrong who held both
5 those positions?
6 A It was Gary Armstrong and another employee. And Bill
7 Beckman told me face to face, he said, "You know, I
8 applied for that Public Works Director job and I was
9 turned down by Mayor Larson," and Bob Donahoe couldn't
10 give him the job because he had been caught drinking many
11 times with John Case at work. He had bottles all over
12 the place. This was told by -- this was told to me. I
13 didn't see the bottles, but this was told to me by some
14 of the other guys that had seen him. And he admitted to
15 me face to face. He was denied that job before -- when
16 he tried to get it before Gary Armstrong was ever hired,
17 and he told me why. Face to face he told me himself.
18 And then he went to the Mayor and told the Mayor what I
19 had told him, and Gary Armstrong was fired, and Gary --
20 and Bill Beckman got the job, Public Works Director or
21 City Administrator. First he got the job of Public Works
22 Director and then he got the job City Administrator.
23 Q Okay. Mr. Bohon, we only have a couple of minutes left
24 on the videotape so --
25 A Okay.

1 Q -- well, why don't we go ahead and just take a short
2 break right now while we change the tape because I don't
3 want you to get into a longer answer than the tape has
4 provided for.
5 THE VIDEOGRAPHER: We are going off
6 record. The time is 11:23. This is the end of disk
7 number one.
8 (Recess from 11:23 to 11:34.)
9 THE VIDEOGRAPHER: We are back on
10 record. The time is 11:34. This is the beginning of
11 disk number two.
12 EXAMINATION (Continuing)
13 BY MS. FREEMAN:
14 Q Mr. Bohon, now that we're back on the record, you
15 indicated to me while we were off the record that you
16 might have a correction to make?
17 **A Yeah.**
18 Q What was that?
19 **A You asked me -- you asked me in one of those questions**
20 **who -- whether -- how many places I had asked to go to,**
21 **you know, look for work.**
22 **Right after I was terminated, I think it was the**
23 **City of Everett and Lake Stevens, I applied for -- they**
24 **had an advertisement out for building inspector and I**
25 **applied. I walked -- I walked the application right down**

1 **and handed it across the counter to them, and I never**
2 **heard one word from either one of them. And I -- you**
3 **know, you have to fill out on the application whatever --**
4 **it says, "Why did you leave," and, "How long did you work**
5 **there," and all of this stuff, and I never got back from**
6 **them. I told them exactly what happened, why I was**
7 **terminated. I never heard another thing from them.**
8 Q So you put on your application with the City --
9 THE VIDEOGRAPHER: One second. We're
10 going off record. The time is 11:35.
11 (Recess from 11:35 to 11:38.)
12 THE VIDEOGRAPHER: We are back on
13 record. The time is 11:38.
14 EXAMINATION (Continuing)
15 BY MS. FREEMAN:
16 Q So, Mr. Bohon, you were talking about making an
17 application with the City of Everett or the City of Lake
18 Stevens for a building inspector position; is that right?
19 **A Yes.**
20 Q And so you put on your application that you had been
21 terminated from your last job with Stanwood?
22 **A Yes. I mean, I -- they ask you why you -- "What was the**
23 **reason for the leave," and you put it down.**
24 Q Did you write anything else besides, "I was terminated"?
25 **A I really don't know what I put on there. I put as much**

1 **as I -- as was explaining why. I can't verbatim quote it**
2 **to you.**
3 Q Any other corrections you need to make about your
4 testimony this morning?
5 **A Well, that's the only one that I happened to see here is**
6 **that. I haven't been through the rest of them, but I**
7 **can't imagine there's any more, but that one I -- it**
8 **definitely was right there.**
9 Q So, Mr. Bohon, you --
10 **A But I think I -- I think I've told Bill.**
11 Q Okay. I don't want to hear about what you told your
12 attorney because that would be privileged conversation,
13 so I'm not asking about that.
14 Mr. Bohon, you are making a claim of age
15 discrimination against the City of Stanwood in this
16 lawsuit; is that right?
17 **A Yes.**
18 Q And --
19 **A That and several other things, I think, were included in**
20 **that but --**
21 Q Okay. So right now, I'd like to talk about the age
22 discrimination claim.
23 Are you alleging that your termination -- that you
24 were terminated in January 2006 because of your age?
25 **A Yes.**

