SUPREME COURT NO. 1036094
COURT OF APPEALS NO. 399346

SUPREME COURT OF THE STATE OF WASHINGTON

Jeffrey & Anna Wood,

Petitioner.

v.

Dunn & Black P.S. and Robert A Dunn, an individual.

Respondents.

RESPONDENTS' ANSWER TO PETITION FOR REVIEW

Jeffrey Downer, WSBA No. 12625
Daniel C. Mooney, WSBA No. 44521
Sara R. Shapland, WSBA No. 49775
Of Attorneys for Respondents

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I. IDENTITY OF PETITIONER

Respondents, Robert Dunn and Dunn & Black, P.S. (hereinafter collectively "Dunn"), defendants below, ask this Court to deny review of the decision granted in Part II.

II. CITATION TO COURT OF APPEALS DECISION

On September 19, 2024, the Court of Appeals, Division III, issued a unanimous unpublished opinion under Case No. 39934-6-III (hereinafter "Opinion"), affirming the trial court's dismissal of the Woods' lawsuit based on ineffective service of process and the running of the statute of limitations.

Further, the Woods seek review of the October 10, 2024, Order Denying: (1) Motion for Consideration of Additional Evidence on Review, and (2) Motion for Reconsideration. A copy of the opinion and order are attached to this Answer to Petition for Review as Appendix A.

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III. ISSUE PRESENTED FOR REVIEW

Whether this Court should deny Plaintiffs-Appellants' Petition for Review under RAP 13.4(b), where:

1. The Woods fail to establish any basis for review under RAP 13.4(b); and

2. This case presents no issue of substantial public interest that should be determined by this Court.

IV. STATEMENT OF THE CASE

The facts and procedure as stated in Division III's unpublished opinion are accurate and need not be repeated at length. However, throughout their Statement of the Case, the Woods take excessive liberties in characterizing unfounded innuendo as fact. Thus, they are addressed in turn.

First, the Woods inappropriately accuse Mr. Dunn of evading service, which prompted Mr. Wood to allegedly file the Summons and Complaint with the Washington State Secretary of State Corporations Division as the statutory representative of the registered agent of the Dunn & Black Corporation. Pet. for

Rev. at 3. Simply because Mr. Dunn was not at his house or office when the process server came does not mean he was evading service. There is no evidence Mr. Dunn evaded service, and the Woods cite none. Further, a defendant has no duty to cooperate with service or accommodate a process server. *Weiss v. Glemp*, 127 Wn.2d 726, 734, 903 P.2d 455 (1995) (failing to come to the door to receive service of process does not constitute evasion of service, and those who are to be served with process are under no obligation to arrange a time and place for service or to otherwise accommodate the process server).

Second, the Woods' statement that Plaintiff and Defendant were both mailed copies of the acknowledgment from the Washington State Secretary of State's Corporate Division Office is false. Pet. for Rev at 3. Rather, the exhibit supports that the alleged letter was mailed to the Woods only, not Mr. Dunn or Dunn & Black, P.S.

Next, the Woods' allegation that the defendants' counsel did not respond to Mr. Wood's request for a CR 26(i) conference, and instead proceeded with a CR 56 Summary Judgment for dismissal for improper service of process is not only false, but irrelevant even if true. Attached to this answer as Appendix B is a true and correct copy of an email exchange between Mr. Wood and Mr. Mooney, clearly acknowledging the completed CR 26(i) call. However, there is no requirement that a CR 26(i) conference must be had prior to filing a motion for summary judgment. CR 26(i) only applies when seeking to compel some form of discovery. Thus, this point has no merit or basis to be asserted now as support for this Court to accept Review.

Finally, claiming that Defendant's attorney committed an unethical act, and violated the very code of ethics and oath they are required to uphold is completely inaccurate. The Woods' belief that defendants withheld the letter from the Secretary of State was somehow an ethical violation is absurd. It was

reasonable to review the letter, deduce that it did not comport with proper service protocols on a corporation, and therefore not include it with their already numerous affidavits establishing a lack of proper service of process. Frankly, it is not even clear what "documents" were delivered to the Secretary of State, as the letter does not identify what was received. Thus, there was no way for defense counsel to know it even involved an attempt at service through the Secretary of State.

The Woods' own attorneys—of which there were two—similarly did not see the letter as relevant to the service of process issues, as surely, they would have brought it to the court's attention in responding to the Motion to Dismiss. There was absolutely no unethical effort to hide relevant evidence from any court. Further, even if this was somehow unethical, which Dunn maintains is not, this is not the proper avenue for resolving such an allegation.

V. ARGUMENT WHY REVIEW SHOULD BE DENIED

A. The Woods fail to establish any basis under RAP 13.4(b) for this Court to accept review.

The Woods' Petition for Review does not present a proper basis for review by this Court. The Supreme Court's review of a Court of Appeals decision is an extraordinary step, and RAP 13.4(b) sets forth the only grounds under which a Court of Appeals decision will be reviewed. None of those grounds are adequately presented by the Woods, and therefore review should be denied.

B. Contrary to the Woods' contention, review is not warranted under either RAP 13.4(b)(1) or (2).

Pursuant to RAP 13.4, this Court will grant a petition for review only:

> (1) If the decision of the Court of Appeals is in conflict with the decision of the Supreme Court; or (2) If the decision of the Court of Appeals is in conflict with the decision of another division of the Court of Appeals; or (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

RAP 13.4(b).

The Woods claim review is warranted under RAP 13.4(b)(1) and (2). Pet. for Rev. at 8–9. However, this Petition should be denied because it fails to satisfy either.

Nothing in RAP 13.4, or in Washington law, entitles the Woods to review by this Court simply because they disagree with the Court of Appeals' decision:

> RAP 13.4(b) does not allow review simply to correct isolated instances of injustice. The Supreme Court, in passing upon a petition for review, is not acting as a court of error, rather is functioning as the highest policy-making judicial body of the state. Its concern is with the general state of the law, not particular applications of it, whether involving the state constitution, statutory or regulatory law, or the common law.

Wash. Appellate Prac. Deskbook §18.2 (4th ed. 2016).

The Woods argue review is warranted under RAP 13.4(b)(1) and (2), but the authority they cite in their Petition does not conflict with the Court of Appeals' decision in this matter. Furthermore, this case involves no constitutional

issues and there are no matters of substantial public interest that are implicated by this purely private dispute.

Furthermore, the Court of Appeals did not error in its consideration or handling of the additional evidence the Woods intended to offer for the first time on appeal.

1. The Court of Appeals' Opinion does not Conflict with a decision of the Supreme Court.

The Woods argue that the Opinion in this case conflicts with this Court's decision in *Spencer v. Franklin Hills Health-Spokane*, 3 Wn. 3d 165, 548 P.3d 193 (2024). *See* Pet. for Rev. at 10–19. In making their argument, the Woods erroneously rely on the Court's statement that "the service statute should be liberally construed 'in order to effectuate the purpose of the statue while adhering to its spirit and intent.'" *Id*. at 18–19, citing *Spencer*, 3 Wn. 3d. at 171.

However, liberal construction of the service statute, RCW 4.28.080 as required by *Spencer*, does not equate to departure from the plainly enumerated statutory requirements of

RCW 23.95.450, an entirely different statute that was not even analyzed by the *Spencer* court, as the Woods contend.

a. The decision in *Spencer* does not apply to this case.

