SUPREME COURT OF THE STATE OF WASHINGTON

STEVEN HEEB	
	NO. 394913
PETITIONER	MOTION FOR DESCRETIONARY
	REVIEW FOR UNTRUTHFUL AND
KAY SIKES	
	UNFACTUAL OPINION DIV III
RESPONDSANT	TREATED AS A PETITION FOR REVIEW

A Steven Heeb pro-se asks the courts to review the opinion of the court of Appeals Division III that is full of un factual information .

B. Steven Heeb will now go through the opinion and describe the parts that are not factual or true. The first page of the unpublished opinion is not proper and Steven Heeb was given a restraining order because Justin sent him on a mission to get Kay Sikes address then failed to send Steven Heeb Any CR 30 notifications of the two hearings that Tracy Brandt presided over . I am sure he did not want Tracy Brandt to from me that Justin Collier

Sent me out on a mission to get Kay Sikes current address at his

I did not know at all about hearing dates for the restraining order on 10/21/2019 and 11/18/2019 where the restraining order was issued by Tracy Brandt . These two CR 30 violations are the cause for me to loose all faith in Justin Collier representing me and I was told nothing about the order from him and found out about it going through airport security.

June 8 th was the hearing date I had Justin Collier set to get that restraining order removed I made no attempt previous to that and there was no probable cause for the order to be placed upon me. My documents filed with the court my situation well and her here say statements she got from others did not justify defamating my character from her lack of integrity.

Under RAP 3.3 CONSOLIDATING OF CASES this should be joined Justin Colliers case 39206-6-III because of the manipulation of Justin Collier and judge Travis Brandt. Justin Collier CR 1.1 1.2 1.3 and 1.4 and did what he wanted when he wanted and failed to follow rule 1.16 declining or terminating representation. As stated in the documents you have on the Justin Collier case on page 292 of the January 10 th 2023 hearing on line 11 the judge is holding me responsible for the failures of Justin Collier I ask the court to read page 292 to 304 of this transcript and the judge is wrong and prejudice towards me.

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I want the court to now read the transcripts of the October 6 th 2022 hearing. Page 181 through 204 in the reading of those pages it will show that I was only made aware of two depositions one was supposedly before the February 9 th 2021 notification late afternoon for February 11 th at 10:00 am in Wenatchee and the other one was an e mail on March 29 th at 2.20 pm that day that Justin Collier sent me . How would it be proper for the court to hold me accountable when I knew nothing about a deposition and was on the road to Montana with my son to get a heavy piece of equipment that I needed his help with. Justin Collier has a total of six CR30 violations representing me. Hearing 10/21/2019 hearing 11/18/2019 hearing 9/24/2020 failing to serve notification and documents for hearing. February 9 th 2021 for February 11th deposition, March 22 nd notice of hearing and there were no encrypted e mails from me saying I was not going to come and yes there are e mails from me telling him what a horrible job that he did representing me and he set me up for troubles. The sixth CR30 violation is his E mail to me March 29 th at 2:20 pm for a deposition he asked me to attend at his office at 10:30 am Justin Collier knew of this deposition date that was made on March 22 nd 2021 at the hearing that he lied about me knowing anything

That hearing the court of Appeals Division III thinks that it is ok to get horrible representation and violate CR30 rules six times and do all the things I have proven that he has done then they drag time out so the Chelan county Superior court dismisses the case for untimeliness when I received a judgement for lack of representation on January 10 2023. This is absolute discrimination that the court of Appeals Division III will be held liable for and Chelan county for allowing impropriety in the court room and violating the color of law.

Stating Mr. Heeb failed to appear at multiple depositions is a lie. Mr. Heeb has seasonal work schedules that he has to adhere to or loose his job that he has to have to pay his bills

Rule CR 45 STATES (3) (a) states the court by which a subpoena was issued shall quash or modify the subpoena if it (i) fails to allow reasonable time. I am going now to refer to exhibit 4 that will be provided in the documents. This document proves that on February 11 th I was working at my job and that the following week I was on call working as well just as I stated. I have taken the brunt of Justin lack of responsibility and there is definitely things Judge Trav is Brandt could have done in his court to avoid impropriety and make things go smoothly.

Washington code. Judicial conditions 2.3 states that a judge shall not in performance of judicial duties , by words or conduct manifest bias or prejudice , or engage in harassment , and shall not permit court staff, court officials , or others subject to the judges direction and control to do so.

The transcripts of Chelan county Superior court 19-3-00275-04 allowed the attorneys and the judge himself and especially transcripts of hearing date 3/22/2021 to slander , deflamate and state unconfirmed and abusive things about me that he allowed in his court all through proceedings along with his prejudice statements that Kay Sikes did everything right this is stated on page 191 lines one through four of the October 6 th hearing and at the January 10 th hearing 2023 on page 303 line three through seven the judge states that Ms. Sikes does everything right again and that is not true at all because of the following reasons and the judges prejudice misconduct and not true statements about me not willing to take a deposition. First of all my EXHIBIT 4 proves and it be confirmed that on February that I was working and that I was on call that next week from the 15 through 19 th with three box cars. Justin Collier never tried to set anything up before the March 22 nd 2021 hearin g took place that he lied about an encriptive E mail from me stating I was not coming to the hearing and that is totally a blatant lie my E mails I am providing the court in EXHIBIT 3 prove this.

PAGES

What took place at the March 22 2021 hearing that I knew nothing about what was said at that hearing months later when my transcriptionist transcribed that hearing. Justin Collier knew then of the April 1 st deposition and only sent me an E mail on March 29 th 2021 at 2:20 in the afternoon while I was on the road to Montana with my son to help me get a heavy piece of equipment. CR 30 rules apply and Judge Travis Brandt having copys of these E mails made no concern about how my attorney represented me as he should have under the previously described rule 2.3 and this judge had no regaurd for impropriety in his court room. The court can not state I had a problem taking a deposition because as soon as I come back home I E mailed Justin Collier and told him I would be at his office first thing in the morning morning even though I had gotten no sleep in the past 24 hours. I tried to be there for the deposition but Justin Collier said that we could not do the deposition because the court reporter rescheduled for another job.

Justin Collier then stated that evening that he would have them move it out for two weeks so I can have time to sleep . Justin Collier failed to do as he stated and resigned as my council on April 2 n d 2021 failing to do anything during the 10 days of responsibility to his client that he is responsible for.

Steven Heeb had every right to state what he did to him as stated .

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In his E mails to Justin Collier because of his lack of representation.

The following problems with the September 24 2020 hearing judge Leslie Allen violated a CR 30 service of a document that not a court file stamped document stated as being a settlement agreement. There was no such court legal document presented at that hearing. I told judge Leslie Allen that I just seen the matrix that very morning for the first time. The judge did not ask me if I wanted the hearing to go on she just continued on with it.

To prove the court of Appeals Division III wrong about their Opinion I called Barbara their court clerk and case worker there and asked her for a copy of the settlement agreement that in the Opinion it is regaurded as a legal settlement agreement she looked for awhile and said there is no court filed settlement agreement and I stated to her that I k new that and their Opinion was wrong . I then asked her for the encrypted E mail that the judges stated defense for Justin Collier and asked her for a copy of that as well and Barbara she did not have a copy for that as well. I told her that is what i thought that the court of Appeals Division III opinion was thrown together without the research of my documents for proof of my case in judge attorney ;prejudice to defeat me at all costs. The next problem with the September 24 th 2021 hearing that does not have a court filed legal settlement agreement .

CR 37 sanctions can only be filed by themselves according to rule 11 (b) her filing had a total of 16 pages with the last three being the thrown together illegal matrix that has never been properly formatted and file stamped with the court clerk and is a violation of rule five (e) so there is no settlement agreement .

The next real big problem that people should go to jail for is April 29 hearing and want the court to read the entirety of transcripts of that hearing because I was very green at what I was stating and Justin Collier put me in that position and caused the CR 37 sanctions but everything I stated at that hearing was proper and true.

I want to reference that on page 59 lines one through five judge Travis Brandt wants there to be a settlement agreement to be filed with his court and the judge and attorneys all know this is illegal and the document is not even proper. In the transcripts it states that the judge is going to review the September 24 2020 hearing because I say it was not legal nor complete even though the judge and attorneys wanted it that way.

I am now going to now refer to EXHIBIT 2 which is the minutes filed June 25 2021 that state Justin Collier did no wrong and that is totally untrue.

This is a wrongful act,

Nor was the matrix court filed with the court clerk so according to Rule 5 filing with the court (e) defined there is absolutely no settlement agreement. The next problem with September 24 2020 hearing was My CR 30 notice of the hearing date being less than 24 hours and judge Leslie Allen was aware of that as well. The next problem that took place was there was no finalizing that took place at that hearing. The judge gave the parties till October 30th to respond for a time limit.

The September 24 2020 court transcripts lines one through seven clearly state that I am to receive a 5000.00 dollar settlement that Justin Collier and judge Travis Brandt both did nothing to see that I got the $ 5000.00 while Kay Sikes came upon this working mans property and took what she wanted when she wanted. Justin Collier totally failed his client again because right after the thirty day time period he should of had documents filed with the court for dismissal for no action this cost his lots of money and mental anguish. Justin Collier failed his client in every way and judge Travis Brandt allowed this to happen in his court and allowed a catch 22 situation to exist because of his irresponsibiltys serving his client.

The next problem is the March 15 filing of Kambra Mellergaards CR 37 sanctions.

The judge is absolutely on Kay Sikes side and uses Justin Collier to make me look bad and to serve a judgement upon me. February 9th afternoon notice for February 11 th deposition date and me working and and being on call the following week was proper. Justin Colliers March 29 at 2:20 in the afternoon for April 1 st at 10:00 am is not a proper CR 30 notification and the judge judge manipulated the wording of what took place in Justin Colliers and mine E mails and had no right to make judgement upon me. Judge Travis Brandt was highly prejudice to wards me and I want to state this also Justin Colliers law suit against Kay Sikes was not approved by me and was never shown to me before being filed with the court. Judge Travis Brandt after almost five and a half months from the September 24 2020 hearing allowed them to bring the lawsuit forward using my case instead of them bringing their own case . Judge Travis Brandt allowed them everything to benefit themselves at my expense and the previously awarded five thousand dollars that was awarded to me at the September 24 2020 hearing he willfully and intentionally ignored . I asked Travis Brandt to recuse himself in early 2022 and he refused to do so and has never had any intention to allow the court rules that I quoted have any meaning or value or fairness before the court.

Amougst all the other court rules that I have quoted being broken by judge Travis Brandt and the attorneys is rule 4.6 (c) which states you have a deposition before a judgement can be made and my fifth sixth and seven amendment rights have been violated by him and I feel what was done in this case was done with will full intent to set me up with no understanding.

The opinions back ground the statement Steven Heeb did a a distribution of property with Justin Collier is totally untrue Justin Collier did what he wanted when he wanted without me being involved and without my permission ,

the matrix referred to is not a court filed document dumped upon me with judge Leslie Allen and Justin Collier forcing it upon me improperly with nothing done within the required time limits.

I cannot appear at a deposition if I know nothing of it an d I have described the two I knew of for Febuaruy 11 th and for April 1 st very thoroughly in the court transcripts that was not read before Division III made their opinion against me Steven Heeb has just cause for has taken place and the county judges words are not correct. The transcripts prove a predetermined that with open minds the Division III judges should have revlewed better.

