SUPREME COURT
OF THE STATE OF WASHINGTON

Jeffrey & Anna Wood
Plaintiff/Appellant

V.

Dunn & Black P.S. & Robert A
Dunn
Defendant/Respondent.

APPELLANT PETITION FOR REVIEW

Jeffrey C. Wood Pro Se
21319 E. Harvard Vistas Ln.
Newman Lake, Washington,
99025 (509) 991-7191
jwood@pvfworldwide.net
Appellant

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RULES

I. IDENTITY OF PETITIONER

Jeffrey & Anna Wood were as the Plaintiffs in the Spokane County Superior Court Cause No. 22-2-00741-32 and Appellants in Jeffrey and Anna Wood v. Dunn & Black P.S. and Robert A. Dunn 39934-6-III,

II. CITATION TO COURT OF APPEALS DECISION

Appellant seeks review of the written decision issued in Jeffrey Wood and Anna Wood v. Dunn & Black P.S. and Robert A. Dunn 39934-6-III, dated Sept. 19, 2004 and the order on Appellant's Motion to Consider additional evidence and for Reconsideration dated October 10, 2024.

III. ISSUES PRESENTED FOR REVIEW

1. The Court of Appeals failed to apply the standard set forth by the Washington State Supreme Court in Spencer v Franklin Hill Case No. 102147-0 May 9 2024

3. The Court of Appeals failure to consider Respondent/Defendant's failure to present evidence, and assert false assertions under RPC 3.3 to the trial court and the appellate court for consideration clear shows a bias against

appellant.

4. The Court of Appeals erred in denying Appellant's motion in determining that the additional evidence presented for review violates RCW 23.95.450, RAP 9.11 and Articled 3 of the Washington State Constitution for the appellants right to due process .

5. The Court of Appeals erred when they dismissed/denied the motion for the additional evidence without any explanation, past rulings, or case precedent, authority in the name of judicial equity for the plaintiff.

6. Err in the Clerks office inputting additional evidence into the computer system incorrectly clearly benefitted the defendant/respondent.

IV. STATEMENT OF CASE

This Division III ruling is reviewable under RAP 13.4b(1,2). *(1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or (2) If the decision of the Court of Appeals is in conflict with a published decision of the Court of Appeals;*

On March 10, 2019 Mr. Jeffrey Wood acting Pro Se, hired 2 process servicing companies to provide process of servicing duties to the law firm Dunn & Black P.S. and Robert A. Dunn.

Mr. Wood acting Pro Se because he was unable to secure a legal malpractice attorney in Spokane as well as state -wide, Mr. Wood was engaged in a home construction law suit, a chapter 13 bankruptcy, and foreclosure, and lacked the experience to engage a servicing company firm for a proper service of process. As the 90 day service of process was due to expire, and defendant was clearly avoiding service of process, the plaintiff filed 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. The summons and complaint was filed on March 10, 2022. The 90 day servicing deadline was June 10, 2022. Mr. Wood received an acknowledgment for the Washington State Secretary of State on June 3, 2022 that the complaint was received and filed under file number 31240. Plaintiff and the Defendant were both mailed copies of the acknowledgement from the Washington State Secretary of State's Corporate Division office. **(Exhibit "A")**

On October 25, 2022 Mr. Wood requested a CR 26(i) conference to discuss the defendant's objection to their submitted

Request for Admission regarding service, to discuss why the defendants didn't believe the service was not perfected per the email attachments plaintiff provided to the defendants counsel. **(Exhibit "B")** The email sent to defense counsel clearly included a copy of the acknowledgement from the Secretary of State which was attached to the email, and reply of the email was acknowledged by the defense counsel as received. **(Exhibit B).** The defendants counsel did not respond to plaintiff's request to a CR 26(i) conference, and instead proceeded with a CR56 Summary Judgment for dismissal for improper service of process. Defendant's motions was filed with the Superior Court on November 3, 2022. Although the defendants counsel will claim that anyone acting Pro Se is to be held to the same standards as a licensed, educated attorney. Mr. Wood contends this is not a reasonable assertion or law. Mr. Wood was caught off guard. Dealing with an elderly parent, law suit against an insurance company, foreclosure and chapter 13 bankruptcy, (most all stemming from this case of a legal malpractice lawsuit) and expected to write a motion to a CR 56 summary judgment for

improper service of process at the beginning of the upcoming holiday season, when Mr. Wood was under the impression service was proper by issuing the summons and complaint to the Washington State Secretary of State as an authorized entity for a corporations registered agent.