The Court of Appeals' decision in this case does not conflict with *Spencer* because *Spencer* deals with an entirely different statute than the Woods rely on and is thus inapplicable to this matter. The issue presented by *Spence*r was whether the service that was completed on the defendant in that case complied with RCW 4.28.080(9) when a corporation's human resources manager *accepted* the summons and complaint. *Spencer*, 3 Wn. 3d. at 168 (emphasis added).

The Court in *Spencer* was operating under the framework of RCW 4.28.080(9), and explained:

> As a whole, RCW 4.28.080(9) permits service not just on those in high positions in the corporation but, more broadly, to people in roles where they must understand the workings of the organization and know how to get important legal documents for the corporation into the hands of those who will need to act on them. For example, it authorizes service not only to obvious leadership positions in the organization, such as the

> "president" or "registered agent," but also to that person's "secretary, stenographer or office assistant." RCW 4.28.090(9). . . The statute provides a wide-ranging list of suitable people to accept service on behalf of a corporation, and we liberally construe its terms to effect its purpose of accomplishing service of process and notice to the defendant.

Spencer, 3 Wn. 3d. at 171(citation omitted).

In the *Spencer* case it was an undisputed fact that a person was actually served with the summons and complaint on behalf of Franklin Hills Health-Spokane. *Id*. at 169. The issue was whether that individual, Franklin Hills' human resources manager, qualified as one of the individuals authorized to accept service of process on behalf of a company under RCW 4.28.090(9).

In contrast, in this case neither Mr. Dunn nor Dunn & Black, P.S., nor anyone else, were ever served a summons and complaint. The court of appeals had no obligation to evaluate whether a proper "managing agent" was served under RCW 4.28.090 when each and every declaration of service provided to the court established service never occurred. The

Spencer case, therefore, has no relevance to the issues before either the trial court or the court of appeals, and the decisions in this case do not conflict with it.

The court in *Spencer* did not discuss the applicability of RCW 23.95.450. Instead, it analyzed whether the service of process in that case complied with RCW 4.28.090.

The decisions in this case—those of the trial court and Division III—are therefore not in conflict with *Spencer*, because since no service on anyone had yet to occur, the trial court and the Court of Appeals did not yet need to evaluate whether the individual served met the definition of 'managing agent' under RCW 4.28.090.

b. The Woods fail to cite a conflicting Supreme Court Opinion related to RAP 9.11

The Woods' Petition for Review is, in essence, a request for this Court to overrule Division III's declination to consider new issues and evidence raised for the first time on appeal simply because they do not agree with the Court of Appeals'

decision. *See* Order Denying: (1) Motion for Consideration of Additional Evidence on Review, and (2) Motion for Reconsideration.

This is not a proper basis for acceptance of review under RAP 13.4 and the Woods cite no opinions of the Supreme Court or another court of appeals addressing RAP 9.11 that conflict with Division III's ruling. But even if it was a proper basis for acceptance of review, the Woods' claim still fails because the additional evidence would not change the outcome of the case. RAP 9.11(a)(2).

i. The Woods fail to meet the requirements of RAP 9.11.

The Court of Appeals properly denied the Woods' Motion for Consideration of Additional Evidence on Review. Only under extraordinary circumstances may the appellate court direct that additional evidence on the merits of the case be taken. *See* RAP 9.11. Under that rule, an appellate court may direct that additional evidence be taken where:

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

RAP 9.11(a). Under this rule, a party requesting the appellate court review additional evidence must satisfy all six conditions, or the request fails. *Wash. Fed'n of State Emps. Council 28, AFL-CIO v. State*, 99 Wn.2d 878, 885, 665 P.2d 1337 (1983). The Woods do not meet the requirements of that rule, in particular they cannot satisfy the second requirement outlined above, and therefore their request for consideration of additional evidence was properly denied.

ii. The evidence offered by the Woods does not satisfy the requirements of RCW 23.95.450 and thus would not have changed the outcome below has it been considered.

Again, in their Petition for Review, the Woods attach a letter from the Secretary of State addressed only to Jeffrey and Anna Wood. The letter, however, does not include any information about what documents were received by the Secretary of State or that they were mailed to Dunn & Black, P.S. It is merely a receipt sent to the Woods, which is insufficient to establish proper service.

This same letter was presented to the Court of Appeals, who analyzed the letter in the context of RCW 23.95.450, which requires the following must all be met:

> 1) A represented entity may be served with any process, notice, or demand required or permitted by law by serving its registered agent.
>
> 2) If a represented entity ceases to have a registered agent, or if its registered agent cannot with reasonable diligence be served, the entity may be served by registered or certified mail, return receipt requested, or by similar commercial delivery service. The address of the principal

> office must be as shown in the entity's most recent annual report filed by the secretary of state. Service is effected under this subsection on the earliest of:
>
> > (a) The date the entity receives the mail or delivery by the commercial delivery service,
> >
> > (b) The date shown on the return receipt, if executed by the entity, or
> >
> > (c) Five days after its deposit with the United States postal service or commercial delivery service, if correctly addressed with the sufficient postage or payment.
>
> (3) If process, notice, or demand cannot be served on an entity pursuant to subsection (1) or (2) of this section, service may be made by handing a copy to the individual in charge of any regular place of business or activity of the entity if the individual served is not a plaintiff in the action.
>
> (4) The secretary of state shall be an agent of the entity for service of process if process, notice, or demand cannot be served on an entity pursuant so subsection (1),(2), or (3) of this section.

RCW 23.95.450(1)–(4).

The letter alone is insufficient to establish compliance with RCW 23.95.450. The Woods have submitted no evidence showing that prior to attempting service through the Secretary

of State they complied with subsections (1)–(3) and were unsuccessful.

While not written in detail, after review of the Woods' same argument in their Motion for Consideration of Additional Evidence, the Court of Appeals affirmatively stated, "Lack of compliance with RCW 23.95.450(1) through (3) renders the method of service outlined in RCW 23.95.450(4) unavailable to the appellants." *See* Order Denying: (1) Motion for Consideration of Additional Evidence on Review, and (2) Motion for Reconsideration.

The Court of Appeals analyzed the plain language of RCW 23.95.450 and determined that the legislature intended a Plaintiff utilize the options in order that is most to least likely give a Defendant notice of the lawsuit. RCW 23.95.450(4) clearly and unequivocally states "The secretary of state shall be an agent of the entity for service of process *if* process, notice, or demand *cannot be served on an entity pursuant to subsection*

(1), (2), or (3) of this section. RCW 23.94.450(4) (emphasis added).

The Court further stated that it "has considered appellants Jeffrey and Anna Wood's motion for consideration of additional evidence on review; respondents Dunn & Black, P.S., and Robert A. Black's answer; the declaration of Daniel C. Mooney in support of the respondent's answer; the appellants' reply, the appellants' motion for reconsideration of this court's September 19, 2024, opinion; and the record and file herein." *See* Order Denying: (1) Motion for Consideration of Additional Evidence on Review, and (2) Motion for Reconsideration.

Clearly, and contrary to the Woods' allegations in their Petition, the Court had available to it all information available to render a decision. Certainly, if the Court of Appeals was persuaded that *Spencer* allows complete departure with plain language of a statute, they would have ruled accordingly. The

Woods now simply take issue with the decision because he does not agree with the outcome.