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The opinion on the top of page 3 of the opinion is a total lie by the Division III judges making the opinion and I refer them to the transcriptions of the September 24 2020 hearing and read what was accurately stated and then it was Kay Sikes that failed to follow through in a timely 30 day time limit requirement. The courts are bias and prejudice just what is stated on that page and the court made this a catch 22 situation with Justin Collier working for opposing council and it is obvious this courts opinion could care less about court rules that have been broken in my defence and the absolute manipulation to attempt to make a non court filed non legal settlement agreement ands screw me out . Mr heeb never did respond on the affirmative about anything having to do with Kay Sikes but Justin Collier has done things repeatedly on his own without Steven Heebs permission and definitely did more to help the opposing party and that is impropriety of the law.

I don't have any idea if Justin Collier got paid for assisting the opposing party but he is absolutely lieing about any cryptic email because the court has those E mails from me and I absolutely knew nothing about the March 22 2021 hearing the documents that I have provided in this response proves my case that he was just being a trouble maker and state slanderous things about me.

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What happened in the court room on September 24 2020

was a short hearing put on record that the court needs to read the transcript of. Mr. Collier did all the talking and conferred with me then made statements to the court. On the bottom of page thirty eight is where Kambra Meller brings up the Ford Thunderbird at last minute long after everybody initialed the matrix . On page 39 it states the court took a 12:15 till 12:21 break while Justin Collier and myself have a conference then Justin Collier addresses the court. I am addressing the facts of this case. Kay Sikes attorney and Justin Collier worked together creating this matrix that appeared before the court for the first time the morning of the hearing at which time I saw it for the first time that very morning. (fact) why would two legally educated attorneys bring before the court a three page document that is not even titled settlement agreement , that does not have signature lines legally for the petitioner and respondent to sign off on. The most important thing is that it was never filed and recorded with the Chelan Superior court clerk and another important thing is my right were totally VIOLATED by CR 30 service requirements not only b y Justin Collier but by judge Leslie Allen as well when we met first thing that morning .

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(FACT) Kay Sikes atty Kambra Mellergaard created this matrix document over a period of time the court never told them they had to know and make up that document in less that thirty minutes so how is it proper before any court that my attorney Justin Collier demand an y kind of legal response out of me when it was handed to me that very morning with no time for review. The judge if she did her job properly would have stated to all concerned that this hearing will be called of and rescheduled due to CR 30 service violations and it is Steven Heeb's rights to have five day to examine a new document that is titled as a settlement agreement and is in proper settlement agreement legal format and the most important thing of all this judge and all the judges and the court of Apeals judges and Supreme court judges have absolutely disregarded my documents in the previous case before you in case 387976 that my exhibit M that has case law about settlement agreements and CR2A legal requirements. The courts had a responsibility to review years ago and took my money for review and never even researched my materials and made sure that there is a legal court filed document filed with Chelan Superior court clerk and Martin Young knows this (the clerk) knows there is no court file stamped settlement agreement and I stated to him and asked him to put it the court file notes that there is no settlement agreement and there is a CR 37

Sanctions that he knows was filed on March 15 2021 and the last three pages are that improper matrix that is put with CR 37 sanctions that is violation of Rule 11(b) stating sactions are filed by themselves and Martin Young knows this as well and put note of it in the case file.

Like I have earlier stated after receiving the Division III opinion I called the court of Appeals Division III court clerk Barbara who has been my case worker and I have had many conversations with (she knows my voice) . I wanted proof of what the Division III judges stated about a settlement agreement and a copy of that E mail that Justin Collier stated that he received from me. Barbara researched the case and stated she don't have a settlement agreement on file nor the e mail. I stated to her that is right and I know that so please go tell your judges that .

All the judges and attorneys that have been involved with my cases absolutely educated with the rules of the law to be an attorney but they think it is of ok to disregard court rule 11 (b) court Rule 29 which states any document required or permitted to be presented to the court or to a justice shall be filed with the Clerk in paper form. Rule 5 (e) Filing with the court defined and I state again there is no settlement agreement and the courts have put me through pure hell .

What has been stated in this Division III opinion actually shows Justin Collier failed to properly represent his client and his lies that he made at the March 22 2021 hearing transcripts and previous hearings previous hearings prove so. The transcript proves on page 59 proves that Judge Travis Brandt and atty Kambra Mellergaard will break court rules and do underhanded deeds to try to justify to make a court filed document that Travis Brandt can use against me in court . The court needs to read all the transcripts of 19-3-00275-04 this judge committed fraud and failed to acknowledge anything in my behalf and totally disregarded the 5,000.00 dollars that I was awarded on September 24 2021 . The transcripts will prove he had a predetermined prejudice towards me and his description of his CR 43 (f) (1) is not proper and he allowed Justin Collier to work against me and allowed slander and impropriety in his court room. My E mails prove my unhappiness with Justin Collier but they prove the only two depositions that I knew about and that judges judgement against Improper and illegal and the court of Appeals Division III could have stopped all of this from happening if they would have given any merit to my exhibit M provided in 387976 and compared to Chelan county Superior courts case history. The deposition history is simple as this for the two depositions that I

Received from Justin Collier were the February nineth E mail at 1:30 pm requesting that I be at his office at 10:00 am on the 11th my response to him is not polite but he has caused me problems and has failed to properly represent me and this is the third time he has not properly addressed me for hearings and this requested deposition and he has been made very aware of my seasonal work loads. By this time of it was 139 days since the September 24 2020 hearing that had a thirty day day time limit and it was his responsibility to put forth a motion for dismissal he did nothing to represent me properly just took my money. The facts are the judge did not like me talking in my E mails to Justin Collier the way I did and had no understanding and did not want to understand because he meant harm for me the easiest way he could bring it to me. He allowed this case of mine to be five and half months after the September 241 2020 thirty day limit , he allowed the March 15 th filing of the CR 37 sanctions with the illegal matrix that was never filed with the court clerk in the form of a motion and done in proper procedure and is an absolute CR 30 violation of both Judge Leslie Allen and Justin Collier allowing this to even to be presented in court . I requested the courts review of all of the April 29 2021 court transcripts and in it the judge Travis Brandt states he is going to review the September 24 2020 hearing .

The materials I presented in court on the April 29 th hearing showed him that I did not have knowledge of deposition notices or they were not of CR 30 service requirements allowing impropriety into his the rules and laws are the same for everyone and to be treated the same.

My Exhibit 2 proves that the judge approved Justin Colliers violation CR 30 notifications to me and the E mails prove what I stated to him and the E mails prove that on March 31 st Justin Collier was going to set up another deposition two weeks out that he never did do . Judge Travis Brandt allowed an illegal matrix to upheld in court but not the five thousand dollars awarded to me and in effect he also broke CR 30 service laws as well. Going to Exhibit 3 Febuary where I stated it is absurd he gives me less than a weeks notice because it was late Tuesday afternoon expecting me be there Thusday morning when I was scheduled to work that day and did .

then Thursday February 10 th at 12:05 I respond to Justin Collier I am promised to be on call . I am not doing anything next week and let him know that he did not handle this lawsuit properly and I have a right to express my opinion without the judge making a judgement against me nothing was ever said that I would not attend a deposition and the fact is I had no problem with

Attending a deposition but I need enough notice to say to Crites seed hey I have a court date I need to keep for a deposition next week not leave them hanging . Just like Exhibit 4 states I have worked for many years and it is a job that has to be addressed quickly getting product to the railcars. Instead of making a catch 22 lets put the responsibility on Justin Collier and judge Travis Brandt and face the true facts All Justin Collier had to do was just give me a proper CR 30 service notice that gave me time to adjust my work schedule but it never happened and none was ever given for any specific date for the week of the 15 th to the 19th so if the CR 30 service was proper during that time I would have asked to change things and communicated with Crites to work on a schedule but that did not happen . Instead judge Travis Brandt wants to hold these E mails over my head for a judgement and he had no understanding for me for what this attorney failed to do and properly represent me and the transcripts of this case will prove he had a predetermined prejudice towards me all through the hearings and he refused to recuse himself in 2022 and continued on no matter what proof I brought before the court and court rules and for certain rule 4.6 (c) where I was never given a proper CR 30 or notice of and it was never proper.

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The opinion of the Appellant show they did not properly review my case and documents because they are siding with judge Travis Brandt that feels I deserve a judgement (Fact) Steven Heeb has never stated no to a Deposition but has reasonable concerns about lees than two day notices. Steven Heeb was never given a proper CR30 notice February 15 th and 19 th and did state he was on call with his work many times at many hearing dates. Did this ever concern the judge that I received improper CR 30 notices? Just where are these cryptical E mails that Justin Collier tells the court about on the March 22 2021 hearing that he absolutely lies about and says there is something wrong with me and has no idea why I am not at the hearing when in fact there was no notification to me. He made no effort to set up another deposition until his failed CR 30 notification to me that was set at the March 22 nd hearing for a Deposition to be taken on the first of April at 10:30 am at his office on the first of April . Why was it not appropriate for Justin Collier to let me know right after the March 22 nd hearing but he waited till March 29 at 2:20 pm to notify me when I am on the road to Montana with help to get my work done. You would think Judge Brandt knowing these things would call Justin Collier on his actions. The court cant say Steven Heeb did try to make it work with his short notice because after getting back in town

The opinion of the Appellant show they did not properly review my case and documents because they are siding with judge Travis Brandt that feels I deserve a judgement (Fact) Steven Heeb has never stated no to a the march 31 st email at 8:54 pm shows I got ahold of Justin Collier and stated I would be in his office in the morning for the deposition. But he stated that it would not work because of the court reporter . Then Justin Collier states that I will have them move it at least two weeks so I can have time to sleep and he failed to ever do that.

Now I am going to reflect back to January 10 th 2023 hearing the judge Travis b Brandt had a motion for reconsideration that I filed on October 7 th 2023 that he willfully and intentionally put off till the January 10 th 2023 Hearing which is 96 days old then on the 23 od December was another hearing that I had that he said he was going to make a decision on by Friday that week if he could but he never even tried he put both of these off until January 10 th 2023 then referring to the transcripts on page 392 the judge holds me responsible for the failures of Justin Collier by using rule CR 43 (f) (1) which he states all the law requires at is for them to notify my and he don't have to notify me and I am responsible for what they

Stated was my first notice for a Deposition which is stated in the court transcripts and I tell the court I know nothing of that hearing and was given no notice of that hearing by E mail or any legal CR 30 notice and what I state to the court is true and there was never any declarations of mailing on any court matters just when he resigned as my attorney.