Mr. Wood was faced with securing some type of legal counsel to assist in this endeavor, and hired Mr. Ryan Best to author a response motion to a CR 56 summary judgment motion and, and to represent him in court. Mr. Wood acting Pro Se, and dealing with numerous other life's issues forgot about the acknowledgement letter from the Secretary of State acknowledging receipt of the summons and complaint on behalf of Dunn & Black P.S., and forgot to inform his acting attorney of the letter, which therefore was not presented to the trial court for consideration. Interesting enough the Defense counsel did not present this evidence to the trial court either. Defense will argue that the plaintiff didn't offer the evidence to the court. Mr. Wood asserts it was an oversight on his part, and would not have knowingly left out evidence that would have

complimented his argument that service was proper. A licensed attorney takes an oath to not withhold evidence from a trial court as well as an Appellate Court under RPC 3.3(a)(3). Defendant's attorney committed an unethical act, and violated the very code of ethics and oath they are required to uphold. Defense counsel was provided a copy of the acknowledgement letter from the Washington State Secretary of State's office as well as in an email attachment on October 25, 2022, **(Exhibit "A" and "B")** and elected to ignore a CR26(i) request, but went ahead and filed the CR 56 Summary Judgment with the trial court anyway without acknowledging this evidence and inserting it into their summary judgment brief.

Through the trial court proceeding, as well as the Appellate court process, not once did the defense bring forward the acknowledgement letter from the Washington State Secretary of State's office acknowledging receipt of the Summons and Complaint on June 1, 2022. This was 10 days prior to the 90 day service of process time afforded a plaintiff to provide service, and the defendant corporation consistently denied ever receiving the

summons and complaint.

Mr. Wood presented both servicing companies 2 copies of the summons and complaint. One to serve Dunn and Black P.S. (Corporation), and one copy to serve Robert A. Dunn (Individual). In the case of Spencer v Franklin Hill Health, Spencer did not send a registered letter or post notice in the newspaper. In Spencer v. Franklin Hill, Spencer also was also under the impression service was perfected. *Washington State Court of appeals Division III Case No. 39934-6 June 1, 2023, and Washington State Supreme Court Case No. 102147-0 May 9, 2024* Mr. Wood acting Pro Se knew the defendants were avoiding service, and was not going to be served. *Court of Appeals Division III Case No. 39934-6-III P.2-4* Mr. Wood then sent a copy of the summons and complaint to the Washington State government agency responsible for providing service to the corporations registered agent. It wasn't until after the Statute of Limitations ran out did Mr. Wood receive acknowledgments from the servicing companies that they were unable to serve the registered agent of Dunn and Black P.S. and Mr. Robert A. Dunn. But, Mr. Wood was still under the impression that service was

perfected by the Washington States Secretary of State's acknowledgment letter date June 1, 2022. The Secretary of States letter did not state "We accept this summons and complaint pending verification the summons and complaint was sent by certified letter to the defendant, or that a notice was posted in the newspapers as outlined under RCW 4.23.95.450". No conditions were noted for acceptance. **Exhibit "A"** The acknowledgement States,

"*The undersigned here by states that they are the duly appointed and acting clerk in the office of the Secretary of State responsible for the receipt and the processing of the service of process documents under the Washington State statute RCW 23B.18.040 and or RCW 23.95.450* The summons and complaint was received, filed, and copies sent to Dunn & Black P.S. and Jeffrey and Anna Wood on June 3, 2022 prior to the June 10, 2022 90 day deadline. With this understanding and acknowledgement, the summons and complaint was received, and service was perfected.

V. ARGUMENT

Petitioner seeks review by the Washington State Supreme Court

pursuant to RAP 13.4b(1,2).

A. The Court of Appeals Division III was misinformed or the lack there of, because the Panel were not presented all the facts prior to their 19 page unpublished opinion September 19, 2024.