However, the Woods cite no Supreme Court decision that is contrary to the Court of Appeals' finding that in order to utilize service via secretary of state the Woods must first have shown an inability to proceed under RCW 23.95.450(1)–(3). RAP 13.4(b)(1) clearly requires a conflicting Supreme Court Decision to warrant acceptance of review. No such case exists in this matter and therefore, review should be denied.

2. The opinion in this matter does not conflict with a published decision of the Court of Appeals.

The Woods argue that under RAP 13.4(b)(2), review is warranted because the decision in this case conflicts with Division III's unpublished decision in *Spencer v. Franklin Hills Health-Spokane*, 26 Wn. App. 2d 1053 (2023) (unpublished). Pet. for Rev. at 11. In making this argument, the Woods cite the unpublished court of appeals opinion that was entered in *Spencer* prior to acceptance of the Supreme Court's review.

The Woods are incorrect. RAP 13.4(b)(2) provides a basis for review only if the decision under review conflicts with a published decision of a court of appeal. *See* RAP 13.4(b)(2) ("[I]s in conflict with a *published* decision of the Court of Appeals[.]") (emphasis added).

Given that the Court of Appeals' decision in *Spencer* was unpublished, notwithstanding the fact that there is no conflict as discussed *supra*, any alleged conflict between it and the decision in this case cannot serve as a basis for review under RAP 13.4(b)(2). Furthermore, there is nothing in the Court of Appeals' decision that requires consideration or review given that the decision was already reviewed by this Court.

3. The Woods do not argue that grounds for review exist under RAP 13.4(b)(3)&(4).

The Woods have asserted grounds for Supreme Court review under RAP 13.4(b)(1) & (2) only. *See* Pet. for Rev. at 8–9. They do not offer any argument or authority in support of any other basis for this Court to accept review. Therefore, the

Woods concede that review is not warranted under either RAP 13.4(b)(3) or (b)(4). And they are correct.

RAP 13.4(b)(3) clearly does not apply to this case as the case does not involve any question under either the Washington or United States constitution. Although the Woods make a passing reference to the Court of Appeals denying them due process by not considering certain evidence submitted for the first time on appeal (Pet. for Rev. at 13), they offer no meaningful argument or analysis on the issue and cite to no case supporting their argument. As such, this Court should decline to consider the issue. *See Nelson v. Duvall*, 197 Wn. App. 441, 460, 387 P.3d 1158 (2017) ("Passing treatment of an issue or lack of reasoned argument is insufficient to merit judicial consideration."), *citing Palmer v. Jensen*, 81 Wn. App. 148, 153, 913 P.2d 413 (1996).

RAP 13.4(b)(4) also does not apply. For a substantial public interest to exist, the Woods must show "the particular issue has ramifications beyond the particular parties and the

particular facts of an individual case." *Wash. Appellate Prac. Deskbook* §18.2(3) (4th ed. 2016). Detailed analysis of the "substantial public interest" criterion of RAP 13.4(b)(4) is scant, but this Court weighed what amounts to "public interest" when considering the related question of whether to decide a moot issue:

> When determining the requisite degree of public interest, court should consider (1) the public or private nature of the question presented, (2) the desirability of an authoritative determination for the future guidance of public officers, and (3) the likelihood of future recurrence of the question.

In re Mines, 146 Wn.2d 279, 285, 45 P.3d 535 (2002) (internal quotation marks omitted). *Dept. of Ecology v. Adsit*, 103 Wn.2d 698, 705, 694 P.2d 1065 (1985) (en banc); *Sorenson v. City of Bellingham*, 80 Wn.2d 547, 558, 496 P.2d 512 (1972). Where the Court has directly addressed the "substantial public interest" criterion of RAP 13.4(b)(4), it has used these principles. *State v. Watson*, 155 Wn.2d 574, 577, 122 P.3d 903 (2005).

In *Watson*, the issue was whether a prosecutor's office delivery of a memo to all members of the bench regarding its decision not to recommend drug offender sentencing alternative (DOSA) sentences was an improper ex parte communication. This Court held that the Court of Appeals' decision was reviewable under RAP 13.4(b)(4) because the ruling (1) could affect every sentencing proceeding involving a DOSA sentence; (2) created confusion and invited unnecessary litigation; and (3) could chill policy actions by both attorneys and judges in the future. *Id.*

In contrast, this case involves only the private parties to this action and affects only them. This is a private legal malpractice case arising from Dunn's representation of the Woods in a lawsuit against their former homebuilder, based on unique facts applicable to this case only, which are unlikely to recur, and the legal issues regarding service of process involved in this case are well-settled. Therefore, RAP 13.4(b)(4) does not provide a basis for review of the decision.

Furthermore, the Woods seek for review of an unpublished decision in this matter. Because the decision below is unpublished, it has no precedential value and has no impact beyond the parties to this case. RCW 2.06.040; *State v. Fitzpatrick*, 5 Wn. App. 661, 668, 491 P.2d 262 (1971). Unpublished opinions of the Court of Appeals will not be considered in appellate courts and should not be considered in the trial courts. *Id.* They do not become part of the common law of the State of Washington. "Unpublished opinions . . . should not be cited or relied upon in any manner." *Skamania County v. Woodall*, 104 Wn. App. 525, 536 n.11, 16 P.3d 701, *rev. denied* 144 Wn.2d 1021, 34 P.3d 1232 (2001) (citing RAP 10.4 (h)). Therefore, there is no possibility the Court of Appeals' decision creates supposedly bad precedent and or otherwise has broad implications beyond the parties to this case, such that review under RAP 13.4(b)(4) is warranted.

C. This Court should award Dunn its fees in responding to this Petition.

RAP 18.9 permits an appellate court to award a party its attorney's fees as sanctions, terms, or compensatory damages when the opposing party files a frivolous appellate action. *Reid v. Dalton*, 124 Wn. App. 113, 128, 100 P.3d 349 (2004). An appeal is frivolous if, considering the entire record, the court is convinced that the appeal presents no debatable issues upon which reasonable minds might differ, and the appeal is so devoid of merit that there is no possibility of reversal. *Lutz Tile, Inc. v. Krech*, 136 Wn. App. 899, 906, 151 P.3d 219 (2007); *Yurtis v. Phipps*, 143 Wn. App. 680, 693, 181 P.3d 849 (2008) (*pro se* litigant's multiple, frivolous appeals and motions to modify warranted imposition of attorney's fees and costs). Furthermore, pro se litigants are held to the same standards as attorneys. *See State v. Hoff*, 31 Wn. App. 809, 812, 644 P.2d 763 (1982) ("The rules of procedure apply equally to a defendant represented by counsel or appearing pro se.") (citation omitted)

Dunn should be awarded its attorney's fees and costs under RAP 18.9. The Woods' Petition is devoid of merit and based on arguments that reflect a fundamental misunderstanding of the law. The Woods have lost at every turn in this case: they lost every motion; all of their motions for reconsideration have been denied; and the Court of Appeals affirmed without even taking oral argument. The Court of Appeals indicated in its opinion that the Woods' appeal to it boarded on frivolous. Opinion at 15 ("The Woods' appeal borders on the frivolous.") Now, in a last-ditch effort to save their case they make unfounded personal attacks against opposing counsel and attempted to submit new evidence on appeal, without ever once addressing the proverbial elephant in the room: why did neither they, nor their attorneys, submit the letter from the Secretary of State's office to the trial court if it established proper service of process? The answer is simple: because it does not.