There is no way the court can properly say there was any more than two notifications and judge Travis Brandt made judgement upon me for the the first one that I had any correspondence from Justin Collier on and that was for February 9 th notice for a deposition date of February 11 th a day that I was working . Justin Collier comes back on February the 10th and asks what day can I do next week and asks me what day can I do and I tell him the truth that I am on promised to be on call and that I am working as I have stated Justin Collier never gave another proper CR 30 notice and I worked that week as planned . Without a proper CR 30 notice for the week of February 15 to the 19 th the judge has no right to hold that over me because I never violated anything because there was no notice and Justin Collier must have said some things that I did not know about because it escalated into March 22 nd hearing where I was put down by all and Justin Collier states I don't know why I would not show up at this hearing and states he has a cryptic

And these are the facts and Barbara who has been my case worker and clerk at court of Appeals Division III could not find this settlement nor that cryptic E mail and Justin Collier is a liar and has fraudulently claims there is a legal court filed settlement agreement and there is not one on file at the Division III court records and judge Brandt and the Appellant court need to come to terms with that and hold Chelan County and themselves accountable. Going back to page 292 lines twenty and twenty five the judge agrees with me that I have to have a five day notice for a deposition but he don't uphold that because he says the two day notice was not valid for February 11 th deposition because I was working but I refused another date is what is described on page 295 lines 5 through 9 from judge Travis Brandt and that is a lie and I was not unwilling to do anything the court asked of me but the facts are I had a right to say I am not doing anything that week because there was no written CR 30request for that week for me to respond to any certain date during the 15 th to the 19 th I was on call like I said and Justin Collier put forth no effort for any other time and it is shown in the court transcripts there was nothing that went on until after the March 15 th CR 37 sanctions which the judge Travis Brandt AND Kambra Mellergaard committed fraud trying sneak in a non ...ly of illegal format and not titled settlement agreement.

The settlement agreement needs to be of proper heading and properly formatted with signature lines and be filed with the court in the form of a motion It cant be manipulated into a hearing with CR 30 violations of both judge Leslie Allen and Justin Collier. I am going to now take you back to page 294 and at the top of that page 1 through 11 judge Travis Brandt goes on to state what he has many times through out this case and It shows his absolute b desire to throw me un der the bus by stating Kay Sikes and her attorney did everything right on March 15 th 2021 they all did everything wrong in attempt to create a settlement agreement and the judge Travis Brandt goes on to say my statements on February 10 th for the week of the 15 th to the 16 th with no CR 30 issued for that time of any certain date requested puts me uncooperative with the court is not proper or true and he had no right to ever place any judgement upon me and to CR 11 (b) 2 rules and rule 5 for March 15 CR 37 Sanctions filing and he never had any right to ever hold over me his total preponderance of prejudice he made upon me for years and I am sure he never though I would research his wrongful acts and hold him accountable and now the Appellant court totally failed to research the documents I provided to them.

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My testimony to the courts has been totally viewed as not of value and even though I paid for it to be properly reviewed I have been judged repeatedly as something less with no value held to my court docxuments. The last paragraph on page 6 of the Division III opinion I have discussed thoroughly and it is not proper for a person to hire an attorney to represent him and violate the described six three CR 30 violations and all the other rules of impropriety that he has broken and as stated the only two Depositions Justin Collier ever addressed to me were the February 9 th notice for the eleventh of February and the March 29 th for the April 1st deposition and I have discussed this very thoroughly and no CR 30 was ever made for the time I was on call the 15 th through the 19 th of February and was never uncooperative with the court to justify and judgement against me and Justin Collier had a job to do protecting me that he did not do and it is not proper for the court to hold me responsible for the February 2 nd notice of deposition Kambra Mellergaard supposedly gave Justin when I am not made aware of a deposition until February 9 th at 1:10 pm deposition for a morning deposition on February 11 th a day I was working shown by exhibit. Judge Travis Brandt made an improper judgement me with CR 43 (f) (1) Justin Collier is your problem child not me and he did not protect me.

The courts have been relentless about dumping the responsibilities of Justin Collier on Steven Heeb and the court is ready to throw him bus anytime that they think they can get away with it. The opinion on page 7 does not address the real and improper actions of the court and fraud was committed and not by accident. On page fifty nine lines one through four the judge Travis Brandt states and the settlement agreement you filed that, I believe, I judst want to make sure, on March 15 along with your original motion and memorandum for CR 37 sanctions which were totally made and caused by Justin Colliers lack ands improper representation not by anything I did or refused to do. The real improper part of this CR 37 sanctions is the matrix which is the last three pages of the CR 37 sanctions that is Travis Brandt calls a settlement agreement on the page 59 transcript and the facts are again as I previously stated by rule 29 and in rule 5 all motions and court reviewed documents have to be filed the Chelan county Superior court clerk and this what judge Travis Brandt does not have a court filed stamped settlement that was required five days before the September 24 2020 hearing and the judge wants to in this improper way get this matrix filed with the court so judge Travis Brandt and both attorneys committed fraud and it was stated

That way in my brief that was filed with Division III court and instead of the judges responding to it properly and doing anything for my defense they try to cover up the fact that on March 15 th 2021 judge Travis Brandt and the attorneys were trying to get the matrix filed in Chelan county Superior court but it was not filed as a motion before the clerk and it was not file stamped and I said all this in my brief and these Division III judges try to be an accessory to wrong doing and don't even bring up the very fact that there is not a settlement agreement that is file stamped motion and legal and proper before the court which is absolute discrimination and a violation of my amendment rights. All these judges should be in big trouble for their consistent deprivation of my rights and failure to give proper recognition of my documents before the court. This case should have been finalized within 60 days of the September 24 2020 hearing with a proper motion for dismissal and with what I stated in m y documents and the transcription of the April 29 th 2021 hearing should have ended this case as well but twisted lies of the court shown in EXHIBIT 2 shows the judge violating my testimony and transcripts and states Justin Collier did nothing wrong when in fact he allowed the filing of March 15 2021 CR 37 sanction materials and was an accessory to all actions that brought me harm to this case allowing it to continue on with sanctions brought.

The Division III clerk knows there is no court filed settlement and stated so but the Division III judges are trying to hide it and manipulate around it trying to change the meaning that was brought in the brief filed Division III no court filed proper legal settlement agreement. I cannot how the court are always trying to pull something over and take my money for a fair and proper review of my case. On page 8 the Division III opinion speaks of the ordering of sanctions and I have already given my explanation for that in previous pages an d it was totally brought on because of Justin Collier failing in his duties as an attorney and judge Travis Brandt refusing to address slander and impropriety in his court room with his predetermined predjudices that Kay Sikes and her attorney do everything right that the judge states that in hearing after hearing and with their home town gang how did I ever have a chance when in fact it is rumored there is betting going on who wins the cases . I have a friend that is a business owner and knows lots of people in Wenatchee and the courts have been in trouble before for wrongful acts upon their citizens.

Division III opinion on page 9 the material I have presented to the court proves this very easily that rule 4.6 (c) was violated and how I addressed the judges January 10 2023 ruling using rule 43 (f) (1) as justification for me not

The Division III clerk knows there is no court filed settlement and stated so but the Division III judges are trying to hide it and manipulate around it trying to change the meaning that was brought in the brief filed on page 292 of the transcripts and then on page 295 lines five through eleven that I have already described throughly and talked about being on the 15 th to the 19th that my exhibit 4 proves my case and the judge has no right to pass judgement upon me because there was never a CR 30 issued for any one of those days to appear for a deposition but the judge refused to find any impropriety in the CR 30 that Justin Collier issued at 1:10 in the after noon on Febuary 9 th for a 10:00 am deposition for a day that I had to work and was on call that day on Febuary 11 th. Then going back to page 292 lines 23 through 25 the judge states I am right that they need five days notice so he contradicts himself and he had no right to make any judgement upon me because I was not doing anything as stated on page 295 lines five through eleven that the judge states I was not willing to participate in a lawsuit simply because there was no CR 30 served for the dates of 15 to the 19 th period . and then of course on page 294 lines one through five the judge says his repeated predetermined quote that Kay Sikes and her Attorney do everything right but the fact is Travis Brandt could have done something about Collier

A long time ago at the April 29 th 2021 hearing because Justin Collier made these two day or less CR 30 services and it was before the judge that day with my motion that he be held responsible and when Justin Collier stated he was going to get me another deposition date and he never did anything . Anybody could slander me make untrue statements about me and the judge would allow that that because the judge as he states Kay Sikes and her attorney does everything right in the court of preponderance of prejudice and that is exactly what this judge did to me and I hired an attorney that the judge worked with to set me up and allowed this improper judgement forced upon me that cost me more than what was quoted in court and cost me over thirty aight thousand dollars . Which has put me in my county taxes so they want all the years paid at once now for a total of fifty two thousand dollars and what this prejudice court did to me caused this. The judge knew by documents I gave him on April 29 th that CR 30 laws had been violated and the judge could care less how Justin Collier set me up just a catch 22 situation that Steven Heeb was not given proper CR 30 notices but Steven Heeb was held accountable for his attorneys failures and knew nothing of the first deposition I am accused unwillingly not attending and I have treated like blatant liar always.

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The opinion of the court of Appeals Division III page 9 does not take into consideration that this September 24 2020 hearing was a proper CR30 service hearing that judge Leslie Allen violated C R 30 service laws as well because she allowed the hearing top continue when I informed her early on that I had never seen this matrix before and knew nothing about its content.

On thing that is perfectly clear no matter wat the court rules say I am still at fault. The judge should have dismissed this hearing and stated this gentleman has the right to review this document for five days and set up a new hearing date nobody deserves to be beat to death with a document they know nothing about . Kay Sikes Kambra Mellergaard and Justin Cottier all worked together to create this matix document that was not a court filed motion five days before the hearing and served properly on me. It does not have proper format for a motion before the court and has no labeling stating that it is a settlement agreement . The judge is responsible documents presented before ethe court and there is nothing legal and proper about this hearing and the judge ordered that everyone initial that matrix before there was any issue made of cars before we moved into the court room for things to be recorded. This hearing was absolute manipulation of my rights with no resolve and certainly not a legal settlement agreement and

The hearing had a thirty day time limit for completion and they chose to let this matter go for five and a half months and then Judge Travis Brandt did not require them to make there own new case he allowed them to use my case no. the judge had no consideration for the five thousand dollars awarded to me in the hearing he ran right over the top of that as well. It is easy to see by the transcripts and documents of this case that it was total collaboration of two attorneys and a judge seeking to label me as the looser of this case.

D STATEMENT OF THE CASE

There has been absolute collusion and collaboration to obstruct Steven Heeb of a fair trial in Chelan county Justin Collier works with this judge as an attorney regularly and does not want to be in bad graces with with Tracy or Travis Brandt and the transcripts show he did nothing to put his client in a better position instead he requested i go fin d out where Key Sikes was living and his reason he stated for the request was so he wanted her address to mail her documents. It was a very long wait for hearing because of covid restrictions. The case summery (EXHIBIT 5) shows that on 7/22/2020 the trial was canceled why is the persons name not stated on the document ? can anyone cancel a trial?

Should not the person cancelling the trial be required to identify themselves and it be noted on the case summary? As we look at the case summary it can be clearly seen that before the 9/ 24 /2020 there was never a settlement agreement motion before the court. Justin Collier had no communication further with me after the settlement hearing until he sent me the Febuary ninth CR 30 notice for a Febuary 11 th deposition.

There is nothing on the case summary until 10/26/2020 and again on 10/30/ 2020 a non jury trial is canceled is cancelled so who canceled this trial and why was the trial canceled ? was it because there was absolute collaboration of two attorneys and a judge ? was this not a violation of rule 4.6 (c) where I had to have a deposition before a trial and judgemen t made?

There was one thing for certain there was nothing done within the thirty day time limit of 9/24/2020 hearing date and my attorney informed me of nothing and did nothing in my defence.

