

1 WILLIAM SCHEIDLER
1515 Lidstrom Place E.
2 Port Orchard, WA 98366
360-769-8531

3 IN PRO PER

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6
7 **SUPERIOR COURT OF THE STATE OF WASHINGTON**
FOR THE COUNTY OF KITSAP

8 WILLIAM SCHEIDLER,
9 **Plaintiff,**

10 V

11
12 Scott Ellerby
13 **Defendant,**

)
) Case No.:
)
) **COMPLAINT FOR**
)
) Defamation;
) False Light Invasion of
) Privacy;
) Breach of Duty;
) Intentional Infliction of
) Emotional Distress;
) Negligent Infliction of
) Emotional Distress; and
) Negligence
) Monetary Damages
)

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15
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17
18 **Plaintiff complains and for causes of action alleges as follows:**

19
20 **I. JURISDICTION AND VENUE**

- 21 1) The Superior Court of Kitsap County has personal and subject
22 matter jurisdiction under RCW 2.08.010
23 2) Venue is proper in this court per RCW 4.12.020(3)

24 **II. PARTIES**

- 25 1) Plaintiff William Scheidler is a resident of the State of
26 Washington and of Kitsap County. Plaintiff Scheidler files suit for
damages due to injuries occurring within Kitsap County.

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1 2) Defendant Scott Ellerby, an attorney with the firm Mills Meyers
2 Swartling, Seattle, WA, represented Plaintiff Scheidler in a matter
3 of real property located in Kitsap County versus the Kitsap County
4 Assessor circa 1998. Defendant Ellerby had contact with plaintiff
5 Scheidler in 2008. Such contact resulted in the damages alleged
6 herein and span 1998 through 2009 and involve real property located
7 in Kitsap County and personal injury to plaintiff while in Kitsap
8 County.

9 III. SUMMARY OF THE CASE

10 Defendant, Scott Ellerby, an attorney with the firm Mills Meyers
11 and Swartling agreed to represent Plaintiff Scheidler in his appeal
12 from a Kitsap County Board of Equalization decision that was to be
13 heard before the WA State Board of Tax Appeals[BOTA] on November
14 18, 1998.

15 On the eve of that appeal, Defendant Ellerby withdrew his
16 representation, leaving Plaintiff to fend for himself before the
17 BOTA hearing. Exhibit A

18 The true reason for Ellerby's withdrawal, as Scheidler has recently
19 learned, was nothing but a conspiracy between the Kitsap County's
20 Attorney C. Noble and Ellerby. The scheme Noble would raise a
21 fraudulent "conflict of interest" charge against Ellerby. Ellerby
22 would then present this fraudulent charge to Scheidler claiming
23 that a conflict of interest requires Ellerby to withdraw under the
24 RPC. Cassandra Noble's true purpose in raising a conflict charge
25 was to interfere with Scheidlers legal strategy so as to protect an
26 unlawful scheme of Kitsap County. Scott Ellerby's whose purpose
27 was to protect Scheidlers from all foreseen harms, instead Ellerby
28 abandoned his duty by 'playing along' in this concocted fraud by
29 Noble. Ellerby should have reported this fraud to the appropriate
30 authorities, such as the FBI or the WA State Bar, as his duty
31 demanded.

32 Clearly the motive of Noble was to conceal a larger fraud
33 perpetrated upon all Citizens, even today. The method of the fraud
34 is found in a recent pamphlet obtained by plaintiff that the
35 Department of Revenue issued to County Assessors. The pamphlet,
36 which is attached as Exhibit B, specifically states in paragraph 5,
37 County Assessors are say when a Citizen inquires into the reasons
38 behind a required calculation on a Senior/Disabled application
39 form. From that pamphlet is this important paragraph

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1 "RCW 84.36.383(5) defines "disposable income" as adjusted gross income as
2 defined in the federal internal revenue code plus all the following to the extent they
3 were included in or excluded from adjusted gross income."

4 Compare that statement with the TRUE RCW language

5 (5) "Disposable income" means adjusted gross income as defined in the federal
6 internal revenue code, as amended prior to January 1, 1989, or such subsequent
7 date as the director may provide by rule consistent with the purpose of this section,
8 plus all of the following items to the extent they are not included in or have been
9 deducted from adjusted gross income:

10 You must see that the pamphlet the DOR provided to Assessors states
11 the EXACT opposite of what the STATUTE states. The pamphlet states
12 "INCLUDED" which is not the same as "NOT INCLUDED" found in the RCW
13 nor is EXCLUDED FROM the same as DEDUCTED FROM. When Assessors
14 follow an alternate reading of the statute the calculations
15 required under that alternate instruction would also be reversed
16 and a retired/disabled persons' claim for exemption will be judged
17 improperly.