The Petition appears intended merely to delay Dunn's efforts to put this matter behind it, be done with this client and have peace of mind. This is precisely the abuse of the appellate process that RAP 18.9 is intended to deter and Dunn should be awarded its reasonable attorney's fees and costs opposing this Petition for Review.

VI. CONCLUSION

RAP 13.4(b) enumerates the four narrow grounds for review by the Supreme Court. This case presents no such issue for review and the Woods have failed to meet the strict standards of RAP 13.4 in any regard. Their arguments regarding RAP 13.4(b)(1) and (2) are unpersuasive and they make no effort to argue RAP 13.4(b)(3) or (4) even apply. As such, this Court should deny review and award Dunn its reasonable attorney's fees and costs incurred in responding to this Petition for Review.

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Respectfully submitted this 6th day of January, 2025.

I certify that this memorandum contains 4,347 words, in compliance with RAP 18.17.

LEE SMART, P.S., INC.

By: */s/ Daniel Mooney*
Jeffrey Downer, WSBA No. 12625
Daniel Mooney, WSBA No. 44521
Sara Shapland, WSBA No. 49775
Of Attorneys for Respondents

CERTIFICATE OF SERVICE

I hereby declare that on this day I caused the foregoing document to be electronically filed with the Clerk of the Court using the Court's electronic filing system, and a courtesy copy via FedEx, which will serve a copy of this document to:

Jeffrey Wood
Anna Wood
21319 E. Harvard Vistas Lane
Newman Lake WA 99025

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

DATED this 6th day of January, at Seattle, WA.

/s/Soumya Reddy
Soumya Reddy
Legal Assistant
sxr@leesmart.com

Appendix A

FILED
SEPTEMBER 19, 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

JEFFREY WOOD AND ANNA WOOD, Appellants, v. DUNN & BLACK, PS, a Washington Professional Service Corporation &, ROBERT A. DUNN, Attorney at Law, Respondents.	)	No. 39934-6-III UNPUBLISHED OPINION

FEARING, J. — Jeffrey and Anna Wood, former clients of the law firm Dunn & Black, P.S., brought a malpractice suit against the firm and one of its lawyers. We affirm the superior court's dismissal of the suit based on ineffective service of process and the running of the statute of limitations.

FACTS

Dunn & Black filed a lawsuit on behalf of Jeffrey and Anna Wood (the Woods) against Milionis Construction concerning the construction of a dream home that became a nightmare. Robert Dunn provided most of the services on behalf of the law firm. The litigation eventually led to a claim against the construction company's liability insurer. The dispute is the subject of a Washington Supreme Court decision: *Wood v. Milionis Construction, Inc.*, 198 Wn.2d 105, 492 P.3d 813 (2021).

Dunn & Black represented Jeffrey and Anna Wood for over two years before filing a notice of intent to withdraw on March 8, 2019. On March 12, 2019, Jeffrey wrote a letter to Robert Dunn expressing disappointment in the representation. We attach the letter as an appendix to this opinion. In the letter, Jeffrey charged Dunn with never having represented his and Anna's interests, failing to insist that an insurance company pay to properly fix the home, possessing a conflict of interest by previously representing Milionis, being charged for expert services that should have been paid by the insurance company, and failing to pursue personal liability against Stephen Milionis, owner of the construction company. Dunn & Black's withdrawal became effective on March 22, 2019.

PROCEDURE

On March 10, 2022, Jeffrey and Anna Wood filed a complaint for legal malpractice against Robert Dunn and Dunn & Black (collectively "the attorneys"). The Woods alleged that the attorneys performed negligently when representing them by failing to adequately advise them on settling with Milionis Construction and by failing to disclose a conflict of interest.

A process server attempted to deliver the summons and complaint on Robert Dunn and Dunn & Black on March 14, March 17, April 4, and May 14, 2022 with no avail. The process server was never able to contact Dunn or a representative authorized to receive service on behalf of the attorneys. The details of the attempts follow.

In the afternoon on March 14, 2022, a process server went to the offices of Dunn & Black and spoke with the receptionist, who informed him Robert Dunn was not in the office. The process server left a business card with the receptionist and requested that Dunn call to schedule a time to meet.

In the evening of March 17, a process server again traveled to the offices of Dunn & Black and spoke with the receptionist. This time, the receptionist informed the process server that Robert Dunn was out of the office until later the next week. The receptionist offered to take the summons and complaint, but the process server declined to leave them with her. The process server took one of Dunn's business cards with him as he left.

On April 4, 2022, a process server attempted to deliver service at the offices of Dunn & Black. The process server spoke with Robert Dunn's paralegal, who said that Dunn was not in the office. The process server left his business card with her. Also on April 4, the process server called Dunn and left him a voicemail.

During the morning on May 14, a process server attempted to serve Robert Dunn at his personal residence. The main gate leading to the residence was locked. The server paged Dunn through the callbox near the gate, but the call was forwarded to voicemail.

On the morning of May 22, 2022, process server Rob Uzeta tried to serve Robert Dunn and Dunn & Black at Dunn's home and arrived to find the main gate locked. Similar to the previous process server, Uzeta called the residence using the gate's callbox but received no answer.

Rob Uzeta attempted service again in the evening on May 23. This time, the main gate to Robert Dunn's property was open, but the second gate closer to the home was locked. Uzeta did not serve Dunn or Dunn & Black.

On June 21, 2022, 104 days after Jeffrey and Anna Wood filed their complaint, Rob Uzeta went to the offices of Dunn & Back intending to serve the attorneys. According to Uzeta, the receptionist, Maureen Cox-O'Brien, informed him "nobody at the office is authorized to receive" service on behalf of Robert Dunn or Dunn & Black. Clerk's Papers (CP) at 14. Cox-O'Brien further informed Uzeta that attorneys Dunn and John Black were absent, and she did not identify a time at which they would be in the office. Cox-O'Brien is actually a paralegal at Dunn & Black, not a receptionist. She has never been a personal representative of Dunn & Black and is not otherwise authorized to accept service on behalf of Dunn or Dunn & Black. According to Uzeta, he left the pleadings on the "receptionist['s] desk." CP at 14.

The attorneys never filed an answer to Jeffrey and Anna Wood's complaint. Lawyer Daniel Mooney entered a notice of appearance on behalf of the attorneys in July 2022.

On November 3, 2022, the attorneys filed a motion, entitled "Defendants' Motion for Summary Judgment." CP at 15. Despite captioning the motion as one for summary judgment, the opening section of the motion seeks dismissal of the case "pursuant to CR 12(b)(2) and CR 12(b)(5)," not CR 56. CP at 15. The attorneys asserted that the Woods

never served process on either defendant. The attorneys added that the superior court lacked jurisdiction because more than ninety days had passed since the filing of the complaint. The attorneys requested the case be dismissed with prejudice because it had been over three years since Robert Dunn withdrew from representing the Woods and the statute of limitations barred re-filing.