These are the facts of wrong doing and illegal hearing of 9/24 /2020 1. there were no CR 30 notices of the hearing 2. There was no court file stamped motion for a settlement agreement 3. There was a CR 30 violation by judge Leslie Allen for this hearing to go on after I stated to her early that morning that I had never seen that matrix before she should of called off the hearing

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4. any judge would know that matrix was not of proper format with signature lines for plaintiff and respondent to sign off on and it was not a legal file stamped motion properly served before the court.

5. Judge Leslie Allen should have never order us to initial that document until there was absolute certainty there were no further issues about what was in that document and really to uphold my defense the court is responsible and the attorneys for making sure things are proper before the court before anything is initialed and the document is proper before the court.

6. Justin Collier made all the statements in the hearing when it was recorded not me .

7. The hearing had a thirty day time limit stated by Judge Leslie Allen.

8. Justin Collier and judge Travis Brandt never gave any recognition to the five thousand dollars that is described on page thirty eight of the transcriptions in the first paragraph but they want to take from that hearing an illegal non court filed matrix that is not even labeled as a settlement agreement and use it against me when her and her son came onto my property and took things when they knew I was gone doing my work.

9. It was not a level playing field at this hearing it was a collaborating of two attorneys and a judge that was pushing things not proper before court.

PAGE 35

The wrongful acts go beyond just Chelan county Superior court they go to the Appellant Division III and Supreme court and none of these courts have not bean able to provide me with a file stamped motion for a settlement agreement from Chelan county Superior court. Case summary of that court shows one does not exist. Fact the Appellant court and Supreme viewed my previous case 387976 with Kay Sikes and my EXHIBIT M was totally disregarded that describes case law in Washinton State and proved there was not a proper legal settlement agreement and all your courts had to do is look at Chelan courts case summary and see that there is absolutely no motion and settlement agreement ever filed with that court but the courts can allow for my life to be ruined by the actions of the courts for that is perfectly fine .

Let me make one thing perfectly clear right now the documents that have been filed with Chelan county Superior court and the prosecutors office are extensive and have cost me very deeply but I know how your court works from previous cases and I know little to no time is put into reviewing my documents to examine the wrong doing that exists and therefore the appellant court has wrongfully taken my money for consideration for me . Fact the courts so far have totally have discriminated against a working man and I can easily prove what I say. Steven Heeb was never notified of a November 17 notice of deposition.

The court needs to read the transcripts of this case because during time I represented myself in 2022 there lots of things that I set the judge straight on but he allowed his previous predjudices towards me to continue and did nothing about bringing justice for me. To him it is a simple mind set and it is proven and stated by the judge himself Kay Sikes did everything right by his actions in court and statements in court Kay Sikes did everything right

Is in the Otober 6 th transcripts and in the January 10 th 2023 and they are simply untrue statements . The April 29 th shows the judges total desire for Kay Sikes to win this case by just what he states on the top of the page 59 and shows that he had no regard for my five thousand from the 9/24/2020 hearing but he thinks it is appropriate to call that unlawful non court filed document that he calls a settlement agreement and the CR 37 sanctions are filed together with together on March 15 th 2021 and I state perfectly in my brief to Division III the wrong actions of him calling that a settlement agreement and what does the Division III judges do they totally again refuse the fact that there never was a court filed motion for a settlement agreement and there is not one listed in the Chelan Superior court case summary . Barbera their court clerk and case manager knows it but the judges who wrote their opinion do not want to admit it or any wrong doing for allowing Travis Brandt to make use of a corrupt

Non court file stamped motion for a settlement agreement by the rules I have previously described RULE 5 and rule 29 which state documents have to be court filed with the court clerk . The judge has to file all things before court with the court clerk to be legal before court but obviously the Division III court is fine with unfiled documents. Judge Travis Brandt on April 29 th hearing was told the truth by me and he had enough to stop harmful brought by him upon me to have stopped the hearing for the impropriety and wrongful acts that had already been forced upon me but he did not because he already had Justin Collier set me up with a deposition that I was never given notice of and at that hearing I gave proof of the depositions that I did know of. Regardless of that the Division III court and Chelan judge Travis Brandt think it proper for a client to hire an attorney and you can prove in court that attorney never gave you notifications of depositions and you get nailed for what they didn't do with a CR 43 (f) (1) when you clearly properly brought evidence to court that Febuary 9 th 2021 was the very first time you ever knew anything about any deposition. Fact the judge should have said at the hearing then and there I want you to prove it and I would have but no he wants everyone to accept the fact that Steven Heeb is a liar when in fact the judge himself is an absolute manipulating liar and the Division III judges who

Have reviewed this case and documents don't want to accept the fact that there never was a November 17 2020 as I am now made aware of after looking at the courts case summary for a deposition but I have no idea if Justin Collier got it or not but that notice was never to me . The materials that I provided to the court on April 29 th 2021 should have made me clear and the case be dismissed but the judge in actions are totally clear Kay Sikes does everything right and he continues on with his preponderance of prejudice that I will prove with the materials that he held against me for the first deposition notice that I was ever given which was Febuary 9 th at 1: 30 pm for a Febuary 11 th morning deposition. My exhibit 4 clearly shows my schedule being that I was on call working on the 11 th as I stated I was. What the court needs to do if they think I am lying have Justin Collier prove he gave me notice for a deposition for the November 17 court filing and also for that cryptic E mail which is a absolute lie.

Now I am going to take the court to the January 10 2023 hearing which the damages of it to me is from Justin Colliers failed six CR 30 failed service notifications that what I have read about the day of service count and there has to be five days afterwards. Page 292 lines 18 through 25 talks about lawyer responsibilities and the judge states

The facts is that on the top of the page the judge states that Kay sikes did everything right in lines one through 4 but even with the copys of my E mails the judge still says that on ten and eleven she -- Febuary 2 nd that's way more than five days. All I can say to that is you knew of these improprietys since the April 29 th 2021 an d you chose to hold them over my head instead of giving a fair trial where I got a deposition instead of Rule 4.6 (C) being violated and my constitutional rights being violated . Travis Brandt saw how Collier withdrew and did not make him be responsible what was in his E mails and duties.

Page 294 line 15 through 17 are totally untrue statements and is not shown stated or reflected in my E mails the judge states then then and it's not that you didn't show up , it was never scheduled because you said I'm not – I don't have—I cant do it . Fact what is talked about here is for the Febuary 9 th E mail that was for the 11 th less than two days notice and the judge blames me for the scheduling when all the court and attorney hand to do was give me a proper CR 30 which never did happen from Justin Collier and I am again blamed for his responsibilities. FACT no where does it ever state I would break a proper CR 30 notification.

Page 294 line line 18 through 20 I state to the judge that I am working

PAGE 40A

At the bottom of the page I am right I do need a five days notice to be able to do that . So with that coming from the judge lets go all the way back to the September 24 2020 hearing because two CR 30 violations at that hearing (five day notices) as the judge described and there is no court file stamped motion for settlement agreement proper at that hearing just what the attorneys and judge allowed and was illegal but Justin Collier says it is as again shown shown on page 59 one through four at the April 29 th hearing.

So now lets go back to page 294 and lets take the statement the judge quotes me on and this quote from me is from when Collier first notified me of the less than two day notification for Febuary 9 th afternoon for the day I was working on and did work on Febuary 11th so I said to him on Febuary 9 th when notified that is absurd I am very busy this time of year is what was said about his less than two day notification . Justin Collier had left me out of two hearings and failed to give me proper services for the September 24 2020 and for that with just cause I was not happy with him and I had not heard anything from him since the September 24 2020 hearing date so I was not overly kind or friendly towards him since her was working for the opposing side.

PAGE 40B

Then the judge states right so—and – I can understand that as should for the (first notice for a deposition) because why would an attorney give such a CR 30 if they was not trying to cause problems for that person. The judge goes on to talk about Febuary 10 th and what is stated in lines 21 to 25 is about the Febuary 10 th E mail and the does not state what the judge says it does on page 295 for the 10 th of Febuary . what the E mail does state is what can you do next week?

at 11;49 am what I replied to him about his E m all is I am promised to be on call next I am not doing anything next week is what was actually said and then I go on to tell him, about his poor representation.

This is the way I would be sure the law would interpret this and I did not lie about anything and my EXHIBIT 4 backs this up I was on call there is nothing for me to do until I get a proper CR 30 that gives the date for the deposition and I was never given that and if I would have communicated to make sure the date for the was taken care of and responded to. The judge had no right to give me any judgement or state I did anything wrong when there is no proper CR 30 that had been served upon me. The judge stated that he

PAGE 4/1

The judge stated that he understood about the Febuary 9 th less than two days notification being understandable for my work.

What the judge fails to understand Justin Collier failed to give me another CR 30 for anytime or any place until March 29 th at 2;20 pm was the next CR 30 that was given. The time I stated that I was on call was from the 15 th to the 19 th of Febuary and he could done his job and given me a proper CR 30 for me to respond to but it was his responsibility for him to lie to the court about a cryptical and lie about me ever being served notice of the March 22 nd hearing where everybody slanders me and it is set up for another deposition date for April 1 st. Although Justin Collier knows the deposition is for the first he still does not give me a proper CR 30 and serves it upon me on March 29 th as stated above.

What the judge states on page 295 is improper and untrue in lines 5 through 15 first off there was only one CR 30 in all of Febuary and that was on the 9 th for the 11 th improperly done and the judge admits that. As I have already stated then when Justin Collier addresses next week on the 10 th he does not give me another CR 30 to have to work with, I cant work on a schedule until I have a date given to me.

My statement back to Justin Collier on the 10 th was proper and proper and true I am promised to be on call , I am not doing anything next week . There was nothing for me to do because he never gave me any CR 30 notification to be anywhere at anytime for a deposition for the week of the 15 th to the 19 th of Febuary . I don't set up the depositions and their place taken at that is the courts or Justin Colliers duty.

What the Judge states on page 295 lines 7 through 9

So that shows the court an evidence by you of unwillingness to participate in a lawsuit that you filed , right?

And no that is not right and it was improper for that judge to ever say that and what should frustrate the judge is the way Justin Collier and what he did to his client.

The judge goes on to to say on 295 lines fourteen through 15 your not willing to do anything next week or the following week and that is a absolute blatant lie with the desire to set me up and this judge and judges so far have allowed Justin Collier to cause me five years of damages and with the opposing sides benefit .

The judge had no right to hold me accountable for something

That Justin Collier failed to schedule for that week of the 15 th to the 19 th and this is the was it was all through this case manipulation and Kay Sikes is always right and the Appellant judges decided this proper action as well and do not give my documents proper review. On the Justin Collier case the Appelant courts have let that case go for over a year doing nothing about the wrongful acts of him. Then it got given back Chelan Superior court and they threw it out because they state timelyness regardless of damages caused by him in a judgement on January 10 th 2023, The courts want me responsible and label me incorrectly and allow the inexcusable acts of of these of these people to be allowed when the court is supposed to uphold its integrity to the people it serves . No justice has been served to me just attempt to bankrupt.

E. ARGUMENT OF THE CASE

These are wrong an d horrific acts described in all my documents I prepared for the courts much of the opinion of Divisfon was not addressing truthful facts it was obscuring wrongful acts . What I have stated in this document is proper and true and the courts

Steven Heeb has long been victimized by court prejudice and is prepared to to take my matters to to higher authority if I need to brin g justice to this case . my problems and documents have already been communicated. RAP RULE 18.8 and RAP RULE 3.3 apply to these cases to promote justice.