1 Q And who do you believe made that decision?
2 **A I think you told us in our discovery that is Bill**
3 **Beckman. Who do I think made it, it was Stephanie**
4 **Cleveland, Herb Kuhnly, Bill Beckman and Dianne White,**
5 **Linda Reid Jeffries I believe were all involved in it.**
6 Q And what leads you to believe that the decision to
7 terminate you in 2006 was because of your age?
8 **A Oh, there's no question that it was because of my age**
9 **because there's no other reason. There was a true**
10 **reason, honest reason. They had a protectural reason in**
11 **there, but that wasn't why.**
12 Q Aside from your termination in 2006, was there any other
13 action by the City of Stanwood that you believe
14 constituted age discrimination against you?
15 **A Yes.**
16 Q What other acts of age discrimination did the city take
17 against you during your employment there?
18 **A Well, it started before my employment. I applied and**
19 **they hired somebody ahead of me obviously and he was**
20 **younger and I was qualified. They hired him.**
21 Q And this was back in 1992?
22 **A 1992.**
23 Q Okay. Do you know who made that decision?
24 **A I don't know. The guy that hired me, I guess, which was**
25 **Bob Donahoe. I'm assuming he's the one that made the**

1 decision. I don't --
2 Q Okay. Any other action the City of Stanwood took against
3 you during your employment there that you are alleging
4 was unlawful age discrimination?
5 A Yes. They denied me all the benefits. They denied me
6 longevity pay. They denied me the right to be a
7 bargaining agent from Public Works. They refused to give
8 me any kind of -- any kind of a contract. They did --
9 when they gave everybody else cost of living, they didn't
10 give it to me. They promoted everybody else when they
11 gave them more authority. They didn't give it to me. I
12 had certificates more than anybody else. They didn't
13 give it to me. They didn't pay me to go to college at
14 night and yet it was job required. They signed me up.
15 They paid the bill. They saw the grades. They saw the
16 certificate yet later on, you'll see where Stephanie
17 Cleveland says, "Since you're not certificated, you're
18 getting paid less. If you were to be certificated, you'd
19 get more." And then I was underpaid by $750 in her own
20 words. You'll see them -- you've seen them. So they
21 denied me the benefits. They denied me the promotions.
22 They harassed the hell out of me on everything. They
23 stuck me -- they had a maintenance man, building
24 maintenance man, and they stuck me under the crawl space
25 with the cat poop and the rats and the spiders and the

1 spider webs and I had to crawl on my belly and dig a
2 ditch to drain the water out from underneath because the
3 women were complaining it was damp and cold in there.
4 The guy that was the building maintenance man was younger
5 than me. That was his job not mine. And that's where
6 they put me right at the very start.
7 Q So this situation --
8 A The other thing --
9 Q Sorry. I just want to clarify. The situation where you
10 had to crawl in for a building to create some drainage
11 was back in 1992 when you first started working at
12 Stanwood?
13 A When I first started working there. And I don't know how
14 long it lasted. It was -- went on for quite a period of
15 time.
16 Q And you believe that they made you do that because of
17 your age?
18 A Yes.
19 Q And --
20 A I believe they -- they did that because my age made me
21 more qualified than any other person in the City of
22 Stanwood, and I was supposed to have been put on a list
23 as qualified for various jobs stepping up. The law I saw
24 since I've been terminated said that. That was never
25 done. I was older and more qualified than anybody to bid

1 those jobs, but everybody there that had the power to
2 keep me suppressed kept me suppressed because they were
3 trying to -- they had been there a long time. They were
4 trying to increase their pay for retirement and their
5 benefits. So they did everything to keep me from ever
6 being able to compete on an equal basis. You asked me
7 about breach of contract. They promised equal employment
8 opportunity to everybody that applied. They did not do
9 that to me. They broke that contract. Everything that I
10 should have got they denied --
11 Q And --
12 A -- except a regular paycheck that was incomplete and
13 insufficient.
14 Q And it's your belief that the denial of pay and benefits
15 that you feel you deserved during the whole time you
16 worked at Stanwood from 1992 to '96 was because of your
17 age?
18 A Yes.
19 Q What led you to believe that the city denied you benefits
20 and pay from 1992 to 2006 because of your age?
21 A Because my age made it possible for me to get superior
22 credentials to anybody there. You get them by time. I
23 had -- I had the time by years, in jobs, in very
24 authoritative positions, proven, successful jobs. That
25 all comes from age.