The opinion states: "The [defense] attorney asserted that the Woods never served process on either defendant". This is a false statement by no fault of the panel, as they were not presented with all the facts associated with this case. Appellant filed an additional evidence motion prior to this authored opinion, and through the processing by the court clerk's office failed to input the additional evidence into the computer correctly, and was not presented to the panel prior to the opinion. **Attachment "E".** A Reconsideration motion was filed September 27, 2024 under RAP 12.4 to formally request that the panel withdraw the filed opinion, and consider in light of the Appellant's motion, which addresses the crucial issue that would impact the panel's decision that the Appellant did not validly serve either defendants in time to toll the running of the statute of limitations.

The additional evidence presented should have rendered this complete opinion of September 19, 2024 immaterial. As the Appellant's motion clearly establishes, Defendant law firm Dunn & Black was served within 90 days of the filing of the Appellant Complaint. A costly and unfortunate err by the appellate clerk's office for Jeff and Anna Wood as well as the appellate court panel before authoring their September 19, 2024 unpublished 19 page opinion. *Jeffrey Wood & Anna Wood v. Dunn & Black P.S. (Corporation) and Robert A Dunn (Individual) Case No. 39934-6-III September 19, 2024*

B. The Court of Appeals Decision III Conflicts with the Appeals Court Division III and Washington State Supreme Court's opinion Spencer v Franklin Hill.

On November 3, 2022 Dunn and Black P.S. filed a motion to dismiss for lack of jurisdiction and insufficient service of process in the Spokane County Superior Court without presenting all of the evidence in their possession. On March 29th 2023 the Superior Court Granted Summary Judgment for improper service of process. Plaintiff filed a reconsideration

motion on April 10, 2023. The motion for reconsideration motion was denied on August 8, 2023. An appeal was filed with the Washington State Court of Appeals Division III on November 13, 2023. A request for oral arguments were requested, and originally granted. Upon Mr. Wood's preparation for oral Arguments Mr. Wood uncovered a document (Acknowledgement receipt for the filing of the summons and complaint) on behalf of the defendant Dunn and Black P.S. on June 1, 2022. A document of importance as it showed Dunn and Black had been perfectly served the summons and complaint as per RCW 23.95.450 in relation to the Appeals Court Division III and the Washington State Supreme Court's ruling in Spencer v Franklin Hill. *Washington State Supreme Court Case No. 102147-0 May 9, 2024*

Although the additional evidence was going to be presented in oral arguments scheduled for June 5, 2024 the court canceled **(Exhibit C)** the oral arguments hearing causing Mr. Wood to file an Affidavit of Jeffrey Wood, and an additional evidence motion under RAP 9.11 on May 21, 2024. *Jeffrey*

Wood & Anna Wood v. Dunn & Black P.S. (Corporation) and Robert A Dunn (Individual) Case No. 39934-6-III September 19, 2024 An acknowledgment letter was issued by the Appeals Court Division III court on May 24, 2024 to the plaintiff acknowledging receipt and delivery of the additional evidence to the panel for consideration. **(Exhibit D)** An opinion ruling was issued by the Appeals Court Division III on September 19, 2023. However, the panel in its written opinion did not noticeably address the additional evidence filed with the appellate court on May 21, 2024 and June 1, 2024. Mr. Wood contacted the appellate court, and his case manager only to find out, the additional evidence was inputted into the computer system incorrectly, and the additional evidence was not seen by the appellate panel before issuing their ruling on September 19, 2024. **(Exhibit E)** Mr. Wood was apologized to, and was ensured it was now in front of the panel for review. This mistake by the clerk's office was costly in time and effort to the Appellant under RAP 9.11. It is clear the appellate court took no time or interest to facilitate equity, or to consider the additional evidence

by authoring their half a page order denying (1) motion for consideration of the additional evidence on review, and (2) Motion for reconsideration. *Washington State Appeal Court Division III Case No. 39934-6-III Dated Oct 10, 2024.*

The Appellate erred in not doing their due diligence in the name of equity and Article 3 of the Washington State Constitution of due process. They did not consider that section a1, a2, a3 and a6, were clearly met under RAP 9.11. It is clear 4 of the 6 conditions were clearly met. One could argue all 6 elements were met. The appellate court erred by waiving all 6 elements of Rap 9.11 be satisfied, to serve the ends of justice. *Washington State Appeal Court Division III Case No. 39934-6-III Dated Oct 10, 2024*