Word count 4900

STEVEN HEEB

LAWYERS

The CR 2A Agreement

M
EXHIBIT L

In all cases, lawyers are required to abide by rules established by the Court. Washington State's Superior Court Rule 2A (CR 2A) is a rule designed to bind the parties in a lawsuit to an agreement. The rule states as follows:

RULE 2A

STIPULATIONS

No agreement or consent between parties or attorneys in respect to the proceedings in a cause, the purport of which is disputed, will be regarded by the court unless the same shall have been made and assented to in open court on the record, or entered in the minutes, or unless the evidence thereof shall be in writing and subscribed by the attorneys denying the same.

CR 2A operates in conjunction with RCW 2.44.010, a statute the deals with the authority of an attorney. RCW 2.44.010 reads, in part, as follows: "An attorney and counselor has authority: (1) To bind his or her client in any of the proceedings in an action or special proceeding by his or her agreement duly made, or entered upon the minutes of the court; but the court shall disregard all agreements and stipulations in relation to the conduct of, or any of the proceedings in, an action or special proceeding unless such agreement or stipulation be made in open court, or in presence of the clerk, and entered in the minutes by him or her, or signed by the party against whom the same is alleged, or his or her attorney...."

A party in litigation will most likely encounter the term CR 2A or a CR 2A Agreement following mediation. Should the parties settle their matter at mediation, the terms of the settlement will be memorialized in writing—a CR 2A Agreement. The Agreement, once signed by the parties and/or their attorneys, binds the parties to the terms of the agreement.

By Washington State Attorney S. Scott Burkholter

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Don't Forget the Memorandum of Settlement!

JUNE 1, 2010MAY 16, 2013 / USAMWA
By: Michele Sales | Mediator, Arbitrator

(https://usamwa.files.wordpress.com/2013/01/sales.jpg)A good mediator recommends that the parties draft and sign a Memorandum of Settlement at the conclusion of what appears to be a successful mediation. The Washington Supreme Court recently re-emphasized the need for such a writing in its decision of In re Disciplinary Proceeding of Bradley R. Marshall , 279 P.3d 291 (2009).

Part of the complaint against attorney Marshall involved whether a settlement had been reached at mediation1 by a King County Superior Court Judge. The court noted that "most, if not all, of those present believed some settlement was intended"2 , including the judge.3 However, two of the Plaintiffs decided that they did not want to settle. Shortly after the mediation, the Defendant's counsel sent a release and settlement agreement that those two Plaintiffs refused to sign. According to the charges and findings, Mr. Marshall then attempted to force those clients to proceed with the settlement against their wishes.

While the facts of the Marshall case are not ones we hear about on a regular basis, the issue of one party trying to renege on a settlement does raise its ugly head at times. It may occur because someone close to the party (spouse, parent, significant other) who did not attend the mediation and witness the reasons or basis for the settlement tells the party that settlement was a bad idea. Other times, it may simply be that a party changes his or her mind after thinking about the day's events over night. Worst of all, it may be that the party felt compelled by his attorney to agree to a settlement. Whatever the cause, it is worth revisiting the idea of signing a memorandum at the conclusion of mediation and what needs to be in that writing.

CR 2A states, "No agreement or consent between parties or attorneys in respect to the proceedings in a cause, the purport of which is disputed, will be regarded by the court...unless the evidence thereof shall be in writing and subscribed by the attorneys denying the same." In similar fashion, RCW 2.44.010 (1) states that an attorney has the authority to bind his client, but that the court shall disregard all agreements "unless such agreement ... [is] signed by the party against whom the same is alleged, or his attorney."

Washington law has been clear since the early 1980's that standard contract law governs whether the parties have reached a settlement. Stottlemyre v. Reed , 35 Wn.App. 169, 665 P.2d 1383 (1983). It is interesting to note that although the agreement in Stottlemyre was only an oral agreement, the appellate court found that the attorney's written representation in an affidavit that a settlement was reached was sufficient to meet the "signed by the party...or his attorney" provision of the statute. Some might say that this ruling was appropriate because "the law favors the private settlement of disputes and is inclined to view them with finality".4 But counsel should not rely on such a creative interpretation of the Rule and statute and should make sure that a settlement document is created and signed.

Subsequent cases have flushed out the court's holding in Stottlemyre by clarifying that a party's subjective intent not to be bound until the execution of a final settlement agreement will not void an otherwise enforceable settlement agreement.5 However, the agreement must not have been reached by fraud, coercion or mistake.6

The signature of the party's attorney is not needed if the party has signed.7 Alternatively, Stottlemyre holds that an attorney's signature alone is adequate to bind the party assuming all other

things are equal. In this instance, however, the practical effect is likely to be that the party fires his attorney and institutes a malpractice action.8

But the courts have said that the settlement memorandum must refer to all material terms, or there is a basis to challenge whether a settlement was reached. In Howard v. DiMaggio 70 Wn.App. 734, 855 P.2d 335 (1993), the appellate court found that attorneys simply agreeing on the settlement amount (cash plus repayment of the Plaintiff's PIP carrier) did not cover all material terms. The appellate court found that the Plaintiff had not agreed to sign a medical guaranty letter, had not agreed to "the details of the release and hold harmless documents", and had not agreed who would be the designated payees on the check. Thus, the alleged settlement agreement was not considered enforceable.

Similarly, in Lavigne v. Green 106 Wn.App. 12, 23 P.3rd 515 (2001), the parties attended a mediation at which they agreed on an amount of settlement. No writing was signed. Allegedly, the insurance adjuster at the mediation said there "were no additional terms or provisions or conditions on the settlement".9 However, a release was sent that included indemnification, hold harmless and full release language. The party seeking to avoid the agreement essentially conceded that his real disagreement was about the amount of the settlement, but because he raised a genuine issue of material fact on the other terms, the appellate court sent the matter back to the trial court for determination.10

My strong recommendation is to make sure a memorandum is signed when you believe you have reached a settlement. In a personal injury action, the memorandum should indicate the amount of settlement, that all claims will be released, that an indemnification and hold harmless as to subrogated interests will be signed along with a release, that the lawsuit (if any) will be dismissed with prejudice and without costs, and that the parties acknowledge that the agreement is binding and enforceable. Defense representatives may simply choose to bring a standardized settlement agreement and then later supplement it with a document that acknowledges receipt of the settlement check by the plaintiff.

In an employment case, the extent of the terms can be much more involved. While a mediator can assist in drafting a memorandum during or at the end of the mediation, a better practice is for defense counsel to provide a copy of a proposed settlement agreement to plaintiff's counsel prior to the mediation and then make changes as the mediation proceeds throughout the day. Not only are the non-monetary terms (ie, confidentiality, no re-hire, no application for rehire, no disparagement, etc.) outlined for the plaintiff's

attorney clearly and concisely, but you have given the plaintiff plenty of opportunity to seek more information about the meaning of terms before signing.

While these suggestions provide no guarantee that your mediated settlement agreement will not be challenged, your client should be better protected by taking these affirmative steps in mediation.

1. The decision refers to the proceeding with Judge Heavey as a mediation in some places and as a settlement conference in others. Whichever correctly describes the proceeding, the use of a CR 2A document would have alleviated part of Mr. Marshall's problems.
2. Id.
3. 279 P.3d at 303, fn 22.
4. 35 Wn.App. at 173.
5. Morris v. Maks, 69 Wn.App. 865, 850 P.2d 1357 (1993).
6. 106 Wn.App. at 15. The court reviewed each argument under an abuse of discretion standard and found the evidence lacking in Patterson. There is an interesting discussion on a plaintiff's mistake as to policy limits in a mediation and subsequent settlement in Brinkerhoff v. Campbell, 99 Wn. App. 692, 994 P.2d 911 (2000) that bears reading in its entirety.
7. In re Patterson, 93 Wn.App. 579, 969 P.2d 1106 (1999).
8. See, e.g., In re Ferree, 71 Wn.App. 35, 856 P.2d 706 (1993).
9. 106 Wn.App. at 15.
10. See also Veith v. Xterra Wetsuits, L.L.C., 183 P.3d 334 (2008) in which the court succinctly concludes that so long as the parties are still in negotiation on material terms and have not resolved their disagreements over some of them, there is nothing for the court to enforce.

Essay, Settlement

ESSAY SETTLEMENT

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CR2A: The Way To Go To Confirm Informal Agreements

By Kim Schnuelle

Frank, a potential client, comes to you in an agitated state. He was divorced three years ago and, although the underlying child support order requires payments of $600 per month for the parties' daughter Kate, his ex-wife Sarah has agreed, as documented through a series of emails, to pay $1,800 per month and has been doing so for the past two years.

Her income skyrocketed after she received a promotion and, as she stated in her emails, she felt it was only fair to increase her support for their daughter accordingly. She further stated that she had run some child support worksheets and she thought this is what the court would order.

Frank has come to rely on the $1,800 to meet his monthly needs and assumed that Sarah would keep her written promises to pay this increased amount for the foreseeable future. Sarah also promised in these emails to buy their daughter a new car on her 16th birthday and even went so far as to state she had "visited dealers" and to suggest specific makes and models.

Some of these emails went to both Frank and their daughter. Kate is 16 and has responded that she is eagerly awaiting her

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new car and requested a specific car in a blue color, to which Sarah responded, "Sure."

Four months ago, Frank received an email from Sarah stating that she was switching back to the amount listed in the child support order, effective immediately, and Frank can't imagine how he will make ends meet on such a small sum. Sarah also has stated that Kate will need to get a job and pay for her own car now.

Frank kept hoping she would "see the light" and keep her written promises, but it did not come to pass. Aside from the obvious response of filing for a child support adjustment or modification, which the wise practitioner should file right away, is there any other relief that you can provide Frank? Is there any way you can help Frank and Kate get the promised car from Sarah?

Depending upon their content, the series of emails may constitute a valid CR2A agreement between the parties that would be enforceable as a child support adjustment in court. CR2A reads as follows:

No agreement or consent between the parties or attorneys in respect to the proceedings in a cause, the purport of which is disputed, will be regarded by the court unless the same shall have been made and assented to in open court on the record, or entered in the minutes or unless the evidence thereof shall be in writing and subscribed by the attorneys denying the same.

CR2A only applies: 1) when the agreement was made by the parties or attorneys in respect to the proceedings in a cause, and 2) the purport of the agreement is disputed.[1] When these elements are met, CR2A "precludes enforcement of a disputed settlement agreement not made in writing or put on the record, whether or not common law requirements are met."[2] It does not, however, affect an agreement made in writing or put on the record.[3]

The purpose of this rule is to avoid disputes and to give certainty and finality to settlements and compromises. Thus, if there is a dispute that negotiations culminated in an agreement where there is non-compliance with the rule, the court must disregard it as evidence.[4]

As a settlement agreement is a contract, the basic rules of contract law apply.[5] The burden of proving this contract would be on the person asserting its existence.[6] The goal of construing the contract would then

be to determine and effectuate the parties' mutual intent.[7]

The principal case on the factors necessary to reach a binding CR2A in Washington is *Morris v. Maks*.[8] In determining whether informal writings are sufficient to establish a contract by themselves, a court must consider whether: 1) the subject matter has been agreed upon; 2) the terms are all stated in the informal writing; and 3) the parties intended a binding agreement prior to the time of signing and delivery of a formal contract.[9]

This article analyzes the three *Morris* factors in light of subsequent case law in order to determine how the courts have defined the parameters of these requirements.