1 Q Which people at the City of Stanwood do you believe
2 unlawfully discriminated against you in your employment
3 because of your age?
4 A Everybody that had a chance to keep me down. Everybody
5 that had a higher job of authority than me because they
6 were striving to increase their retirement money and I
7 was a threat to them. I was their nemesis because if
8 they gave me the opportunity, I'd outbid them and get the
9 job.
10 Q When did you first --
11 A The law says that the city must hire the most qualified
12 person for the job. That's the law. I was the most
13 qualified for those jobs that they wanted. So they
14 didn't pay me like they should have. They didn't give me
15 the authority. They didn't give me the -- they gave me
16 the job, but they didn't give me the title and they
17 didn't give me the pay raises and they didn't give me the
18 benefits. And that will stand out like a sore thumb and
19 when you look at the budget information, what they got,
20 when they were promoted. They got their step incremental
21 increases. I begged for it and I got nothing, nothing in
22 13 and a half years. It says you're supposed to be
23 evaluated every single year. You saw my report. I had
24 four evaluations in 13 and a half years, and they were
25 all in the top category, 97 percent excellent, better

1 than any other person probably or certainly in the very
2 top 10 percent. Now, what happened to the other 10 and a
3 half that I was supposed to get, eleven actually because
4 one was supposed to be at six months. Where are they?
5 Q Were all your evaluations that you received done by
6 Stephanie Hansen?
7 A No. Well, yeah. A combination of Stephanie Hansen and
8 Tim Nordtvedt. He's the man that worked with me daily at
9 my elbow. He saw what I did.
10 Q Mr. Bohon, when did you first start to believe that you
11 were being discriminated against in your employer at the
12 City of Stanwood because of your age?
13 A Because of the way that the city took off and exploded
14 and because of my personal situation and because of being
15 clear remote away from all of the information area, it
16 took a while to learn that.
17 Q When did you first start --
18 A I don't know when I first started finding out about it.
19 Q What was the first thing that made you feel that you were
20 being discriminated against because of your age?
21 A Well, I guess the first time I asked for a pay raise and
22 they said, "Well, it wasn't in the budget." The money
23 was there. There was no question about that. It was --
24 it was generated by the building department fees, but
25 they were giving it to the water people. Somebody.

1 Wasn't giving it to me.
2 Q And what led you to believe they weren't giving it to you
3 because of your age?
4 A Because I was a threat to everybody. They could not let
5 me get ahead because my age made me so much -- more
6 highly qualified than anybody else in years. Just years
7 alone. Nobody had the number of years behind them in
8 responsible positions that I had. And you can only get
9 that by age. If there's a guy 40 years old and he's had
10 a job and he's only been able to get four years
11 experience in him and I've got ten more years experience
12 in it because of my age, it's pretty obvious why. It's
13 age and it's credentials that you build up because of the
14 years of your age. And that's what kept me suppressed
15 because I could outbid anybody because of my age, because
16 of my credentials.
17 Q Did you ever apply for a promotion or for a different
18 position within the City of Stanwood during the time you
19 worked there between 1992 and 2006?
20 A They never let you know who -- when there's an opening.
21 They all took them. They kept them. Just like Bill
22 Beckman. I couldn't have gotten manager because the job
23 was never made open. The Public Works Supervisor was
24 never opened up for bid. City Administrator was never
25 opened up for bid.

1 Q So I take it the answer to that question is no, you never
2 applied for another position or promotion --
3 A I was never notified when a position -- when there were
4 open positions. Neither was many other people.
5 Q Okay. I just want to be able to finish my question.
6 I take it that the answer is no, you never did apply
7 for any other position or promotion within the City of
8 Stanwood during the years you worked there between 1992
9 and 2006?
10 A I kept going --
11 Q Yes or no, did you ever apply for another job or another
12 position?
13 A I was never aware of any one until somebody else had
14 taken it.
15 Q So I take it that that means that you never did apply for
16 one?
17 A No.
18 Q What positions -- were there any positions that you would
19 have applied for within the City of Stanwood during the
20 time you worked there?
21 A I would have applied for the Public Works Director if I
22 had known it was open.
23 Q And when --
24 A And apparently it was open at the time that I applied for
25 the other job, but it was never advertised. I never -- I

1 wasn't aware of it.
2 Q So when you applied for your job as the code enforcement
3 officer in '92, it was your understanding that the Public
4 Works Director position was open?
5 A No, not in 1992. Apparently it was open, but I didn't
6 know about it. And I didn't know about it whenever it --
7 whenever that guy was hired. I think he was hired in
8 1993, but it was never openly -- to my knowledge, it was
9 never openly advertised.
10 Q And that was when Gary Armstrong was hired?
11 A Yes.
12 Q So are you saying that if you had known about -- if you
13 had known the Public Works Supervisor position was open
14 in 1993 or whenever Gary Armstrong got hired, you would
15 have applied for it then?
16 A Yes.
17 Q And it's your belief that you would have gotten that job?
18 A I think I would have, yes. I think I was better
19 qualified than Gary was. Why did he keep -- why when he
20 was boss, why did he keep me suppressed and never let me
21 get an even shot at it? Why did he never give me a pay
22 raise? Why did he not evaluate me like he should? Why
23 did he not give me benefits? Why did they not register
24 my certificates? It was done by him when he was my boss.
25 Q By Gary Armstrong?