18 Such a scheme by Assessors, if ever brought to light, is a
19 violation of State and Federal Law and could result in their
20 prosecution. Ellerby found this fraud and threatened to expose it
21 - it is so implied in his Memorandum. That was until Cassandra
22 Noble, herself a potential target for criminal investigation,
23 convinced Ellerby to help conceal this larger fraud by withdrawing
24 from representing Plaintiff. Since both Noble and Ellerby
25 understood the nature of Scheidler's health, there would be little
26 risk in Noble facing Scheidler alone in the BOTA hearing. With
27 Ellerby safely out of the picture, Scheidler would be forced to
28 abandon his challenge of this unlawful scheme.

29 When Plaintiff Scheidler learned, in mid 2008, of the scheme
30 concocted between Ellerby and Noble, back in 1998, and that Ellerby
31 'never had a conflict' as he portrayed for his excused withdrawal,
32 plaintiff asked the Defendant's Law firm to refund monies paid.
33 Mr. Mills of the firm Mills, Meyers and Swartling responded by
34 writing that after thoroughly investigating the issue, he stood
35 firmly behind Mr. Ellerby's claim that he was never disqualified
36 and did not withdraw for any conflict reason. Rather, defendant
37 Ellerby told Mr. Mills that Plaintiff Scheidler asked him to
38 withdraw on the eve of the BOTA hearing. According to Defendant

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1 Ellerby, in covering his breach of duty of 1998, says today,
2 Plaintiff ran out of money and couldn't afford to pay his
3 representation ... among other absurd allegations, and he never
4 withdrew on his own account.

4 The nature of this case concerns the conspiracy, the lies, the
5 defamation on the part of Defendant Ellerby for the substantial
6 damage he caused Plaintiff Scheidler.

6 IV. FACTS IN COMMON

7 EVENTS of 1998:

- 8 1) Circa May 1998, Scott Ellerby [defendant] for the benefit of
9 plaintiff Scheidler, submitted a Notice of Appeal and accepted a
10 \$500 retainer in agreement to represent plaintiff in that appeal.
11 Mr. Ellerby made a 'Request for a Formal Hearing' before the
12 Board of Tax Appeals [BOTA]. A 'Formal Hearing' permits a
13 further appeal to the Superior Court if warranted.
- 12 2) Circa November 15, 1998, Scott Ellerby served his "Memorandum" in
13 Support of Plaintiffs' BOTA appeal.
- 13 3) Between the time plaintiffs paid Ellerby's retainer and the date
14 his "Memorandum" was written and served, plaintiffs had paid over
15 \$1500, to defendant for his preparation for the BOTA hearing that
16 was scheduled for November 18, 1998.
- 15 4) Circa November 16, 1998, Kitsap County's Attorney, C. Noble,
16 raised a purportedly genuine 'conflict of interest' charge
17 against Ellerby's law firm. This 'conflict charge' is not
18 disputed but rather admitted by Scott Ellerby in emails found in
19 the written record.
 - 18 • Larry Mills, of Mills, Meyers and Swartling, also confirms Ms.
19 Noble raised this conflict as evident by his emails contained
20 in the written record.
 - 20 • Defendant presented this conflict of interest charge to
21 Plaintiffs as the reason Defendant, Ellerby, had to withdraw
22 his representation. Mr Ellerby said he faced possible
23 sanctions if he continued to represent us and sought cover for
24 this breach by claiming his withdrawal was mandated under RPC
25 1.9. The evidence contained in the written record confirms
26 that this was the impression put upon the Plaintiff's by
27 Ellerby. It is clearly evident by the content, context, and
28 tone of the notes and documents made at that time.
 - Plaintiff's felt the conflict raised by Ms. Noble caused
Ellerby to resign and there was no choice in the matter.

- 1 5) On November 17, 1998, Defendant served plaintiff a copy of his
2 "Notice of Withdrawal" citing Kitsap County's 'conflict of
3 interest' contention.
4 6) Plaintiffs', without reasonable alternatives to choose from on
5 the eve of the BOTA hearing, no prospects for substitute
6 representation, no legal understanding of all possible options,
7 already mentally exhausted from the shock, faced the BOTA on
8 November 18, 1998 without representation.
9 7) Circa January 21, 1999, plaintiffs were charged an additional
10 \$453 by Defendant's firm, which plaintiff paid in full.

11 **EVENTS of 2008:**

- 12 8) Circa July 2008, Plaintiff emailed Ellerby and stated:

13 To Scott Ellerby,

14 Greetings Scott, you may remember me as you were to handle my dispute with the WA State
15 Board of Tax Appeals, that was until the eve of the appeal date when Kitsap County raised a
16 conflict of interest charge against you. That was some years ago. Unfortunately my health
17 and financial situation has further deteriorated and am asking that the money I paid for your
18 representation be refunded. While it is likely this request may not be justified, I am hoping the
19 fact that you pulled out at the last minute makes it a reasonable request given the
20 circumstances then and now -- all of which has ended poorly for me. Thank you for anything
21 you may be able to do.