The appellate erred in not sending the additional evidence (at the very least) back to the trial court under RAP 911 (b). This err is truly not equality of justice under the law. Even though under RAP 9.11(b)

*"The appellate court will **ordinarily** direct the trial court to take additional evidence and find the facts base on that evidence".*

This would have been (at a minimum) a fair equitable solution if

the appellate court just wanted to get this case off their desk. The ruling by the appellate court, was not equality under a law. *RAP 9.11* This clearly aided the defense when the appellate court (without noticeably evaluating all of the evidence), found reason to dismiss the additional evidence for review. Mr. Wood's motion to supplement the record with the additional evidence filed a reconsideration motion to ensure appellants' right were protected. In this case the additional evidence was denied without siting any past case precedence, court rulings, or authority to collaborate this dismissal/denial.

It is clear the appellate court erred in not exploring, and fully considering the Washington State Supreme Court Ruling in Spencer v Franklin Hill when evaluating RCW 23.95.450 and siting "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 appellant". *Washington State Supreme Court Spencer v. Franklin Hill Health Case # 102147-0 May 9, 2024;* It was clear RCW 23.95.450 (1) was not going to be accomplished no matter who was attempting to serve the

defendants. The defendant was an attorney and knew how to avoid service of process. Spencer v Franklin Hill was not even mentioned in their October 10, 2024 ruling of the Division III Appellate Court. *Jeffrey Wood and Anna Wood v. Dunn & Black P.S. and Robert A Dunn. Washington State Appeals Court Division III Case No. 39934-6-III. October 10, 2024.*

The Appellate Court erred when not considering the defense clearly withheld evidence from the trial court as well as the appellate court. A clear and egregious act of deception under RPC 3.3(a)(3) by the defendants. This is clearly not equity for the plaintiff.-The defendants assert "Defendants have made no attempt to bias the court or otherwise act improperly, so no relief under CR 50(a)(9) should be afforded." (CP 130 Ln 16-18) **Exhibit F).** This is an absolute false statement under RPC 3.3(a)(1)) asserted to the trial court by the defendants in this case. An officer of the Court requires candor under RAP 3.3(a)(3) towards the tribunal to not withhold from the Court evidence or legal authority that would impact the Court's consideration of motions or actions, even when the defendants

have stated both to the trial and appellate courts that "Neither Defendants were served". In this matter, a patently incorrect and misleading statement. Dunn admits that the Woods supplied them with the certificate before their motion for summary judgment, and do not deny receiving it from the Secretary of State, but failed at any time to bring it to the courts attention in this matter. Equity does not and should not reward a party for their own misdeeds or shortcomings.

The additional evidence presented to the Appeals Court was not fully considered. Although improper service of process cases seem (in more cases than not) to stem from the plaintiff not properly handing the summons and complaint to the proper individual with the authority to accept the serving from a servicing company. With that understanding, step 2 and 3 of RCW 23.95.45, Mr. Wood, and knowing personal service to Mr. Dunn was impossible to accomplish, and as well as Mr. Dunn being listed as the registered agent of the corporation was avoiding service. It is obvious Mr. Dunn was not making it easy for the server to perfect service, and as the defendant is also an

attorney, knew how to avoid the process of service. Even if Mr. Wood's hired a servicing company, and the servicing company handed the summons and complaint to someone other than the registered agent Mr. Robert Dunn, then Mr. Wood would most certainly be arguing to either the trial court or the appellate court that the process of service was proper, and the defense would argue it was not handed to the proper person. *Case in point, Spencer v. Franklin Hill. Washington State Supreme Court Case No. 102147-0 May 9, 2024;* It was Mr. Woods's belief, and thought process by mailing a copy of the summons and complaint to the Washington State Secretary of State Corporation Division, the very entity representing the registered agent of Dunn & Black P.S. Corporation, this would ensure it was received, and notification be sent to the registered agent of Dunn & Black P.S. a Washington State Corporation. As the evidence shows the summons and complaint was received, and filed under File No. 31240, with no conditions attached on June 1, 2022 acknowledgement by the Washington State Secretary of State. **Exhibit A** This acknowledgement left Mr. Wood with the

belief service was proper, and perfected. If there had been printed conditions of acceptance inserted into the acknowledgement of receipt from the Secretary of States letter of acceptance, Mr. Wood would have had 10 days to complete any additional requirements before the 90 day service period.