In their motion, the attorneys cited rules for summary judgment, asserted that the action was "ripe for summary judgment," and requested "the Court enter summary judgment in [their] favor and dismiss Plaintiffs' complaint with prejudice." CP at 17-18, 25. With the motion, the attorneys filed a declaration of Daniel Mooney with exhibits attached, a declaration of Robert Dunn with exhibits attached, and a declaration of Maureen Cox-O'Brien.

Jeffrey and Anna Wood hired attorney Ryan Best to temporarily represent them in response to the attorneys' summary judgment motion. On December 8, 2022, counsel Best filed, on behalf of the Woods, a response to the motion. The response acknowledged the expiration of the relevant statute of limitations period as being on March 22, 2022. On January 13, 2023, the superior court conducted a hearing on the attorneys' motion. At the hearing, the attorneys' counsel, Daniel Mooney, explained to the court "We're here on a motion to dismiss plaintiff's complaint under CR 12 and CR 56 for failure to effect service of process within the required statute of limitations period or the 90-day tolling period provided by statute." CP at 79. Best argued, on behalf of the

Woods, that the attorneys had waived their ability to raise the defense of insufficient service of process because (1) they sought affirmative relief by requesting the court dismiss the complaint for insufficient service of process in a summary judgment motion instead of first raising the defense in a CR 12(b) motion or responsive pleading and (2) they failed to timely raise the defense. Mooney responded that the attorneys sought dismissal of the suit as a defensive tactic and did not seek affirmative relief. Counsel also commented on the difficulty of scheduling a hearing because of the busy schedule of the superior court judge.

The superior court later entered an order granting Robert Dunn and Dunn & Black's motion for summary judgment, effectively dismissing the action without prejudice. In the order, the court outlined the pleadings on which it relied in granting the motion. Those pleadings included declarations and exhibits attached to the declarations.

LAW AND ANALYSIS

On appeal, Jeffrey and Anna Wood assert four arguments. First, they effectively served Dunn & Black and Robert Dunn. Second, the attorneys waived the defense of insufficient service of process by first raising it in a CR 56 motion for summary judgment instead of in a responsive pleading or a CR 12(b) motion. Third, the attorneys followed improper legal procedures and protocol before filing their CR 56

summary judgment motion. Fourth, the statute of limitations has not run on their professional malpractice claim since they have yet to discover all of the harm suffered.

Service

Jeffrey and Anna Wood argue that they properly served Robert Dunn and Dunn & Black. In so arguing, the Woods contend that, under the continuous representation doctrine, the statute of limitations does not accrue until the client suffers harm from the malpractice. This argument goes to their fourth contention and does nothing to establish proper service of process. To our knowledge, the Woods have yet to serve the attorneys. The Woods have presented no affidavit of service.

Waiver

Jeffrey and Anna Wood argue that the attorneys waived the defense of insufficient service because they neither asserted the defense in a responsive pleading nor in a motion under CR 12(b), as required by CR 12(h)(1). Instead, the attorneys raised the defense for the first time in a CR 56 motion for summary judgment.

Jeffrey and Anna Wood take few steps to analyze whether the attorneys waived the defense of insufficiency of service. Instead, they cite portions of CR 12 and the rule that the defense of insufficient service of process is not waived if it is asserted in either a responsive pleading or a CR 12(b)(5) motion. CR 12(h)(1)(B); *French v. Gabriel*, 116 Wn.2d 584, 588, 806 P.2d 1234 (1991); *Gerean v. Martin-Joven*, 108 Wn. App. 963, 972–73, 33 P.3d 427 (2001). We do not seek to change this rule.

CR 12(h)(1)(B) reads in relevant part:

> A defense of . . . insufficiency of service of process is waived . . . if it is neither made by motion *under this rule nor included in a responsive pleading*.

(Emphasis added.) We note that the attorneys have yet to be served. If served, the attorneys would still have the opportunity to raise the defense in their answer.

Regardless, we deem Jeffrey and Anna Wood's argument too technical. The Woods contend that a motion to dismiss for insufficient service must be brought by a responsive pleading or CR 12(b)(5) motion, not a summary judgment motion. Although, the attorneys captioned their motion as one for summary judgment, the opening section of the motion sought dismissal pursuant to CR 12(b)(2) and CR 12(b)(5). CR 12(b)(2) references lack of personal jurisdiction. CR 12(b)(5) mentions lack of sufficiency of process. CR 12(h)(1)(B) does not preclude captioning the motion to dismiss for lack of service as a summary judgment motion. No rule precludes a party from filing two alternative motions, one under CR 12(b)(5) and one under CR 56. To the contrary, CR 12(b)(7) declares in part:

> No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion.

The attorneys filed affidavits with their motion. Even if the attorneys had captioned the motion as a motion to dismiss and had only referenced CR 12 in their motion, the filing of affidavits converted the motion to a summary judgment motion.

Thereafter, Jeffrey and Anna Wood filed their own affidavits. Thus, the Woods suffered no prejudice and the process remained the same regardless of whether the attorneys captioned their motion as a motion to dismiss or a summary judgment motion.

If the court considers materials outside the pleadings, the CR 12(b)(6) motion becomes a summary judgment motion under CR 56. CR 12(b); *Berst v. Snohomish County*, 114 Wn. App. 245, 251, 57 P.3d 273 (2002). Like CR 12(b)(6) motions, CR 12(b)(2) motions may also be supported by matters outside of the pleadings. "If matters outside the pleadings are presented to the court on a motion to dismiss for lack of personal jurisdiction under CR 12(b)(2) the motion is to be treated as one for summary judgment" brought under CR 56. *Puget Sound Bulb Exchange v. Metal Buildings Insulation Inc.*, 9 Wn. App. 284, 289, 513 P.2d 102 (1973).

Washington courts have ruled that a motion to dismiss for lack of jurisdiction under CR 12(b)(2) converts to a motion for summary judgment, by reason of reliance on declarations and exhibits, without the courts suggesting the defendant violated the proscription of CR 12(b). *State v. LG Electronics, Inc.*, 186 Wn.2d 169, 208, 375 P.3d 1035 (2016) (concurring opinion); *Beaman v. Yakima Valley Disposal, Inc.*, 116 Wn.2d 697, 701 n.3, 807 P.2d 849 (1991); *Columbia Asset Recovery Group, LLC v. Kelly*, 177 Wn. App. 475, 483, 312 P.3d 687 (2013); *Freestone Capital Partners LP v. MKA Real Estate Opportunity Fund I, LLC*, 155 Wn. App. 643, 653, 230 P.3d 625 (2010). This

reasoning should also apply to motions to dismiss under CR 12(b)(5) on the ground of lack of service.

We suspect that nearly all motions to dismiss for insufficiency of process rely on affidavits because the defendant files an affidavit that he or she has not been served. In turn, the plaintiff files one or more affidavits seeking to prove service. Jeffrey and Anna Wood's proposed ruling could effectively prevent dismissal of a suit for lack of service.

Improper Legal Procedures

Jeffrey and Anna Wood fault the attorneys for engaging in an improper procedure or protocol before filing a CR 56 summary judgment motion. They complain about the length of time between lawyer Daniel Mooney appearing on behalf of the attorneys and the filing of the motion. They murmur about the time passing between the filing of the dismissal motion and the hearing on the motion. They complain that Mooney did not warn them in advance of ineffective service or the running of the statute of limitations. The Woods cite *Lybbert v. Grant County*, 141 Wn.2d 29, 1 P.3d 1124 (2000) as paralleling their appeal.