22 Regards,

23 Bill Scheidler

- 24 9) Ellerby responded to that email saying, "My recollection is that you and Mary
25 concluded that it was cost prohibitive to have me represent you". This 'story'
26 continues to be repeated in subsequent emails and letters during
27 2008, which are included in the written record. Ellerby claims
28 today, no conflict of interest existed that required withdrawing
his representation of plaintiffs in 1998. Rather Ellerby, never
being disqualified, now blames plaintiffs' finances as the
primary reason that '(plaintiffs) asked him to withdraw.'

- 10) Ellerby claims too Plaintiffs didn't need his services once the
Memorandum was delivered. Defendant Ellerby claims his high
quality work product - the "Memorandum", was all Plaintiffs
wanted. In other words, Ellerby claims Plaintiffs asked him to
withdraw on the Eve of the BOTA hearing because plaintiffs' ran
out of money and the "Memorandum" was all plaintiffs were after.
He says today there was no conflict of issue that would cause him
to resign on the Eve of the BOTA hearing.

- Larry Mills in his July 30, 2008, email, which is part of the
written record, says Mr. Ellerby was never disqualified from

1 representing Scheidlers due to Kitsap's last minute conflict
2 of issue contention.

3 11) From Ellerby's own records it shows that before stepping aside
4 on the Eve of the BOTA hearing but after delivering his November
5 12, 1998 brief on Kitsap's attorney, had phone conversations with
6 C. Noble, circa November 16, 1998, and each exchanged letters at
7 that time.

- 8 • These facts are supported by Ellerby's 'transaction file list'
9 and is part of the documented record only available to
10 plaintiffs in 2008.

11 12) Ellerby's phone log shows he placed a call to plaintiffs
12 November 17, 1998, to discuss the letter from C. Noble. This
13 refutes the claim, which is in the record, by Ellerby that we
14 called Ellerby to ask him to resign.

- 15 • This fact is also in the "transaction file list" and part of
16 the documented record.

17 13) Ellerby, in his new claims, states that back in November 17,
18 1998, he traveled from Seattle, via ferry, to Bainbridge Island
19 and then drove to Poulsbo to meet the Scheidlers that evening
20 before the BOTA hearing so as to discuss and coach the Scheidlers
21 in how to present their case before the BOTA the next day. This
22 meeting included dinner for plaintiffs [Mary and Bill Scheidler]
23 and took between 2-3 hours. Of course after this meeting Ellerby
24 had to travel back to Seattle. Ellerby states all of this was
25 done at no cost to the Scheidlers because he was sympathetic to
26 Scheidlers' finances and wanted to save the cost that Scheidlers
27 would sustain if defendant was to travel to Olympia the next
28 morning for the BOTA hearing.

- These are the statements by Ellerby as part of the written
record and supported by Ellerby's "transaction file list"

14) Within the written record are numerous references and concerns
expressed for plaintiff's health. Plaintiff's medical condition
is in fact the sole reason defendant was hired - defendant was to
do for plaintiff the things plaintiff was unable to do because of
his health. Plaintiff's health would contradict any idea that he
would choose to go before the BOTA without Ellerby.

- Mr. Ellerby, in fact, did recognize plaintiff's health as a
significant handicap of plaintiff's. He so stated it in his
BOTA Memorandum - a work-product he cites as a "high level of

1 detail and legal analysis". Mr. Ellerby states this about
2 plaintiff in his November 12, 1998, BOTA Memorandum.

3 "A disability such as the neurological imbalance commonly
4 referred to as "panic disorder" obviously affects the
5 taxpayer's ability to operate in a complicated
6 world." [EXHIBITS 1 and 1A]

7 15) Mr. Ellerby says this about the Kitsap County Assessor, and what
8 the Plaintiff's experience with the Assessor was and will face in
9 front of the BOTA if the past is a guide to the future.

10 "the Assessor's communications with such a disabled taxpayer,
11 should, by law, conform to clearly articulated standards, and,
12 most importantly, be predictable and consistent."

13 • Mr. Ellerby knew of plaintiff's medical condition, the Kitsap
14 County Assessor knew of plaintiff's medical condition, the
15 BOTA knew of plaintiff's medical condition. And they all used
16 it to their advantage!

- 17 • Ellerby to escape his duty,
- 18 • The County to escape any liability
- 19 • The BOTA to have an easy time in steering the hearing
20 to protect both - Ellerby and the County.