Although Defendants/Respondent argues that the literal language/requirements of RCW 23.95.450 were not met, and that the Washington State Supreme Courts recent decision in Spencer v. Franklin Hill Health-Spokane, LLC,___Wn2d____(Case No. 102127-0), does not "do not" with strict compliance of service of process statutes, the Defendants/Respondent as well as the Appellate fail to rebut the holding of Spencer that literal compliance with statutory service obligations should not always be the standard. Spencer v. Franklin Hill Health Case No. 102147-0 May 9, 2024 states,

> *"The purpose of service is to provide **due process**, which requires notice and an opportunity to be heard (citation omitted). We conclude that the service statute is to be **LIBERALLY** construed in order to effectuate the purpose of the statute while adhering to its spirit and intent.' Sheldon v Fettig, 129 Wn 2d 601, 607, 919 P 2d 1209 (1996); construing the service statute as to give*

> *meaning to its spirit and purpose, guided by the principles of due process." Statutes that prescribe methods of service are the benefit of both the plaintiff and the defendant:* ***The dual purpose of the statute is to (1) provide means to serve defendants in a fashion reasonably calculated to accomplish notice, and (2) allow injured parties a reasonable means to serve defendant.' Sheldon, 129 Wn.2d at 608.***

The obvious purpose of RCW.95.450 is to provide notice to the Defendant of a suit that has been filed against them. The fact the Woods made a good faith effort to accomplish service by using (subsection 1), it fell short to no fault of the Woods. Arguably the Woods only satisfying the last requirement (subsection 4) does not mean the purpose of the statute was not met. It is undisputable the spirit of the statute was met in this case, but the appellate court chose to ignore. Due process was provided to the Defendants as they apparently were served by the Secretary of State Corporation Office with the letter dated June 1, 2022.

(Exhibit A)

VI CONCLUSION

Mr. Wood acting Pro Se does not have all of the legal answers nor does he have the knowledge base required to seek justice in

this legal quagmire of false statements, withholding evidence, and deceptions. And it is clear the defendants have taken full advantage of the legal maneuvering, deception, lack of candor, ethics violations to keep Mr. Wood (acting Pro Se) from presenting his case on merits in a trial court of law.

It is fact that the defendants received a copy of the Washington State Secretary of State's acknowledgement from the plaintiff, as well as from the Secretary of State's office prior to filing their CR 56 Summary Judgment motion for improper service of process, and withheld this acknowledgement from the trial court as well as the appellate court in clear violation of RAP 3.3(a)(3). **Attachment A and B**

It is fact Mr. Wood uncovered the acknowledgment from the Secretary of State by accident.

It is fact that Mr. Wood filed an emergency consideration motion of new evidence to the appellate court for review 4-1/2months prior to the appellate court's ruling September 19, 2024.

It is fact that (for whatever reason) the emergency motion

for additional evidence for the appellate panel to review was inputted into the computer system incorrectly by the court clerk, and never seen by the appellate panel prior to their 19 page opinion being written on September 19, 2024.

It is fact that the defendants and the Appellate Court never made reference or rebutted the Washington States Supreme Court ruling in Spencer v. Franklin Hill Health May 9, 2024 ruling. It is inconceivable to Mr. Wood when the ruling from the Washington State Supreme Court clearly states that the service statute is to be "LIBERALLY construed in order to effectuate the purpose of the statue while adhering to the spirit and intent". The ruling, wisdom, and common sense by the Supreme Court in Spencer v. Franklin Hill Health, fell short by the appellate court towards the appellant in this case.