Jeffrey and Anna Wood concede that defense counsel's conduct in *Lybbert v. Grant County* was purportedly more misleading than steps taken by Daniel Mooney, but assert that the values analysis promoted by the Washington State Supreme Court in *Lybbert* still holds relevance. The Woods add that those values hold more importance when the plaintiff is pro se.

Jeffrey and Anna Wood do not indicate to this court what actions taken in *Lybbert v. Grant County* they believe were more misleading. Grant County engaged in general discovery before seeking dismissal. The county waited a longer period of time before filing its motion. These facts are not present in this appeal.

The Woods otherwise fail to cite authority for this argument. The Woods fail to develop sufficient argument on this issue. A party's failure to provide argument and citation to authority in support of an assignment of error, as required by RAP 10.3, precludes appellate consideration of the alleged error. *In re Dependency of W.W.S.*, 14 Wn. App. 2d 342, 350 n.4, 469 P.3d 1190 (2020).

Jeffrey and Anna Wood suggest that the attorneys' counsel should have warned them between July and November 2022 of the failure to serve his clients. A defendant owes no duty to alert the plaintiff that service was deficient before the expiration of the statute of limitations. *Lybbert v. Grant County*, 141 Wn.2d 29, 37 (2000); *Gerean v. Martin-Joven*, 108 Wn. App. 963, 973-74 (2001).

Statute of Limitations

Jeffrey and Anna Wood argue that the trial court erred in determining that the relevant statute of limitations period began to run on March 22, 2019. Nevertheless, Jeffrey, during the motion hearing before the superior court, declared that he served the summons and complaint on Dunn & Black "on March 21, 2022, the day before the statute of limitations expired." CP at 62. Jeffrey's contention now that the expiration occurred

at some later date conflicts with his representation to the superior court. We address the contention nonetheless.

The statute of limitations period for a legal malpractice claim in Washington State is three years, which "period begins to accrue when the plaintiff has a right to seek legal relief." *Cawdrey v. Hanson Baker Ludlow Drumheller, P.S.*, 129 Wn. App. 810, 816, 120 P.3d 605 (2005). Under the discovery rule, the statute of limitations in a legal malpractice action begins to accrue when the client discovers, or in the exercise of reasonable diligence should have discovered, the facts which give rise to his or her cause of action. *Peters v. Simmons*, 87 Wn.2d 400, 406, 552 P.2d 1053 (1976). For the discovery rule to apply, the plaintiff need not know of the legal cause of action itself. *Cawdrey v. Hanson Baker Ludlow Drumheller, P.S.*, 129 Wn. App. 810, 817 (2005). Rather, she must know the facts that give rise to that cause of action. *Gevaart v. Metco Construction, Inc.*, 111 Wn.2d 499, 502, 760 P.2d 348 (1988). A plaintiff need only be aware of the facts underlying the claim. *Cawdrey v. Hanson Baker Ludlow Drumheller, P.S.*, 129 Wn. App. 810, 817 (2005).

A cause of action accrues when the plaintiff knows or should know of some damage. *EPIC v. CliftonLarsonAllen LLP*, 199 Wn. App. 257, 276, 402 P.3d 320 (2017). When a plaintiff is placed on notice by some appreciable harm occasioned by another's wrongful conduct, the plaintiff must make further diligent inquiry to ascertain the scope of the actual harm. *Green v. A.P.C.*, 136 Wn.2d 87, 96, 960 P.2d 912 (1998). The statute

of limitations does not toll by the fact that further, more serious harm may flow from the wrongful conduct. *Green v. A.P.C.*, 136 Wn.2d 87, 96 (1998). The claimant need not be aware of the full extent of the damages. *EPIC v. CliftonLarsonAllen LLP*, 199 Wn. App. 257, 276 (2017).

Jeffrey and Anna Wood claim they still do not fully comprehend the damage caused by the attorneys. Although they assert that the statute of limitations should not expire until December 12, 2025, the logical extension of their argument is the running of the statute has not begun because they continue to learn about their harm.

The Woods misapprehend the nature of the discovery rule. The statute of limitations commences to run when the claimant knows of some harm, not the full extent of his harm. We attached Jeffrey Wood's March 12, 2019 letter to Robert Dunn expressing disappointment in the representation as an appendix to this opinion. In the letter, Jeffrey complains about Dunn's representation and the harm caused to him. Thus, the statute of limitations ran at the time that Dunn withdrew from representation on March 22, 2019.

RCW 4.16.170, Washington's tolling statute, provides, in relevant part:

> an action shall be deemed commenced when the complaint is filed or summons is served whichever occurs first. If service has not been had on the defendant prior to the filing of the complaint, the plaintiff shall cause one or more of the defendants to be served personally, or commence service by publication within ninety days from the date of filing the complaint. . . .

> If . . . service is not so made, the action shall be deemed to not have been commenced for purposes of tolling the statute of limitations.

Under RCW 4.16.170, Jeffrey and Anna Wood had until March 22, 2022 to file their legal malpractice claim against the attorneys because that date marks three years from the day Robert Dunn withdrew from representing them. At that time, the Woods had the right to seek legal relief by filing a malpractice action given that they knew of the purported deficiencies in the legal representation Dunn provided, as reflected in the letter Jeffrey sent to Dunn on March 12, 2019. The Woods filed their complaint on March 21, 2022, commencing the 90-day tolling period. The Woods needed to effectuate service of process by June 20, 2022. They did not.

Attorney Fees

The attorneys request an award of attorney fees and costs on appeal, pursuant to RAP 18.9(a). According to the attorneys, the Woods' appeal is frivolous. RAP 18.9(a) provides, in relevant part:

> [t]he appellate court on its own initiative or on motion of a party may order a party . . . who uses these rules for the purpose of delay, files a frivolous appeal, . . . to pay terms or compensatory damages to any other party who has been harmed by the delay or the failure to comply or to pay sanctions to the court.

An appeal is frivolous if, considering the entire record, the court is convinced that the appeal presents no debatable issues on which reasonable minds might differ and that it is so devoid of merit that there is no possibility of reversal. *Lutz Tile, Inc. v. Krech*,

136 Wn. App. 899, 906, 151 P.3d 219 (2007). This court resolves all doubts to whether an appeal is frivolous in favor of the appellant. *Lutz Tile, Inc. v. Krech*, 136 Wn. App. 899, 906 (2007).

The Woods' appeal borders on the frivolous. Nevertheless, when resolving all doubts, we rule otherwise. The Woods' argument on waiver presents a debatable issue, particularly since no Washington case directly addresses it.

CONCLUSION

We affirm the superior court's dismissal of Jeffrey and Anna Wood's malpractice suit against Dunn & Black and Robert Dunn. We deny the attorneys reasonable attorney fees and costs on appeal.

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.

Fearing, J.

WE CONCUR:

Staab, A.C J.

Cooney, J.