The Subject Matter Has Been Agreed Upon

Clearly, under basic contract law, there is no valid contract until an offer is accepted and agreement is reached.[10] Although agreement is the first of the *Morris* factors, Washington courts typically bypass this factor in favor of an analysis of the following two factors. Thus, while parties may sometimes couch their arguments as "no agreement was reached,"[11] this author could find no published cases on point that were determined on this factor alone.

Rather, the courts have instead focused their analysis on the two remaining *Morris* factors. Therefore, in deciding whether Sarah's emails constitute a valid CR2A agreement, the prudent practitioner would touch lightly on this initial factor, and focus his or her briefing on the other two factors.

The Terms Are All Stated in the Informal Writing

Multiple cases, many of which are unpublished[12] and thus not generally cited here, have discussed what constitutes a "material term" in an informal agreement. If the correspondence "does not contain the details of the settlement," that it is not a valid CR2A agreement.[13]

In *Evans & Sons v. City of Yakima*, although an exact settlement figure of $40,000 was expressly listed, the parties never agreed to a release-of-liability term in their exchanged letters. Finding this to be a material term, the court held that while the letters demonstrated the parties' desire to reach a settlement, no binding CR2A agreement existed.[14]

In general, terms of release, indemnity and hold harmless are material terms.[15] However, if those terms aren't material to the facts at hand, they may not be dispositive in determining whether a CR2A agreement exists or not.[16] As such, the prudent practitioner analyzes, based upon the specific facts of the case, what the "material terms" would be in a given situation and compares any written documentation to this analysis.

In the hypothetical listed above, for example, Kate's detailed description of the car she desires, followed by Sarah's response of "Sure," and combined with Sarah's earlier written promises to pay for the car in full, might be held to be sufficient to cover all material terms regarding this issue.

The Parties Intended a Binding Agreement Prior to the Time of Signing a Formal Contract

Washington courts have long adopted an "objective manifestation" standard as to whether parties intend to be bound by an agreement.[17] The court thus imputes to a person an intention corresponding to the reasonable meaning of his or her words and acts.[18]

In *Morris v. Maks*, the court found an "intent to be bound" based upon express language contained in: 1) a confirmation letter sent to Maks outlining the assurance of his acceptance; 2) a letter written by Maks's attorney stating that the terms of this earlier letter accurately reflected the agreement; and 3) Maks's personal representation to his bank that he had settled his case with Morris by agreement.[19] The prudent practitioner would thus examine each fact of the case to determine what factors objectively would yield a reasonable conclusion of an intent to be bound.

One key factor is whether the agreement has been signed. A settlement agreement may be found ineffectual under CR2A if it is not signed by the parties to be bound.[20]

In *Veith v. XTerra Wetsuits, LLC*,[21] although the court found that an "expression (communicated by word, sign or writing to the person making the offer) of the intent to be bound" was a benchmark of contract acceptance, the court nonetheless denied the existence of an enforceable contract, centering at least part of its ruling on the fact that no agreement had been physically signed by the parties.[22]

Conversely, refusing to sign an agreement is a manifestation that the party did not intend to be bound.[23] In the hypothetical listed above, the parties exchanged emails but Sarah didn't actually sign any document. She could thus argue that no valid CR2A agreement existed.

Even a cursory review of the applicable case law shows that the outcomes of this type of litigation are very fact driven. Accordingly, the wise practitioner will closely examine all of the emails exchanged between the parties to determine whether the *Morris* factors have been met.

Depending upon the exact language in the email chain, for example, Sarah's response of "Sure" to Kate's specific car request might be construed as a binding contract that could be enforced via a motion to enforce under family law concepts. Likewise, Sarah's many emails agreeing to pay $1,800, especially when coupled with her actual performance of this promise for two years, may also yield a valid CR2A agreement.

In both of these instances, Sarah may nonetheless assert: a) that nothing was signed by any party; b) that under *Vieth* no CR2A agreement was reached; and c) therefore, she is not obligated to purchase a car or pay increased support.

It will be up to the experienced practitioner to sift the facts and writings in the given case to determine whether the *Morris* factors are present. If they are, and the court agrees with your analysis, Frank may be able to recoup four months of underpaid child support, under a revised child support order, and his daughter Kate may receive her car after all.

1 *Marriage of Pearce*, 71 Wn. App. 35, 39 (1993).

2 *In re Patterson & Taylor*, 93 Wn. App. 579, 582–83 (1999).

3 *Id.*

4 *Eddleman v. McGhan*, 45 Wn.2d 430, 432 (1954).

5 *Morris v. Maks*, 69 Wn. App. 865, 868 (1993); *Stottlemyre v. Reed*, 35 Wn. App. 169, 171 (1983).

6 *Johnson v. Nasi*, 50 Wn.2d 87, 91 (1957).

7 *Hall v. Custom Craft Fixtures, Inc.*, 87 Wn. App. 1, 7 (1997).

8 69 Wn. App. 865 (1993).

9 *Id.* at 869.

10 *Hansen v. Transworld Wireless TV-Spokane*, 111 Wn. App. 361, 370 (2002).

11 *See generally Lavigne v. Green*, 106 Wn. App. 12, 16 (2001) ("He further contends that the agreement is unenforceable because it contains material terms to which he did not agree.").

12 *See, e.g., Marriage of Funk*, 141 Wn. App. 1039 (2007) (informal writing providing that "Jodi: You Win; enjoy the spoils of our marriage. Good Bye, Jeff" did not contain any definite terms that might justify a conclusion was reached in which all the parties' properties and liabilities had been conceded to the wife).

13 *Evans and Sons v. City of Yakima*, 136 Wn. App. 471 (2006).

14 *Id.*

15 *Howard v. Dimaggio*, 70 Wn. App. 734, 739 (1993) (regarding estoppel issues).

16 *Lavigne v. Green*, note 11 at 20 (failure to address indemnity and hold harmless provisions regarding a fire damage lawsuit "may or may not be material" as the appellant had not identified "any liability or adverse consequences to which he would be exposed by the terms of these provisions and he has not offered any evidence of subrogated or llenable claims").

17 *Plumbing Shop v. Pitts*, 67 Wn.2d. 514, 517 (1965).

18 *Id.*

19 69 Wn. App. 865.

20 *Bryant v. Palmer Coking Coal Co.*, 67 Wn. App. 176, 179 (1993).

21 144 Wn. App. 362 (2008).

22 *Id.* at 368.

23 *Metro Net Services Corp. v. U.S.W. Communications*, 329 F.3d 966, 1015 (2003) (distinguished on an unrelated point in unreported decisions in *LinkLine Communications Inc. v. SBC CA, Inc.*, 2004 WL 5503772 (2004), and *McKenzie - Willamette Hosp. v. Peachhealth*, 2003 WL 23537990 (2003)).

Go Back

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FILED
JUN 25 2021
Kim Morrison
Chelan County Clerk

CHELAN COUNTY SUPERIOR COURT
FRIDAY, 06/25/2021
TCB SPECIAL SET 8:30 AM
JUDGE TRAVIS C BRANDT/SB

19-3-00275-04
HEEB, STEVEN M -P (by Zoom video) BEATTIE, PAUL H, JR (by Zoom video)
VS
SIKES, KAY LUANNE -P MELLERGAARD, KAMBRA LEE -P

SANCTIONS 3:00 PM MTHRG

MOTION HEARING RE MUSTANG: JULY 12, 2021 AT 2:30 P.M.

Recording start: 3:00 p.m.
Recording end: 3:55 p.m.

The Court reviewed the history of the case. Mr. Beattie advised he did not realize the Mustang was at issue here. Mr. Beattie advised he would stipulate to continuing the restraining order until a further hearing when the Mustang can be addressed. Ms. Mellergaard objected, advising her pleadings were clear and that the Court was to address the Mustang today. Ms. Mellergaard moved the Court to grant the permanent restraining order today also.

The Court advised it must set a hearing for the Mustang. The Court found Mr. Pinon's declaration persuasive since he had experience with the Thunderbird. Utilizing the Haggerty valuation tool , the Court was not persuaded the Thunderbird was in mint condition, but was somewhere between excellent at $29,600 and fair at $18,700. The Court set the value of the Thunderbird at $22,000.

The Court could find no evidence that Mr. Collier was negligent in not informing his client regarding the deposition. The Court granted Ms. Mellergaard's motion for sanctions and awarded $1,500. The Court continued the restrainers until the next hearing date. Order entered. The Court warned the petitioner that the restrainers are continued beyond July 6, 2021. Ms. Mellergaard shall send a copy to Mr. Beattie.

On Feb 9, 2021, at 2:06 PM, steve heeb < > wrote:

Gmail - Deposition

[Quoted text hidden]

steve heeb <steveheeb@gmail.com>
To: Justin Collier <justin@jclawllc.com>

Tue, Feb 9, 2021 at 3:12 PM

She's one owes me a ton of money How am I supposed to respond to something less than a week that is absurd I am very busy this time of year I've never seen anything that says I'm in a lawsuit with her.
[Quoted text hidden]

Justin Collier <justin@jclawllc.com>
To: steve heeb <steveheeb@gmail.com>

Wed, Feb 10, 2021 at 11:49 AM

What day can you do next week?

Sent from my iPhone

On Feb 9, 2021, at 3:12 PM, steve heeb < > wrote:

[Quoted text hidden]

steve heeb <steveheeb@gmail.com>
To: Justin Collier <justin@jclawllc.com>

Wed, Feb 10, 2021 at 12:05 PM

I am promissed to be on call . I am not doing anything next week. I waited for months and you never filed a proper lawsuit . either I am left alone or I will be filing a lawsuit like shojld havr been done in thr first place.
[Quoted text hidden]

Gmail steve heeb <steveheeb@gmail.com>

Deposition

10 messages

Justin Collier <justin@jclawllc.com> Mon, Mar 29, 2021 at 2:20 PM
To: steve heeb <steveheeb@gmail.com>

Steve:

I just got an order signed by Judge Brandt to require you to attend a deposition at my office on Thursday at 1030 or in the alternative to turn over the Thunderbird or the whereabouts of it.

The settlement agreement provided that to occur and unless it occurs then they'll seek a money judgment for the car. I do not know where the car is nor what it is worth.

It can be possible for you to have an arrest warrant issued for failure to appear. I understand what you have said in the past about not attending but I do not think it makes any sense and you need to attend or turn over the car.