In this is the big city of Spokane where everyone knows each other in the circle of legal authority. It pains, and saddens Mr. Wood to have to write this paragraph, but Mr. Wood hopes this isn't a case where all of its unjust is to protect a law firm, in Spokane from answering for their misdeeds and

misrepresentation, and unethical behavior towards their former clients the Woods. In addition, the appellate court ignoring the defense counsels unethical behavior. In the arena of law, it is the systems responsibility, and is supposed to hold members to a higher standard, and accountable to police themselves. It is unfortunate to see how all of this is playing out. Mr. Wood knows this Supreme Court petition for review is the last stop, and last chance to seek justice. This is the perception of Mr. Wood, an 8 year fight to seek resolution to an injustice, and hopes this perception does not offend this Supreme Court. Mr. Wood feels that the system to date falls short for the little guy. In authoring this petition for review as a Pro Se appellant, it gives him no pleasure, but it is clearer than ever on how flawed, and unjust this whole legal process has been.

After Mr. Wood reading RAP 13.4b(1,2) over and over again, it finally hit Mr. Wood, and has given him a better understanding, and clarity of how the legal system works, and what he believes is potentially happening here in this appeal. Spencer v. Franklin Hill's ruling by the Supreme Court was not

directly refuted or rebutted by the defense or the appellate court, because an attempt to directly refute or rebut the Supreme Court's ruling in Spencer would not have had any merit. The ruling in Spencer is pretty straight forward, and no room for legal misinterpretation. And, if an attempt by the defense and the appellate court to refute or rebut the Supreme Court's ruling of Spencer, would have given the appellant a more direct avenue to file a petition for review. The appellate court would have certainly erred in this case in an attempt to rule against the Supreme Court's ruling in Spencer v. Franklin Hill, and ending this appeal in a potential out right reversal of the appellate court's ruling. This appellate court's ruling not only appears to indicate an attempt to derail and under mind the appellant's attempt to seek justice, but also appears to under mind and ignore the wisdom and authority of this Supreme Court. This whole process is just not right. For these reason, (and it is more evident than ever), this pro se appellant seeks and needs assistance from this Supreme Court in the name of equality of justice. Mr. Wood, in the true name of equality and justice, is

asking this court to unravel this legal quagmire, inject wisdom and common sense, and acknowledge the actions from the defendant, defense counsel, and the appellate court is just not right, and overturn the outright dismissal of the appellate court's ruling.

The appellate court asserts that the new evidence presented would not have changed the outcome of the trial court dismissing the case under a CR56 Summary Judgment. This assertion in this ruling is pure speculation on the appellate courts part. This assertion made by the appellate court sited no instances, past cases, rulings, opinions, or authority that substantiates this statement. But, this assertion will go down in the written record, and could potentially bias this court as well as the trial court. It is clear the appellate court took no interest or care in ruling on the additional evidence put forth by the appellant for an honest ruling in the name of equality.

This case to this point has offended equity and justice, and should not be decided on procedural malfeasance perpetrated, and asserted by the defendants, or the appellate

court not having the desire to do its due delegates in Spokane, against a long standing member of the legal community, in that the ruling by the appellate court, that the Supreme Court's ruling in Spencer v Franklin Hill Health has no relevance.

What does equity look like in this case? To the appellant, equality is not a complete dismissal by the appellate court.

If this Supreme Court truly believes in their wisdom and written opinion that RCW 23.95.450 should be liberally construed in the name of equity to the plaintiff as well as the defendant, as in Spencer v. Franklin Hill, then equity would only mean three things,

1. At the very least, remand this case back to the trail court for discovery and an evidential hearing on the merits.

2. Since Mr. Wood was under the impression service was completed 10 days prior to the 90 days allowed for service of process, have this court put 10 days back on the clock, and allow Mr. Wood the opportunity to complete steps 2 and 3 of RCW 23.95.450 (if the defense and the appellate court feel 2 and 3 are that important in the name of equity), and resubmit the summons

and complaint under subsection 4 to the Secretary of State.

or

3. Recognize that under the statue RCW 23.95.450 and the Supreme Court ruling in Spencer v. Franklin Hill, service of process was accomplished in the true spirit of the statute, and not rebutted or refuted by either the defendants or the appellate court, and remand this case back to the trial court for discovery and a trial.