1 A Yes.
2 Q Okay. And did you believe that Gary Armstrong did not
3 give you those things when he was your supervisor because
4 of your age?
5 A Yes. Definitely because of my age because I was a threat
6 to him. I could outbid him. I had more years because of
7 age. I had more credentials because of age.
8 Q Did Mr. Armstrong ever try to fire you?
9 A No. I don't think he -- I think he was afraid to because
10 of age. That's why. That's why he never tried to fire
11 me. Number one, he had never -- didn't have a reason.
12 But everybody was walking very carefully about firing me.
13 Many of them would have fired me if they thought they
14 could get away with it.
15 Q Who do you think would have fired you if they thought
16 they could get away with it?
17 A I think Bill Beckman would have fired me sooner. I
18 think -- I think Gary Armstrong might have fired me
19 sooner when I blew the whistle on what was going on over
20 their hiring Lester Anderson. But, no. They cut my pay
21 in half because I can't cry age discrimination for
22 termination if they cut my pay in half. They say there
23 was no need for it. That's baloney. It was age
24 discrimination. Nobody else was cut in half. And the
25 money was there for me. We were generating it in the

1 building department. The money was there. They can't
2 say it wasn't there. They can't say the demand wasn't
3 there. It was age. It was age discrimination. They
4 kept everybody else, the crooks that were in there that
5 should have been in jail. And I'll prove to you they
6 should have been in jail in trial.
7 Q So earlier this morning, Mr. Bohon, you described a time
8 in 2001 when you met with Stephanie Hansen off-site for
9 coffee.
10 Do you recall that testimony?
11 A It was 2000 or 2001. Your chronological chart would show
12 you when she was hired, and it was right after I found
13 out that she was hired as the new boss. And I met with
14 her off-site not on a working day. It was on a Saturday.
15 It was in the IGA store on Camano Island early in the
16 morning, eleven o'clock maybe. I paid -- I don't have a
17 receipt for the coffee, but I paid for the coffee, and I
18 told her, I says, "You know, we're facing a man that's
19 been there forever and he's got a lot of power and a lot
20 of control and we have to bid for budget money. You need
21 to be aware of this. I need money. You need money.
22 We've got to buy stuff. We need supplies. This man, you
23 need to be able to try to compete with him and so you
24 need to be forewarned of what's going on."
25 Q And who was the man that you were talking about back in

1 2000 and 2001 to Stephanie?
2 A That was Bill Beckman.
3 Q So when you met with Ms. Hansen around -- when she first
4 started around 2000 or 2001, what did you tell her that
5 she needed to be warned about regarding Bill Beckman?
6 A I told her that he was the man in control of the power.
7 He was the power broker in City of Stanwood.
8 Q What was his position at the time?
9 A I think he was Public -- he was Public Works Director at
10 that time.
11 Q He was not the City Administrator?
12 A No. No. I blew the whistle on the City Administrator
13 promotion in April of 2004. That's why they terminated
14 me. That's when I blew the whistle. He wasn't
15 qualified. He should have been fired in 1992 by law.
16 And I'll show you the law.
17 Q Okay. I just want to make sure I'm tracking what you're
18 saying here. So you're saying that Bill Beckman should
19 have been fired in 1992 back when he was the water
20 supervisor?
21 A When he got caught drinking, he was a deficient employee,
22 and the law says you will -- you will terminate a
23 deficient Public Works employee. And it says if the
24 supervisor doesn't terminate a deficient Public Works
25 employer, he is to be terminated. So John Case and him

1 were both caught drinking. He was supposed to fire John
2 Case, and whoever was aware of that was supposed to fire
3 Bill Beckman. I will show you the law. It's 4106
4 something or rather.
5 Q So fast forward to the year 2000 or 2001 when Stephanie
6 Hansen was hired, she became your supervisor; right?
7 A Right away as soon as she was hired.
8 Q As the Community Development Director, you reported
9 directly to her; right?
10 A Right.
11 Q Okay. And other people in that community development
12 department included Tim Nordtvedt? Is that what it is?
13 A Tim Nordtvedt was -- he was not an employee. He was a
14 contractor.
15 Q And he was the building official?
16 A Yes.
17 Q Okay. And you worked closely with him as the code
18 enforcement officer/building inspector?
19 A I worked more with him than her. All she did was write
20 -- sign my paycheck -- sign my time sheet for a paycheck.
21 Q And Mr. Nordtvedt also reported to Ms. Hansen who was the
22 building -- or the Community Development Director?
23 A Mr. Nordtvedt reported to the Mayor, I believe.
24 Q Do you know?
25 A Well, I don't think Stephanie had any control over