APPENDIX

P.V.F. Worldwide, Inc.
------- E. Harvard Vistas Lane
Newman Lake, WA 99025

March 12, 2019

Mr. Bob Dunn
Dunn and Black Law Office
--- North Post Suite ---
Spokane, WA 99201

Dear Bob,

It disappoints both Anna and me to see that you are so willing to pull the plug on our litigation at such a critical point in this case, just on the eve of when our 9th Circuit appeal is to be submitted. I just hope we can find an attorney to accept this case and complete our appeal letter by the deadline. I also hope, that by you and your law firm abandoning us at this point, it does not hurt our chances of the 9th Circuit taking up our appeal. That would really be unfortunate for us. This would pretty much doom our ability to be awarded any kind of meaningful settlement.

You had mentioned you have a business to run, as I also have a business to run. It is common knowledge that you and I have to be paid for our services. You are a service oriented business, and you bill clients for hours of service. I am also a service oriented business. When you, Anna, and I met the very first day you asked what Anna and I wanted from you. I said, "I would like for you to represent us in our case against Milionis Construction." You responded with, "No, that is not what I mean. Do you want to play offense or defense?" I responded with "Offense." You said, "Great," that is what I wanted to hear." Through this entire litigation I have not once experienced, nor have I witnessed what I would perceive as an offensive move or play. I actually at times found myself arguing or having a difference of opinion with my own counsel. Not, once did I feel Anna's or my interests were being addressed. Case in point, a few instances and not limited to:

1. The site visit with Ryan Poole, You (Bob Dunn), and Mr. Paul Shelton (Independent Contractor hired by Cincinnati). The purpose of the

site visit was to discuss the elevation issue, and to discuss the possible fixes. The West foundation wall was argued it should not have been stepped down to meet grade. Instead the grade should be raised to ensure a zero entry into the house as the construction plans indicated. I found myself arguing against you and Mr. Shelton on the proposed fixes to the house. I was arguing the foundation wall needed to be raised, you and Mr. Shelton were arguing that a retaining wall could be built to satisfy the fix. First of all, this retaining wall would have come out of the landscape budget, and would have taken the issue out of the settlement litigation. In addition, it would not have fixed the actual problem. The point being, it probably cost me about a thousand dollars for that site visit and it solved nothing. The site visit left me scratching my head as to why I just paid $1 K to argue with my attorney and the independent contractor Mr. Shelton. And to add insult to injury and to my surprise, I get an invoice for approx. $500 for a variance from the county that was initiated by Mr. Paul Shelton. As I stated earlier, Mr. Shelton was the independent contractor for Cincinnati Insurance. Mr. Shelton was being paid for by Cincinnati. So, I can only assume that all expenses incurred by Mr. Shelton would have been paid for by Cincinnati Insurance. So, I was tasked with paying for a county variance which assisted in excusing Milionis Construction from any over height liability of the house, and at the same time cost me $500. And this being and issue to this day has not been resolved.

2. The fact that you did not disclose to Anna and me, the fact that you represented Mr. Milionis in a previous case, and also represented his wife in a litigation case.

3. Additional discovery from my contractor (Edward Smith Construction) was requested by Mr. Paul Shelton, during mediation, without my knowledge and consent. The mediation agreement drafted up at our mediation was that I or Anna were not to have any contact with Mr. Paul Shelton while he was engaged with his independent construction evaluation. So, when he engaged my personal contractor Edwards Smith, without my consent or knowledge, this expense should have been part of the independent investigation. All expenses associated with this discovery request should have been at the expense of Cincinnati. Instead, I was invoiced in excess of $17K for additional discovery work requested by Mr. Paul Shelton. I requested Dunn and Black send this invoice over to Mr. Thorner (our mediator) to be submitted to Cincinnati for payment. I was advised by you and Ryan Poole to pay the invoice as we did not want to upset the apple cart and "Piss" off Cincinnati Insurance at this point. This

was an additional $17K of needless expense I should not have been responsible for, but was forced to pay. My counsel should have fought to have these expenses paid by Cincinnati Insurance. My counsel did nothing to satisfy our side in this issue.

4. Piercing the Corporate Vail: Through this entire litigation, you emphasized this is not, and should not be personal. This should be about getting funds to fix the construction defects and move forward with the construction of the house. I brought to you the evidence that would set up the possible argument enabling us to go after Milionis Construction and potential personal assets. The evidence I presented, I felt at first was met with some reluctance. Your stance and argument that this should not be personal, and it would be difficult to get a judge to rule in our favor. But, it was a very strong case that he was doing business, and taking payment outside the corporation structure. It seemed I was battling an uphill battle to persuade my counsel to pursue this avenue. Since no discovery by my attorneys was initiated, I was the one who took on the challenge of discovery and found that the personal checks written to Steve Milionis went to three different accounts. It wasn't until you filed to have these account records provided; we found that two of the accounts were personal accounts. It was into the third account where we found approx. $200K had been deposited. I was told by my counsel, Ryan Poole that the account information was intercepted by Mr. McFetridge (Attorney for Mr. Milionis) and was being withheld from our possession. I would have thought that my counsel should have taken the necessary steps, and demanded that the account information be turned over as a condition of pursuing a stipulated judgment. To this day, I have not seen any of that account information. It is also my belief that this information would have been vital to receive before agreeing to enter into a Stipulated Judgment and accepting Mr. Milionis's total liabilities.

On several occasions, I made offers to convert our agreement for legal services from an hourly basis to a contingency agreement. I was willing to pay a premium to you based on success. You repeatedly rejected these requests, stating that you did not enter into such agreements. I, however, would imagine that many of the suits you have filed with the City were on contingencies. I also feel that when our case changed into a bad faith suit to collect the stipulated judgment, that this should have been an option, especially when Cincinnati began taking such a hard line. I made a huge investment into this case in reliance upon your early assessments of

> success, and now that Cincinnati is winning, you are not willing to shoulder part of the risk.
>
> In closing, you have invoiced me approx. $320K for services. It is hard for me to see what I have received of value from your services over the past 2-112 years. I cannot hold your product in my hand, or monitor the wise spending of my money. So, excuse me if I have gone on a reflection of some of your services, and what I have purchased. You ask, "When are we going to be paid?' As I have stated to you many times and again this last Friday, 3/8/19, on the phone, I have expended all liquid cash, and am in the process of selling off items that will resort in cash. We sold our home, of 34 years, and all proceeds went to Dunn and Black. I am putting together the sale of my boat. I have other things for sale that should net in the neighborhood of an additional $140K. This is cash that would have been applied to my account. I am now faced with hiring another attorney and paying for a retainer. So, the cash that was slated to go to you and your law firm will need to be diverted. I am just getting started with two projects in Kenya. Upon the completion of those projects, there will be more funds available. We, in no way, have any intentions of not paying you. In fact, we have provided you and your firm with a substantial amount of money, approximately $163,000.00 to this point.
>
> As soon as I am able to get another law firm to step in and take over this case, I will let you know.
>
> Regards
> Jeffrey C. Wood

CP at 49-51.

FILED
OCTOBER 10, 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

JEFFREY WOOD AND ANNA WOOD, Appellants, v. DUNN & BLACK, PS, a Washington Professional Service Corporation &, ROBERT A. DUNN, Attorney at Law, Respondents.	)	No. 39934-6-III ORDER DENYING: (1) MOTION FOR CONSIDERATON OF ADDITIONAL EVIDENCE ON REVIEW, AND (2) MOTION FOR RECONSIDERATION

THE COURT has considered appellants Jeffrey and Anna Wood's motion for consideration of additional evidence on review; respondents Dunn & Black, P.S. and Robert A. Black's answer; the declaration of Daniel C. Mooney in support of the respondent's answer; the appellants' reply; the appellants' motion for reconsideration of this court's September 19, 2024, opinion; and the record and file herein.