This denial or dismissal by the appellate court is not equity of the law under these unfortunate circumstances and deserves to be reviewed under RAP 13.4b(1,2). *(1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or (2) If the decision of the Court of Appeals is in conflict with a published decision of the Court of Appeals;* and additional egregious behaviors outlined in this petition for review.

If there is any case that deserves to be reviewed to protect the honesty, integrity, equity and sanctity of the judicial process, it is this Washington State Supreme Court Petition for Review.

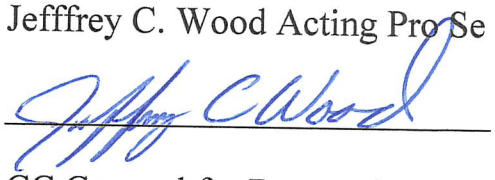
This petition for review should be granted, and have the defendants stand before this Supreme Court and defend their position. This case did egregiously offend equity and justice, and should not be decided on procedural malfeasance or deceptions.

For these reasons listed above, the ruling of the superior Court as well as the Division III Appeals Court be reversed and remand back to the Superior Court for trial scheduling, and discovery.

This contains 4993 number of words excluding the parts of the document exempt from the word count by RAP 18.17.

RESPECTFULLY SUBMITTED this 4th, day of November 2024.

Jefffrey C. Wood Acting Pro Se



CC Counsel for Respondent

EXHIBITS

WASHINGTON
Secretary of State
Corporations & Charities Division

Corporations & Charities Division
Physical/Overnight address:
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Tel: 360.725.0377
sos.wa.gov/corps

June 3, 2022

JEFFREY & ANNA WOOD
21319 E HARVARD VISTAS LN
NEWMAN LAKE, WA 99025-5101

Exihibit "A"

To Whom It May Concern:

The undersigned hereby states that they are a duly appointed and acting clerk in the Office of the Secretary of State responsible for the receipt and processing of the service of process documents under the Washington State statute RCW 23B.18.040 and/or RCW 23.95.450 and is qualified to make the following statements.

On June 1, 2022 , legal documents in the action relating to the below plaintiff vs the below defendant. The legal documents under the Cause Number listed below were received in the Office of the Secretary of State. Said documents were placed on file, under file number: 31240

Cause Number: 22-2-00741-32

Plaintiff(s):
JEFFREY AND ANNA WOOD

Defendant(s):
DUNN & BLACK PS

Duly Appointed: Constance Parbon
Corporations Division

Brad Smith

From: Jeff Wood <jwood@pvfworldwide.net>
Sent: Monday, May 20, 2024 4:37 PM
To: Brad Smith
Subject: FW: JeffreJeffrey P. Downer <Jpd@leesmart.com>y Wood RE: RFA Request
Attachments: 22.05.27 R. Dunn DoS.pdf; 22.6.24 Dunn & Black DoS Filed.pdf; Certified Mail Receipt and Del Confirmation.pdf; Declaration of Non Service.pdf; WA Secretary of State Confirmation of Receipt.pdf

Exhibit "B"

From: Jeffrey P. Downer [mailto:Jpd@leesmart.com]
Sent: Tuesday, October 25, 2022 2:57 PM
To: Jeff Wood; Daniel C. Mooney
Subject: Fwd: JeffreJeffrey P. Downer <Jpd@leesmart.com>y 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

R

Tristen L. Worthen
Clerk/Administrator

(509) 456-3082
TDD #1-800-833-6388

The Court of Appeals
of the
State of Washington
Division III

500 N Cedar ST
Spokane, WA 99201-1905

Fax (509) 456-4288
http://www.courts.wa.gov/courts

Exhibit "C"

May 20, 2024

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CASE # 399346
Jeffrey Wood, et al v. Dunn & Black, LLC, et al
SPOKANE COUNTY SUPERIOR COURT No. 2220074132

Counsel and Mr. Wood:

During its preargument workup of this case, the Court decided the briefing is sufficiently thorough on the issues presented for review to be determined by a panel of this court without oral argument. Therefore, the June 5, 2024 oral argument hearing is stricken.

Your copy of the Court's opinion will be mailed to you after it is filed in the Clerk's office. Opinions are also available at **www.courts.wa.gov/opinions/**.