1 Bill -- over Nordtvedt because Nordtvedt has been there
2 way before her and I think the council and the Mayor
3 approved Tim Nordtvedt's contract, I believe.
4 Q Okay. And because of that, you don't think that
5 Stephanie had -- Hansen had any supervisory duties over
6 the building official?
7 A No, not over him under the circumstances of his contract.
8 Q So when you met --
9 A In fact, his contract probably tells you who he reports
10 to.
11 Q When you met with Ms. Hansen back in 2000 or 2001 when
12 she was your new supervisor, you told her that Bill
13 Beckman, the Public Works Director, was in control of the
14 power and you blew the whistle on him.
15 What were you -- what exactly were you telling her
16 at that time in 2000/2001?
17 A I told him that there was corruption going on.
18 Q With Bill Beckman?
19 A With Bill Beckman and with John Case and with -- a lot of
20 stuff was going on.
21 Q Okay. At that time in 2000/2001, what was the corruption
22 that you described to Ms. Hansen?
23 A I just said it was corruption going on. That -- I
24 think they -- I think -- I'm sure I must have told them
25 that he had been caught drinking.

1 Q Back in 19982, eight years earlier?
2 A Yeah. '99. And then John Case was caught totally
3 insubordinate of his job according to the -- according to
4 the Collective Bargaining Agreement that he is a member
5 of and he signed on to. It says, "You do not refuse to
6 do the job you're assigned," and he was sitting in his
7 truck because he was allowed probably because of his
8 drinking to get way out of shape. And so instead of --
9 his job was to go read the meters, and instead, he has
10 two sets of books in his truck and he sits there and he
11 fills them out. And that was his second time he had got
12 caught as a deficient employee. He was supposed to be
13 terminated by law. Bill Beckman was supposed to
14 terminate him, and both of them were supposed to have
15 been terminated because both of them were deficient by
16 law. I'll show you in trial.
17 Q What was John Case's position with the city?
18 A John Case and Nancy Fullerton and Bill Beckman worked I
19 don't know how many years for a private water
20 association, I don't know how many years before 1996.
21 But in 1986, December -- I believe December 1 of 1986,
22 the City of Stanwood bought out the private water
23 association. The law says if you have people that are
24 still needed in the water association that don't want to
25 retire or whatever, you must take them on as a city

1 employee and you must give them one year's equivalent
2 benefits of what they would have gotten from the private
3 association. So those people had to be, by law, taken in
4 to city employment.
5 Now, the other important thing to note is they're
6 the only people that know anything about one of the most
7 important resources to keep the citizens of Stanwood in
8 good health, and that's the water. Nobody else knew it
9 in the City of Stanwood. So when they got in trouble and
10 they should have been fired, there's nobody else that
11 knew about what their job was, so they didn't fire them,
12 they kept them, but they told Bill he could not be
13 promoted to that other job.
14 Q Mr. Bohon, I think I asked what position with the City of
15 Stanwood did John Case hold. What was his job?
16 A He was the right arm man of Bill Beckman.
17 Q What was his title?
18 A You'd have to look -- you'd have to look at the contract.
19 Q You don't know what his job was? Was he a streets worker
20 or a --
21 A He was supposed to read the water meters and he was
22 supposed to keep on top of fixing the water system. He
23 was the field workman along with Rod Sundberg and Tom
24 Heaphy to do the field work, whatever was needed; reading
25 meters, fixing pump houses. But John Case specifically

1 was supposed to read the meters and he got caught not
2 doing it.
3 Q Okay. Aside from telling Ms. Hansen in 2000 and 2001
4 about Bill Beckman and John Case having been drinking
5 back in 1992 --
6 A And John Case was caught not -- insubordination of his
7 job.
8 Q Do you know --
9 A I told her that too.
10 Q And --
11 A I can't tell you specifically what every word of the
12 conversation was. I basically said they were corrupt and
13 we had to -- we had to try to -- try to compete with them
14 and why they had so much power.
15 Q When you say "we" who do you mean? You were telling --
16 A We. I'm a member of her -- of her working group. I'm a
17 member of her organization.
18 Q Okay. So the community development --
19 A My pay and her pay and what we need for facilities, cars,
20 vehicles we have to bid against the budget.
21 Q So you were giving Ms. Hansen advice on how to --
22 A I told her --
23 Q -- how to request money in the budget from the city
24 council, for example?
25 A I told her -- I told her the power that he wielded.