Justin

steve heeb <steveheeb@gmail.com> Mon, Mar 29, 2021 at 2:30 PM
To: Justin Collier <justin@jclawllc.com>

Sorry I have a trip I have to go to Montana . All the legal work I had to deal with took months how is ir fair I respond in three days. They came to my house several times taking things when they knew I was at work or gone. Everything I have had to deal with her was a lie or absolute manipulation. I want to file a one million dollar lawsuit on her gor all the problems she has made for me.
[Quoted text hidden]

steve heeb <steveheeb@gmail.com> Mon, Mar 29, 2021 at 2:52 PM
To: Justin Collier <justin@jclawllc.com>

It appears judges and everyone else wants to predjudice themselves in her behalf . None of the things I told you to sue her for has happened , I think it is time for a change of venue and possibly a descrimination lawsuit filed. Nobody seems to worried about her past actions and aggressions . I think I could win my requests in a jury trial. She turn did turn into a wine slut and a sleep around.
[Quoted text hidden]

steve heeb <steveheeb@gmail.com> Wed, Mar 31, 2021 at 8:54 PM
To: Justin Collier <justin@jclawllc.com>

A description lawsuit will be filed against Chelan for predjudice not against me . I have gotten no sleep for the last 24 hrs. The court or whoever expects me to respond to something less than 3 days it respond to ; you have failed to issue proper lawsuits mentioned in the emails sent to you. They are required to answer the following questions to me . What gave Kay Sikes the right to develop a hate for me and try to run over me with her PJ. What gives her the right to intentionally come to my residence and take things when she know I am not present I never did anything like that to her, what gives Kay Sikes the right to slabder me in public and to other people mentioned to you with her stating I burned down her house. what gives the courts and Kay Sikes to wrongfully put a restraining order on me when I dod absolutely nothing to deserve

any of her aggressions that she has brought on me. You have left me out to dry and have allowed these people to make aggressions towards me. These quesations from them must be answered by them , I tried to save us she would rather sleep with Mark kollmler than do counciling for us , I could not even get my stud puppy promised by Kay, Lets have some justice here a lawsuit filed on them tomarrow , I will be there in the morning with almost no sleep .

On Mon, Mar 29, 2021, 2:20 PM Justin Collier < > wrote:
[Quoted text hidden]

Justin Collier <justin@jclawllc.com> Wed, Mar 31, 2021 at 9:37 PM
To: steve heeb <steveheeb@gmail.com>

You told me you weren't coming. Twice.

The court reporter then scheduled something else so it cannot happen tomorrow now.

I'll have them move it at least 2 weeks so you can have time and sleep. I have no idea what a description lawsuit is. I'm not filing another lawsuit in this case.

We are down to the thunderbird. It's all just down to that.

Sent from my iPhone

On Mar 31, 2021, at 9:54 PM, steve heeb < > wrote:

[Quoted text hidden]

steve heeb <steveheeb@gmail.com> Wed, Mar 31, 2021 at 10:35 PM
To: Justin Collier <justin@jclawllc.com>

I told you from day one what I wanted to sue her for , it was no problem for you to take my money and not do as I instructed you to do. You know the manipulation and bullshit in this case and you did nothing but let them have the upper hand in this whole matter, you will be filing a lawsuit on this matter or I will be suing you. You have a responsibility to represent your clients and di more than set on your ass and collect money, I personally think they bought you out.
[Quoted text hidden]

steve heeb <steveheeb@gmail.com> Wed, Mar 31, 2021 at 10:44 PM
To: Justin Collier <justin@jclawllc.com>

just so you know I am turning a complaint to the washington state bar assn on this matter , you threatened me with possible jail time, I had a job to do in Montana and I was up for more than 24 hours to get back here , are you telling me now not to come in the morning to meet with you and the people that bought you out.
[Quoted text hidden]

Justin Collier <justin@jclawllc.com> Thu, Apr 1, 2021 at 9:00 AM
To: steve heeb <steveheeb@gmail.com>

Ok. I'm withdrawing. I filed your lawsuit. I litigated the case and you frankly do not listen. You didn't listen to the judge. You didn't listen to the commissioner. You didn't listen to me. You still fail to listen.

I told you to come to the depositions. Because you have to come. You told me you weren't coming. You then didn't come to the deposition scheduled which I said was a mistake.

They then got an order requiring you to come to another deposition which is the process. You then told me in no uncertain terms twice you weren't coming.

I relayed that information so they canceled the court reporter so it would SAVE you costs. Now you're coming and we don't have it.

The only actual issue is the thunderbird car that somehow you don't know what happened to it which seems incredibly unbelievable to everyone involved.

As such I'll withdraw and you file whatever it is you deem necessary.

Sent from my iPhone

On Mar 31, 2021, at 10:45 PM, steve heeb < > wrote:

[Quoted text hidden]

steve heeb <steveheeb@gmail.com> Thu, Apr 1, 2021 at 9:08 AM
To: Justin Collier <justin@jclawllc.com>

The problem is you dont do anything you are hired to do and prodjudice yourself against your client and put him in a bad postin. You have a sworn duty to protect and do what is best for your client . court documents and transcipts will prove you had no intrest in doing that. you choose the easiest route to make a living off your clients and put them in a strossful bind with last minute response times.
(Quoted text hidden)

steve heeb <steveheeb@gmail.com> Thu, Apr 1, 2021 at 9:33 AM
To: Justin Collier <justin@jclawllc.com>

Also you never filed anything that i requested that I wanted to bring suit on her for.

On Thu, Apr 1, 2021, 9:00 AM Justin Collier < > wrote:
(Quoted text hidden)

EXHIBIT 4

CRITES SEED, INC.

212 W. 8th Street
P.O. BOX 8912
MOSCOW, IDAHO 83843-1412
PHONE: 208-882-5519
FAX: 208-882-6464
Pea and Bean Seed Specialists

To whom it may concern:

Re: Steve Heeb

Mr. Steve Heeb has been hauling loads of seed for Crites Seed, Inc since 2015. Steve has been great about being available when we need him to haul anytime of the year. However, the most important hauling he does for Crites are the loads to our rail car site with customer packed seed. Unfortunately, BNSF doesn't always deliver the rail cars on the dates we ask for them, so we have to wait for visual confirmation of the rail cars arrival. We are only allowed to have the rail car 'spotted' at our site for 24 hours without incurring fees. That gives us just 24 hours to move the product to rail site, load the car and release it for pickup. With this being said, Steve stays on standby and is available for us during this time. Steve was hauling to the rail site February 11th, 2021, and was on standby the week of February 15th to 19th for the 3 rail cars we had ordered that week.

Please feel free to contact me if you have any questions.

Thank you.

Taran Rosenberger

Taran Rosenberger, Manager
Crites Seed, Inc - Quincy

CHELAN

CASE SUMMARY

CASE NO. 19-3-00275-04

06/15/2020	**Restraining Order** (1:30 PM) (Judicial Officer: Brandt, Tracy S) *TERMINATE* Resource: Court Admin DEFAULT Events: 06/08/2020 Motion Hearing	
06/15/2020	Motion Hearing	*Index # 36*
07/22/2020	Trial Cancelled Unknown Party	*Index # 37*
09/24/2020	**Settlement Conference** (9:30 AM) (Judicial Officer: Allan, Lesley A) Resource: Court Admin DEFAULT *06/04/2020 Reset by Court to 09/24/2020*	
09/24/2020	Settlement Conference Hearing Held	*Index # 38*
10/26/2020	Notice of Trial Date *AMENDED*	*Index # 39*
10/30/2020	*CANCELED* **Non-Jury Trial** (9:30 AM) (Judicial Officer: Brandt, Travis C) *IDN/DISSO NO CHILD* *Continuance* *07/22/2020 Reset by Court to 10/30/2020*	
10/30/2020	Trial Continued Calendar Conflict	*Index # 40*
11/17/2020	Notice of Filing Service Deposition	*Index # 41*
11/17/2020	Subpoena Duces Tecum	*Index # 42*
01/12/2021	Notice of Trial Date *SECOND AMENDED*	*Index # 43*
02/02/2021	Notice of Deposition	*Index # 44*
02/02/2021	Subpoena Duces Tecum	*Index # 45*
03/15/2021	Motion *AND MEMO FOR CR37 SANCTIONS*	*Index # 46*
03/15/2021	Notice of Hearing	*Index # 47*
03/22/2021	**Motion Hearing** (4:00 PM) (Judicial Officer: Brandt, Travis C) Resource: Court Admin DEFAULT Events: 03/15/2021 Notice of Hearing	
03/22/2021	Motion Hearing	*Index # 48*
03/25/2021	Order *ON CR 37 SANCTIONS*	*Index # 49*
03/25/2021	**General Recovery** (Judicial Officer: Ferrera, Kristin M) Comment 1) Monetary/Property Award	

ACE Hardware

Othello Ace Harware

420 E Main Street

Othello, WA 99344

Phone # (509)488-5667

Fax # (509)251-2886

FAX TRANSMISSION FORM

Date: 7/21/24

To:

Name Court of Appeals Division III

ATTENTION: _____

TOTAL PAGES INCLUDING COVER SHEET _____

FAX # 509 456 4288

FROM:

Name Steve Huth

ACE HARDWARE

PUBLIC FAX LOCATION

FILED
JULY 2, 2024
In the Office of the Clerk of Court
WA State Court of Appeals Division III

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

STEVEN HEEB, Appellant,	)	No. 39491-3-III
v.	)	
KAY SIKES, Respondent.	)	UNPUBLISHED OPINION

COONEY, J. — Steven Heeb filed a complaint against Kay Sikes for distribution of property and debts accrued during their relationship. The parties ultimately executed a Civil Rule (CR) 2A settlement agreement. During the litigation, Ms. Sikes obtained temporary restraining orders against Mr. Heeb. Sanctions were also entered against Mr. Heeb for his untimely setting of a motion and his failure to appear at multiple depositions. Mr. Heeb appeals, arguing that the judges and commissioner were biased against him, that his attorney violated multiple Rules of Professional Conduct (RPC), that he was deprived of a fair trial, and that the settlement agreement was not valid.

We disagree and affirm.

BACKGROUND

Mr. Heeb and Ms. Sikes were in a committed intimate relationship from May 2010 until June 2018. In 2019, with the assistance of Attorney Justin Collier, Mr. Heeb filed a

complaint "Seeking Determination and Distribution of Property in a Committed Intimate Relationship." Clerk's Papers (CP) at 4 (boldface and some capitalization omitted). Mr. Heeb requested the court "determine the properties of the parties subject to distribution," the "indebtedness of the parties subject to allocation," and that the court "decree a fair and equitable distribution" of the assets and debts. *Id*. at 4-5.

Ms. Sikes, also represented by counsel, answered the complaint and filed a motion for an order for protection against Mr. Heeb. Her motion was accompanied by multiple declarations that alleged Mr. Heeb was stalking Ms. Sikes and that she was fearful of him. Following a hearing on the motion, Commissioner Tracy S. Brandt issued a temporary restraining order that required Mr. Heeb to stay away from Ms. Sikes. Later, Commissioner Brandt denied a motion brought by Mr. Heeb to dismiss the restraining order.

In September 2020, a settlement conference was held before Judge Leslie A. Allan and a CR 2A agreement was signed by the parties. The court noted that the parties had "been working from a property matrix" and "[e]ach party and their attorney . . . had the opportunity to review [it] and have all four initialed at the bottom of each page indicating their agreement as to how the various items would be distributed." Rep. of Proc. (RP) at 34-35. Among other obligations, Ms. Sikes was to arrange for the acquirement of a "black 2011 Mustang within thirty days." *Id*. at 37. At the end of the settlement

conference, the only issue remaining was a 1955 Ford Thunderbird that Mr. Heeb and Ms. Sikes each alleged was in the other's possession.