Sincerely,

Tristen Worthen
Clerk/Administrator

TLW:sd

Tristen L. Worthen
Clerk/Administrator

(509) 456-3082
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The Court of Appeals
of the
State of Washington
Division III

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EMAIL NOTICE ONLY

Exhibit "D"

May 24, 2024

Daniel Christopher Mooney
Lee Smart PS Inc
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Jeffrey Wood
21319 E. Harvard Vistas Lane
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Jeffrey Paul Downer
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Sara Renae Shapland
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CASE # 399346
Jeffrey Wood, et al v. Dunn & Black, LLC, et al
SPOKANE COUNTY SUPERIOR COURT No. 2220074132

Mr. Wood and Counsel:

Pursuant to the motion for remand and emergency consideration, the following notation ruling was entered:

May 24, 2024
At the direction of the assignment judge, Appellants' Motion for Consideration of Additional Evidence on Review has been referred to the panel.
Tristen Worthen
Clerk

Sincerely,

Tristen Worthen
Clerk/Administrator

TLW:ln

Jeff Wood

From: Newell, Melissa <Lissa.Newell@courts.wa.gov>
Sent: Monday, September 23, 2024 8:27 AM
To: Jeff Wood
Subject: Opinion in the matter of Wood v Black 399346

Exhibit "E"

Good morning Mr. Wood,

It was my intent to contact you on Friday regarding the status of the opinion/motion in this matter. Unfortunately, I was called home for an emergency.

Secondly, I owe you an apology because your motion was missed because I did not correctly enter [the decision referring it to the panel] it in the system. The Clerk has notified chambers and it is now under review by the authoring judge.

Let me know if you have any questions and again I apologize for the mix-up.

Respectfully,

Lissa Newell
Case Manager, Court of Appeals, Div. III.
500 N. Cedar St.
Spokane, WA 99201
(509) 456-3082

after six month delay in brining motion to dismiss based on lack of service). The Court's ruling was correct because the defense was not waived.

4. To the extent Plaintiffs rely on CR 59(a)(9), the motion should be denied because substantial justice was done.

If Plaintiffs are relying on the substantial justice prong of the reconsideration grounds, such an argument is unavailing. The Washington Supreme Court has cautioned against granting motions pursuant to the substantial justice prong of CR 59(a). *See Knecht v. Marzano*, 65 Wn.2d 290, 297, 396 P.2d 782 (1964) ("granting of new trials for the lack of substantial justice should be relatively rare, especially since [CR 59(a)] gives eight other broad grounds for granting new trials."); *see also Sligar v. Odell*, 156 Wn. App. 720, 734, 233 P.3d 914 (2010) ("Courts rarely grant reconsideration under CR 59(a)(9) for lack of substantial justice because of the other broad grounds afforded under CR 59(a).").

The facts and circumstances of this case do not rise to the "rare" situation where reconsideration should be granted pursuant to the lack of substantial justice prong of CR 59. The simple fact is that Plaintiffs waited until the proverbial eleventh-hour to attempt service of process, and failed to properly complete it within the applicable time period. Defendants have made no attempt to bias the court or otherwise act improperly, so no relief under CR 59(a)(9) should be afforded.

IV. CONCLUSION

Nothing in Plaintiffs' Opposition or in their motion for reconsideration changes the basic reasoning for the granting of the Motion for Summary Judgment. The Court properly dismissed Plaintiffs' claims because it lacked jurisdiction over the Defendants based on Plaintiffs' failure to effect service of process. The Court also properly granted dismissal with prejudice based on the statute of limitations. As a result, no error of law occurred, substantial justice was done, and Plaintiffs' Motion for Reconsideration should be denied.

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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.

Tristen L. Worthen
Clerk/Administrator

(509) 456-3082
TDD #1-800-833-6388

The Court of Appeals of the State of Washington
Division III

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September 19, 2024

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CASE # 399346
Jeffrey Wood, et al v. Dunn & Black, LLC, et al
SPOKANE COUNTY SUPERIOR COURT No. 2220074132

Counsel:

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 the court's e-filing portal or if in paper format, only the original 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 (may be filed by electronic facsimile transmission). 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 L. Worthen
Clerk/Administrator

TLW:sh
Enclosure
c: **E-mail** Honorable Marla L. Polin

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