1 Q Mr. Beckman?
2 **A That was going to be her toughest battle to manage her**
3 **department.**
4 Q Anybody else you told Ms. -- that you told Ms. Hansen in
5 2000 or 2001 was corrupt?
6 **A Excuse me. Go through that again.**
7 Q When you talked to Ms. Hansen in 2000 or 2001, was there
8 anyone you told her was corrupt besides Mr. Beckman and
9 Mr. Case?
10 **A I don't -- no, because I think -- yeah, Gary Armstrong**
11 **was gone by that time.**
12 Q And you said Gary Armstrong got fired because you blew
13 the whistle on his activities?
14 **A Yes, because I saw something come through that confirmed**
15 **that.**
16 Q And that was before Ms. Hansen ever arrived at the city;
17 is that right?
18 **A Yeah. Gary Armstrong was terminated in -- that**
19 **chronological chart you get that information off. In '97**
20 **or '98, Bill Beckman, then he -- Bill Beckman blew the**
21 **whistle -- I blew the whistle on him to Bill Beckman.**
22 **Bill Beckman went to the Mayor and explained what**
23 **happened. The man was terminated shortly thereafter. We**
24 **asked for the FOIA request. The city has still not ever**
25 **given it to us, and they can be fined, from what I**

1 **understand, from $1 to $100 a day for not providing that**
2 **information. The University of Washington just got**
3 **banged for $720,000. Same type of thing.**
4 Q I think you testified earlier, Mr. Bohon, that after you
5 met -- that you considered the conversation you had with
6 Ms. Hansen in the coffee shop back in 2000 and 2001 to be
7 a confidential conversation; is that right?
8 **A It was confidential. That's why I made it off-site.**
9 **Otherwise I would have walked into her office and said,**
10 **"I want to talk to you."**
11 Q Were you asking Ms. Hansen to take any action at that
12 time?
13 **A There was no action she could take.**
14 Q Were you asking Ms. Hansen -- or were you reporting
15 any -- anything to Ms. Hansen at that time about the way
16 you had been treated or any impact on your employment?
17 **A Yes. I told her. I told her that I had been denied**
18 **benefits and were -- the whole department was secondary**
19 **to the water department.**
20 Q Did you tell her at that time that you thought you had
21 been discriminated against because of your age?
22 **A I don't remember if I had told her at that time. It**
23 **doesn't do any good to tell somebody like that because**
24 **they think you're just a, you know, a complaining**
25 **employee that -- you know, until you get to know them.**

1 **They -- you're stupid to tell somebody is that because**
2 **they're going to think, "Hey. I've got a guy here that's**
3 **just a pain in the rear."**
4 Q Was there any point when -- during your employment when
5 you told Ms. Hansen that you thought you were
6 discriminated against because of your age?
7 **A Excuse me. I was drinking coffee. Tell me that again.**
8 Q Sorry. Was there any point during your employment with
9 Stanwood that you told Ms. Hansen, your supervisor, that
10 you thought you were being discriminated against because
11 of your age?
12 **A Yes. I told her several times. And pretty soon she**
13 **stopped even inviting me to the regular staff meetings.**
14 **She told me one time, "You're going to have to go**
15 **outside." I told her, I says, "You know, I've tried**
16 **everything internally." And she says, "No, you're right.**
17 **I think you're going to have to go outside."**
18 Q And that was during a staff meeting?
19 **A It was when she and I -- sometimes she would call me in.**
20 **She would call every one of her people in on a scheduled**
21 **day. She would call Nancy Fullerton in on one Wednesday,**
22 **maybe she'd call me in on Thursday, and then we would**
23 **have staff meetings for the whole staff sometimes every**
24 **week. Pretty soon when she got tired of what I was**
25 **telling her, she stopped even inviting me and including**

1 **me in the staff meetings.**
2 Q Who was involved in the weekly staff meetings that you
3 attended?
4 **A The whole staff. Tim Nordtvedt was -- because he was a**
5 **building official and I worked with him, he was in it.**
6 **Nancy Fullerton was in it, Anne Skinner was in it and**
7 **Stephanie was in it and I was in it. That was our staff.**
8 Q And that was the Community Development Department?
9 **A Yes. And the funny thing about it is we met right**
10 **outside the door of Bill Beckman, and so one time when an**
11 **issue came up that I had to -- I had to blow the whistle**
12 **on Bill Beckman. Anne Skinner raised another issue and**
13 **pretty soon we got -- that was when Bill Beckman had**
14 **tried to get me kicked out of the office. The first**
15 **time, 2001. I had blown the whistle on him hiring. I**
16 **walked into a meeting when they were -- now, you talk**
17 **about -- you talk about efficiency. I -- you need to**
18 **understand here. This is a key part of the whole thing.**
19 **They told me they terminated me -- they wanted to move my**
20 **office over to the City Hall.**
21 Q And this is back in 2001?
22 **A No. This -- when they terminated me.**
23 Q Okay.
24 **A For better efficiency. Now, you tell me how when you're**
25 **trying to illegally in violation of all the law,**