The court reiterated the agreed upon property distribution on the record. The court asked Ms. Sikes, "If the Thunderbird is located so that you can retrieve it, is this the settlement that you've reached?" *Id*. at 40. Ms. Sikes responded, "Yes, Your Honor." *Id*. The court asked Mr. Heeb, "contingent upon the location of the Thunderbird, as a contingent for the other side, is this the agreement that you've reached today?" *Id*. at 41. Mr. Heeb responded in the affirmative.

Thereafter, Ms. Sikes scheduled a deposition of Mr. Heeb to ascertain the location of the Thunderbird. Mr. Heeb did not appear for this deposition, nor two other depositions that were subsequently scheduled. Consequently, Ms. Sikes brought a motion for sanctions under CR 37(d) against Mr. Heeb. At the hearing on the motion, held before Judge Travis C. Brandt, Mr. Heeb's attorney, Mr. Collier, appeared and stated, "I don't know why my client, frankly, wouldn't appear at a des—deposition. He sent a cryptic email to me about how he wasn't served and he knew the law and didn't have to appear." *Id.* 46. Mr. Collier also stated that he worried, "frankly, about [Mr. Heeb's] competency, if he really understands the process." *Id*. Mr. Collier conceded that the court "realistically can impose attorney fees" against Mr. Heeb. *Id*. Judge Brandt awarded Ms. Sikes sanctions against Mr. Heeb for his failure to appear at the depositions. After the hearing, Mr. Collier withdrew as Mr. Heeb's counsel.

Mr. Heeb then brought a pro se motion "For Sanctions be Stricken or Transferred to Justin Collier." CP at 105 (boldface and some capitalization omitted). In support of his motion, Mr. Heeb filed a declaration and attached e-mail communications between himself and Mr. Collier. The e-mails demonstrated that Mr. Collier notified Mr. Heeb of the scheduled depositions at least a few days before each deposition. In response to Mr. Heeb's motion, Ms. Sikes filed another motion for CR 37(d) sanctions for having to respond. A hearing was held and the court reserved ruling on further sanctions.

Later, Mr. Heeb acquired new counsel, Paul Beattie. At a hearing on June 25, the court revisited Ms. Sikes's request and awarded her another $1,500 in sanctions against Mr. Heeb for his failure to attend another deposition and for Ms. Sikes having to respond to his untimely motion to have sanctions against him stricken or transferred to Mr. Collier.

Mr. Heeb continued to claim he no longer had the Thunderbird and provided the value range of the Thunderbird from the Hagerty valuation tool. The Hagerty valuation tool assessed the vehicle's value between $18,700 and $41,500. Mr. Heeb also provided a declaration from Marco Pena who claimed the Thunderbird was in poor condition and was only worth $5,000 to $10,000. Ms. Sikes disagreed with Mr. Heeb's valuation, arguing that the Thunderbird was worth between $43,000 and $65,000. The court determined the value of the Thunderbird was $22,000, and awarded Ms. Sikes a judgment in that amount. There was also contestation related to the Mustang. At Mr. Heeb's

request, issues related to the Mustang and a new request from Ms. Sikes for a permanent restraining order were continued. At a later hearing, the court granted a judgment in favor of Ms. Sikes and against Mr. Heeb in the amount of $9,000 for the Mustang and entered a restraining order for 12 months.

Mr. Heeb appeals.[1]

ANALYSIS

On appeal, Mr. Heeb's arguments are generally unclear. He seems to contend that the commissioner and judges were biased against him, that his attorney violated several RPCs, that his right to a fair and impartial trial was violated, and the settlement agreement was not valid. For the reasons below, we either affirm the trial court or decline to review Mr. Heeb's alleged error.

WHETHER THE TRIAL COURT WAS BIASED

Although Mr. Heeb's argument is abstruse, he seems to argue that the commissioner and judges were biased against him. In particular, he argues that Commissioner Brandt and Judge Brandt, who both heard various motions in this case,

[1] It appears Mr. Heeb is appealing a motion for reconsideration. However, the motion for reconsideration is not contained in the record. In his notice of appeal, where it asks for the decision or court order being appealed, Mr. Heeb wrote "Hearings 10/21/2019 through 10/28/21 hearing." CP at 290. Also, on the notice of appeal, underneath the language stating "Copies of these decision or orders are attached to this Notice" Mr. Heeb handwrote "I have all hearings already." *Id.* The attached document to the notice of appeal in the record is simply the cover page of the transcript of proceedings.

were nepotistic. He also appears to assert that the court erred by ordering sanctions against him. We disagree with both arguments.

"Due process, the appearance of fairness doctrine and Canon [2.11] of the Code of Judicial Conduct . . . require a judge to disqualify himself if he is biased against a party or his impartiality may reasonably be questioned." *State v. Dominguez*, 81 Wn. App. 325, 328, 914 P.2d 141 (1996). However, there is a presumption that a judge performs his or her functions regularly and properly without bias or prejudice. *Kay Corp. v. Anderson*, 72 Wn.2d 879, 885, 436 P.2d 459 (1967); *Jones v. Halvorson-Berg*, 69 Wn. App. 117, 127, 847 P.2d 945 (1993). Thus, a party seeking to overcome that presumption must offer some kind of evidence of a judge's actual or potential bias. *Wolfkill Feed & Fertilizer Corp. v. Martin*, 103 Wn. App. 836, 841, 14 P.3d 877 (2000); *Dominguez*, 81 Wn. App. at 329. Other than generally disagreeing with the commissioner's and the judge's rulings, Mr. Heeb offers no evidence of the trial court's alleged bias against him. Consequently, his argument fails.

Mr. Heeb also takes exception to the sanctions ordered against him for failing to appear at multiple depositions and for Ms. Sikes having to respond to his untimely motion "For Sanctions be Stricken or Transferred to Justin Collier." CP at 105 (boldface and some capitalization omitted). We review a lower court's decision on the imposition of sanctions for an abuse of discretion. *Wash. State Physicians Ins. Exch. & Ass'n v. Fisons Corp.*, 122 Wn.2d 299, 338, 858 P.2d 1054 (1993). A "trial court abuses its

discretion if its decision is manifestly unreasonable or based on untenable grounds or untenable reasons." *In re Marriage of Littlefield*, 133 Wn.2d 39, 46-47, 940 P.2d 1362 (1997). A "trial judge has wide latitude to determine what sanctions are proper in a given case." *Deutscher v. Gabel*, 149 Wn. App. 119, 123, 202 P.3d 355 (2009).

To the extent Mr. Heeb argues that Ms. Sikes's CR 37 motion for sanctions was improperly brought, he is incorrect. Ms. Sikes filed a CR 37(d) motion for sanctions against Mr. Heeb alleging he failed to attend scheduled depositions. A hearing was held and sanctions were ordered against Mr. Heeb. Shortly thereafter, Mr. Heeb's counsel withdrew and Mr. Heeb brought a pro se motion for sanctions to be stricken or transferred to Justin Collier. Ms. Sikes responded to the motion and requested further sanctions that were later ordered against Mr. Heeb.

Mr. Heeb alleges that the original CR 37(d) motion violated CR 11(b) because it was not brought separately from any other motion. However, CR 11(b) does not read as Mr. Heeb alleges. Absent from CR 11(b) is any language that requires a motion for sanctions be brought separately from any other motion. Further, even if the rule required what Mr. Heeb alleges, Ms. Sikes's motion would have satisfied the rule. Her motion for CR 37(d) sanctions only requested sanctions for Mr. Heeb's failure to appear at his scheduled depositions.

Mr. Heeb's argument boils down to his disagreement with the court's ruling on the motions for sanctions. However, other than expressing his general disapproval of the

court's rulings, Mr. Heeb does not argue why or how the court erred by ordering sanctions against him. *State v. Stubbs*, 144 Wn. App. 644, 652, 184 P.3d 660 (2008) ("Passing treatment of an issue or lack of reasoned argument is insufficient to allow for our meaningful review."), *rev'd on other grounds*, 170 Wn.2d 117, 240 P.3d 143 (2010). Indeed, the record reflects that Mr. Heeb missed multiple scheduled depositions. The trial court did not abuse its discretion when it ordered sanctions against Mr. Heeb.

WHETHER MR. HEEB'S ATTORNEY VIOLATED THE RPC

Mr. Heeb protests the representation afforded him by Mr. Collier. Mr. Heeb alleges his attorney violated RPC 1.2, 1.3, and 1.4.

The state bar association's disciplinary process should handle alleged violations of the RPCs, not this court. *State v. Lord*, 117 Wn.2d 829, 887, 822 P.2d 177 (1991), *abrogated on other grounds by State v. Schierman*, 192 Wn.2d 577, 438 P.3d 1063 (2018). The proper "remedy for a claimed violation of the RPC is a request for discipline by the bar association." *Id.* Thus, we decline to further address this issue.

WHETHER MR. HEEB'S RIGHT TO A FAIR AND IMPARTIAL TRIAL WAS VIOLATED

Mr. Heeb alleges a violation of "Rule 4.6(c)" led to a deprivation of his rights under the Fifth and Sixth Amendments to the United States Constitution.[2] Br. of Appellant at 10; U.S. CONST. amend. V, VI. However, he provides no analysis of the

[2] The Superior Court Civil Rules lack a "Rule 4.6(c)." Presumably, the appellant is referencing Superior Court Criminal Rule 4.6(c) that, in part, dictates notice requirements for depositions in criminal cases.

issue or any citation to authority, nor does he explain how his rights were violated. The lack of any reasoned argument precludes any meaningful review. *Stubbs*, 144 Wn. App. at 652. Moreover, a trial was never held; Mr. Heeb's complaint was resolved through a settlement agreement. Thus, we decline to address this issue.

WHETHER THE SETTLEMENT AGREEMENT IS VALID

Throughout Mr. Heeb's briefing, he seems to take issue with the CR 2A settlement agreement, arguing it is not valid. However, Mr. Heeb was present at the CR 2A settlement conference, signed the settlement agreement, and explicitly agreed to the settlement in open court. Mr. Heeb's argument that it was "improperly filed" as part of Ms. Sikes's CR 37 motion for sanctions is also unpersuasive. Br. of Appellant at 12.

Affirmed.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

Cooney, J.

WE CONCUR:

Fearing, J.

Pennell, J.

Tristen L. Worthen
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July 2, 2024

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CASE # 394913
Steven Heeb v. Kay Sikes
CHELAN COUNTY SUPERIOR COURT No. 1930027504

Mr. Heeb and Ms. Sikes:

Enclosed please find a copy of the opinion filed by the Court today.

A party need not file a motion for reconsideration as a prerequisite to discretionary review by the Supreme Court. RAP 13.3(b); 13.4(a). If a motion for reconsideration is filed, it should state with particularity the points of law or fact which the moving party contends the court has overlooked or misapprehended, together with a brief argument on the points raised. RAP 12.4(c). Motions for reconsideration which merely reargue the case should not be filed.

Motions for reconsideration, if any, must be filed within twenty (20) days after the filing of the opinion. Please file the motion electronically through this court's e-filing portal or if in paper format, only the original motion need be filed. If no motion for reconsideration is filed, any petition for review to the Supreme Court must be filed in this court within thirty (30) days after the filing of this opinion. The motion for reconsideration and petition for review must be received (not mailed) on or before the dates they are due. RAP 18.5(c).

Sincerely,

Tristen Worthen
Clerk/Administrator

TLW:jab
Attachment

c: *E-mail*—Hon. Travis C. Brandt