The appellants have not satisfied the six elements of RAP 9.11, the rule that permits this court to direct that additional evidence be taken on review. Although this court may waive the requirement that each element of RAP 9.11 be satisfied, to serve the ends of justice, we decline to do so here. The letter from the Office of the Secretary of State would probably not have changed the outcome of the trial court's summary judgment decision, given that the appellants have not established compliance with RCW 23.95.450. Lack of compliance with RCW 23.95.450(1) through (3) renders the method of service outlined in RCW 23.95.450(4) unavailable to the appellants.

No. 36634-6-III
Wood v. Dunn & Black, P.S.

IT IS ORDERED that the appellants' motion for consideration of additional evidence on review is denied.

IT IS FURTHER ORDERED that the appellants' motion for reconsideration of this court's September 19, 2024, opinion, is denied.

PANEL: Judges Fearing, Staab, and Cooney

FOR THE COURT:

Lawrence-Berrey, C.J.

ROBERT LAWRENCE-BERREY
Chief Judge

Appendix B

Sara R. Shapland

From: Daniel C. Mooney
Sent: Monday, October 31, 2022 8:57 AM
To: 'Jeff Wood'
Cc: Marie Vestal Sharpe
Subject: RE: Jeffrey Wood RE: Request for Information on News Article

Good morning, Mr. Wood-

I was not accusing you of having written or initiated a news article for a paper about this case.

I was asking whether you published notice of the lawsuit in a newspaper as required for service on a corporation through the Secretary of State.

Thank you,
Dan

From: Jeff Wood [mailto:jwood@pvfworldwide.net]
Sent: Monday, October 31, 2022 8:44 AM
To: Daniel C. Mooney <dcm@leesmart.com>
Cc: Marie Vestal Sharpe <mvs@leesmart.com>
Subject: RE: Jeffrey Wood RE: Request for Information on News Article

Mr. Mooney,
You made an accusation that I initiated, or wrote a news article for a paper about this case. Just out of curiosity, would you forward to me a copy of the news article, if there is one? Or, direct me to the newspaper that was writing the article, and the day it was published. I am unable to find this article you speak of.

Thank you in advance.

Jeffrey Wood
Phone: 509-991-7191
Fax: 509-924-0096
Email: jwood@pvfworldwide.net

From: Daniel C. Mooney [mailto:dcm@leesmart.com]
Sent: Tuesday, October 25, 2022 3:35 PM
To: jwood
Cc: Marie Vestal Sharpe
Subject: RE: Jeffrey Wood RE: RFA Request

I'll call you at 2:30.
Dan

From: jwood [mailto:jwood@pvfworldwide.net]
Sent: Tuesday, October 25, 2022 3:34 PM
To: Daniel C. Mooney <dcm@leesmart.com>

Cc: Marie Vestal Sharpe <mvs@leesmart.com>
Subject: RE: Jeffrey Wood RE: RFA Request

Mr. Mooney
Anytime after 2:00 PM at 509-991-7191
Just let me know what time I can expect your call.

Sent from my Verizon, Samsung Galaxy smartphone

-------- Original message --------
From: "Daniel C. Mooney" <dcm@leesmart.com>
Date: 10/25/22 3:20 PM (GMT-08:00)
To: jwood <jwood@pvfworldwide.net>
Cc: Marie Vestal Sharpe <mvs@leesmart.com>
Subject: RE: Jeffrey Wood RE: RFA Request

Ok. What's the best number and time for me to call?

Thanks,
Dan

From: jwood [mailto:jwood@pvfworldwide.net]
Sent: Tuesday, October 25, 2022 3:19 PM
To: Daniel C. Mooney <dcm@leesmart.com>
Subject: RE: Jeffrey Wood RE: RFA Request

I will be available Thursday afternoon.

Sent from my Verizon, Samsung Galaxy smartphone

-------- Original message --------

From: "Daniel C. Mooney" <dcm@leesmart.com>

Date: 10/25/22 3:10 PM (GMT-08:00)

To: "Jeffrey P. Downer" <Jpd@leesmart.com>, Jeff Wood <jwood@pvfworldwide.net>

Cc: Marie Vestal Sharpe <mvs@leesmart.com>

Subject: RE: Jeffrey Wood RE: RFA Request

Hello Mr. Wood-

I am available on Thursday to talk. How about 10:00 am?

Thanks,

Dan Mooney

From: Jeffrey P. Downer
Sent: Tuesday, October 25, 2022 2:57 PM
To: Jeff Wood <jwood@pvfworldwide.net>; Daniel C. Mooney <dcm@leesmart.com>
Subject: Fwd: Jeffrey Wood RE: RFA Request

My partner Daniel Mooney is handling this case. I have cc'ed him on this email so that he can respond to you directly.

Jeffrey P. Downer

jpd@leesmart.com

(206) 621-3482

Begin forwarded message:

> **From:** Jeff Wood <jwood@pvfworldwide.net>
> **Date:** October 25, 2022 at 2:33:45 PM PDT
> **To:** "Jeffrey P. Downer" <Jpd@leesmart.com>
> **Subject: Jeffrey Wood RE: RFA Request**

Mr. Downer,

I would like to request a CR26(i) conference to discuss your client's objections to the RFA's. I would like to discuss why the Defendants don't believe service was perfected per the attached.

Attached are two Non Service attempts by two different entities, copy of a Certified Mail receipt, a copy of a receipt from the Washington State Secretary of State, and a copy of a Declaration of Service. I just wanted to make sure you had copies of everything that was filed for this issue.

Your attention to this matter would be very much appreciated. I will call you on October 26 at 2:00 P.M. unless you respond with a different time you are available.

Jeffrey Wood

Phone: 509-991-7191

Fax: 509-924-0096

Email: jwood@pvfworldwide.net

LEE SMART P.S., INC.

January 06, 2025 - 1:46 PM

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	103,609-4
Appellate Court Case Title:	Jeffrey Wood, et al. v. Dunn & Black, PS, et al.
Superior Court Case Number:	22-2-00741-3

The following documents have been uploaded:

- 1036094_Answer_Reply_20250106134251SC277577_0282.pdf
  This File Contains:
  Answer/Reply - Answer to Petition for Review
  The Original File Name was Answer to Petition for Review.pdf

A copy of the uploaded files will be sent to:

- EservicePAL@LibertyMutual.com
- jpd@leesmart.com
- jwood@pvfworldwide.net
- kxc@leesmart.com
- ltl@leesmart.com
- mls@leesmart.com
- srs@leesmart.com

Comments:

RESPONDENTS' ANSWER TO PETITION FOR REVIEW

Sender Name: Taniya Chai - Email: ttc@leesmart.com
Filing on Behalf of: Daniel Christopher Mooney - Email: dcm@leesmart.com (Alternate Email: sxr@leesmart.com)

Address:
701 Pike Street, Ste. 1800
Seattle, WA, 98029
Phone: (206) 627-7990

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