Transcript of the Testimony of

Warren E. Bohon, Volume III

September 26, 2013

Warren E. Bohon v. City of Stanwood

No. 09-2-01891-8

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1 A Somebody had told her and she had told me.
2 Q Okay. And what -- had you -- what was your response to
3 that?
4 A I wrote her a 21- or 32-page letter.
5 Q Back in 2001?
6 A Back in 2001.
7 Q Okay. Who --
8 A Again just before I was cut back to half time and half
9 pay.
10 Q Who did you understand was responsible for making the
11 decision to try to move your office from the Public Works
12 building to City Hall back in 2001?
13 A Nobody told me I had to. They said that it was
14 recommended that I move my office I believe she said or
15 something to that effect.
16 Q Did you disagree with that?
17 A Yes, because I needed to be where I was to do my job.
18 And I wrote her a letter to that effect and they never --
19 they never followed through and said, "You must do this."
20 I believe -- I had two offices and they said they needed
21 one office to accommodate one of the other guys. I went
22 through and I measured all the offices that the other
23 people had and it was a total bunch of BS.
24 Q So back --
25 A That was a need.

1 Q Back in 2001, you were using two offices in the Public
2 Works building?
3 A Yes, because I had a code enforcement desk in one office,
4 and they were very small offices. Nobody had used them.
5 They were just isolated offices. And then I had the
6 other one in building inspection stuff. And so
7 ultimately, I moved out of one office, and you know the
8 funny thing about it, they never used that other office.
9 It was so much BS that you cannot believe it.
10 Q So at one point --
11 A This -- this was a retaliation because I had had a
12 discussion with Les Anderson. He had -- it was right
13 after he was made supervisor. I think he was made a
14 supervisor in -- I think he was made in 2001.
15 Q And that was the Public Works Supervisor?
16 A Public Works Supervisor. So he come up and I had had a
17 confrontation with him about selling a piece of equipment
18 to help -- better help our job of cleaning the streets.
19 You have to understand he's not the type of guy that
20 you can even have a level headed discussion as you've
21 seen in all the other stuff. You've got documentation to
22 that effect. He's a bully type person. Anyway, he came
23 up and asked me if he could have one of my chairs. At
24 that time, I -- that was before I was even told to move
25 my office, that they needed one of them. He just came

1 up, "Can I have one of those chairs?" I said --
2 Q This is one of the chairs from one of your two offices in
3 the Pubic Works building?
4 A Yes. Now, he had access to all kinds of stuff. He
5 could -- I had to scrounge mine. He had -- as a Public
6 Works Supervisor, he could put in a request and get
7 anything he wanted. A brand new chair. I told him he
8 could not have a chair. I needed it. That was true.
9 Q Did you get in an argument with him about it?
10 A No. He just said, "Well, you're not -- then you're not
11 going to give me that chair?" And I said, "No, Les, I'm
12 not going to give it to you." That's all. We didn't
13 have a big argument. Later on when they pushed -- he
14 pushed it through Bill Beckman to my boss.
15 Q Les Anderson pushed what through Bill Beckman?
16 A He was the instigator of me being told later to get out
17 of my office.
18 Q What about -- so in 2001, you believe that Les Anderson
19 asked Bill Beckman to tell Stephanie Hansen to have you
20 move your office from the Public Works building to City
21 Hall?
22 A Right.
23 Q Okay.
24 A And then later, Les Anderson and I after hours did have a
25 serious discussion about the fact that being asked to

1 move my office was retaliation and it was personal
2 animosity and it was totally uncalled for.
3 Q Okay. Did this serious discussion happen back in 2001?
4 A I believe it did.
5 Q And was -- was the conversation between you and
6 Mr. Anderson?
7 A Yes.
8 Q Was anyone else present?
9 A No.
10 Q Okay. How did that conversation start?
11 A I think I probably instigated it.
12 Q What did you tell Mr. Anderson during this serious
13 discussion?
14 A I told Mr. Anderson that it was obviously -- this thing
15 was -- what's the word for it? It wasn't justified. It
16 was -- it was retaliation.
17 Q The request --
18 A Because I had turned down this chair was basically what
19 was behind it. I said, "This is a personal animosity.
20 This is not -- this is not valid as a requirement,"
21 because nobody is using the office. And I gave him one
22 office and it was never used. So it was a retaliation
23 by Les Anderson supported by Bill Beckman, both of them
24 corrupt because they both were -- had acted illegally in
25 getting the job in the first place along with the Mayor

1 which you have proof in your files that this happened.
2 Q And when you had this serious discussion with Les
3 Anderson back in 2001 about your position that the
4 request to move your office was retaliatory, was
5 Mr. Anderson your supervisor?
6 A No, he wasn't.
7 Q Was Mr. Anderson ever your supervisor?
8 A No.
9 Q Was he the supervisor of the rest of the Public Works
10 staff that worked in the Lagoon building?
11 A Yes. They were all Public Works employees and he was a
12 Public Works Supervisor or foreman. I'm not sure. There
13 was -- I think on different documents, one of them --
14 see, that's -- they went through and changed all the
15 documents. When the job was created, one of them -- I
16 think you'll see in your file that one of the two said
17 "foreman" and it was scratched out to supervisor or vice
18 versa. And the pay showed at 3,250. One of our
19 qualified guys that was supposed to get it would have
20 been paid 3,250, but when Les Anderson was given it, it
21 went to 3,750.
22 Q In 2001 when you confronted Mr. Anderson about the
23 request that had been made for you to move your office to
24 City Hall, how did he respond when you told him you
25 thought he was behind that request and that it was

1 retaliatory?
2 A I don't recall how he responded, but as -- we had had
3 discussion previously to that when he tried -- when he
4 was violating his right to do something as -- he thought
5 he was a council member, he could do whatever. He's a
6 bully type guy. You've seen all that stuff. He came
7 directly to me trying to get me to write up a citation
8 against his neighbor and I said, "I cannot do that
9 without putting the city in extreme liability because
10 there's no justification to it." Repeatedly. So
11 there -- he had it out for me because I did not do what
12 was illegal to ask -- that he was asking me to do.
13 Q And this was --
14 A Way back.
15 Q -- this was back when Mr. Anderson had been a city
16 council member; is that right?
17 A Yes.
18 Q So long before he became the Public Works Supervisor?
19 A Right. And my handling of Les Anderson or the situation
20 is well documented that he had those kind of problems
21 with everybody that had any kind of association with him.
22 There's all kinds of records on that.
23 Q Aside from --
24 A He never should have been a Public Works employee. And I
25 made that statement, see. That's the other thing. I sat

1 in there and he was told. Again, it was a violation of
2 Bill Beckman as his position went to city. There was
3 this confidentiality when I told him what should be going
4 on, and everybody else objected to hiring Les Anderson,
5 he said, "That should never have been told to Les
6 Anderson." People were doing that in the best interests
7 of the city as employees. They were well aware of what
8 kind of a guy he was. We were all voicing our opinion.
9 And he found out about it and retaliated to all of us
10 through the chain against any of us. And I was one of
11 them.
12 Q So what you're describing now is your opinions that you
13 expressed to Bill Beckman advising Mr. Beckman that he
14 should not hire Les Anderson as the Public Works
15 Supervisor?
16 A Right. And it probably went from Beckman to the Mayor
17 because the Mayor is the one that ultimately admitted
18 shewing in Les Anderson illegally. In 2007, he was
19 told -- to Matthew Pruitt. I think you have a document
20 in your file. I have one and certainly you have one to
21 that effect.
22 Q After -- after you wrote this letter in 2001 to Stephanie
23 Hansen objecting to the move -- to moving your office,
24 was that when you condensed one office in the Public
25 Works building down to two -- I mean, sorry, two offices

1 down to one?
2 A Yes.
3 Q Okay. Did you move your office to City Hall at that
4 time?
5 A No. I wrote -- like I said, I wrote a 30 -- there was no
6 room at City Hall. There was no room at City Hall.
7 Q Was that the only reason you didn't want to move to City
8 Hall in 2001?
9 A No, because I was in the most efficient place to operate
10 like I was as my performance proved. I was rated 97
11 percent excellent. Now, you have no detrimental thing
12 against me. You have no thing that say I was not
13 efficient. Almost 100 percent. I don't think you'll
14 find anybody in there that was ever given 100 percent. I
15 was officially -- I was there for the best interests of
16 the city and every employee there where my office was. I
17 wrote a 32-page letter explaining that, and you have a
18 copy of that somewhere, I believe.
19 MS. FREEMAN: The videographer has
20 notified me that the tape is almost over, so maybe we
21 should take a break so we can change the tape real quick.
22 Thanks.
23 THE VIDEOGRAPHER: This marks the end
24 of disk one. The time is 11:22 a.m. We are off the
25 record.