21 14) The BOTA's 1998 ruling was against plaintiff's exemption. The
22 BOTA ruled, in the same way Kitsap County administered the
23 State's exemption program, inconsistent with the facts presented,
24 and inconsistent with the law. Ellerby understood the 'pulled
25 from the air' hurdles Scheidlers were required to jump in pursuit
26 of their rights! Ellerby's Memorandum addressed this behavior.
27 Yet, Mr. Ellerby now claims an individual who finds operating in
28 a complicated world can manage to challenge individuals - the
assessor and the BOTA, who are unpredictable, double-talking, and
inconsistent!

V. CAUSES OF ACTION and CLAIMS FOR RELIEF

CLAIM ONE: Defamation -Scott Ellerby's communication to Larry Mills, Principal of Mills Meyers Swartling]

1. On or about JUNE 2008, Defendant Ellerby communicated untrue
statements to Larry Mills about the reasons Ellerby withdrew
his representation of Plaintiff on the eve of a scheduled BTA
hearing. The information about Plaintiff communicated by
Defendant Ellerby to Mr. Mills consisted of the following

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1 words: "you and your wife decided not to have Mr. Ellerby
2 represent you at the hearing before the Board of Tax
3 Appeals"; "Mr. Ellerby never declined to represent you" and
4 was never disqualified from representing you... because of
Kitsap County's suggestion that Mr. Ellerby and our firm may
have a conflict of interest." [Attached as Exhibit 1]

- 5 2. The information that Defendant Ellerby communicated to Mr.
6 Mills is false because, 1) In a letter by Ellerby to
7 Cassandra Noble, November 16, 1998, [Attached as Exhibit 2]
8 Mr Ellerby states, "we ask the Kitsap County waive any
9 arguable conflicts of interest to allow our continued
10 representation of the Scheidlers." 2) On November 17, 1998,
11 Scott Ellerby signed a "NOTICE OF WITHDRAWAL" based on a
12 conflict of issue raised for the first time on November 17,
13 1998. [Attached as Exhibit 3]

14 **Common Law Malice:**

- 15 3. In communicating false information about Plaintiff Scheidler
16 as alleged in this Claim One, Defendant Ellerby acted with
17 common law malice, that is, with hatred, ill will, and spite
18 toward Plaintiff Scheidler.
19 4. The information about Plaintiff Scheidler communicated by
20 Defendant Ellerby as contained in Exhibit 1 to this
21 Complaint, was false.
22 5. The false information Defendant Ellerby communicated as
23 alleged in this Claim One is defamatory, in that, as
24 reasonably understood, the information tended to harm the
25 character and reputation of Plaintiff William C Scheidler so
26 as to lower him in the estimation of Mr. Mills so as to deter
27 Mr. Mills or other persons from dealing with Plaintiff
28 Scheidlers, by stating or implying that Plaintiff Scheidler
was lying about the events of 1998.
6. Defendant Ellerby communicated the false and defamatory
information about Plaintiff Scheidler, as alleged in this
Claim One with actual malice, that is, with knowledge that
this information was false. As a direct and proximate result
of the acts of Defendant Ellerby as alleged in this Claim
One, Plaintiff Scheidler has been held up to ridicule,
hatred, and contempt, and has suffered injury to his
reputation, personal humiliation, emotional distress, and
mental anguish.
7. WHEREFORE Plaintiff Scheidler demands judgment against
Defendant Ellerby in the form of damages in the amount of
Three Thousand Dollar(s) (\$3,000) in nominal damages; Three

1 Thousand Dollars (\$ 3000) in compensatory damages; and in the
2 form of an award to Plaintiff Scheidler of his costs in this
3 action and such further relief as justice requires.

4 **CLAIM TWO: False Light Invasion of Privacy.**

- 5 1. Plaintiff Scheidler restates the allegations of all the
6 preceding paragraphs of this Complaint, and incorporates them
7 herein.
- 8 2. Defendant Ellerby unreasonably communicated or caused to be
9 unreasonably publicized the information concerning Plaintiff
10 Scheidler's [attached to this complaint] as financially
11 unable to afford Ellerby's services as the reason plaintiffs'
12 asked defendant Ellerby to withdraw.
- 13 3. The information that Defendant Ellerby publicized was false
14 and defamatory.
- 15 4. The false and defamatory information Defendant Ellerby
16 publicized place Plaintiff Scheidler before the Washington
17 State Bar Association and before Mr. Mills, in a false and
18 objectionable light, in that Defendant Ellerby portrayed
19 Plaintiff William Scheidler as an unreasonable person whose
20 own financial woes were the cause of Defendant Ellerby's
21 withdrawal.
- 22 5. Defendant Ellerby, in this Claim Two, acted with actual
23 malice in publicizing information, or deliberately omitted
24 factual information, thus portraying Plaintiff Scheidler in
25 an objectionable light.
- 26 8. WHEREFORE Plaintiff Scheidler demands judgment against
27 Defendant Ellerby in the form of damages in the amount of
28 Three Thousand Dollar(s) (\$3,000) in nominal damages; Three
Thousand Dollars (\$ 3,000) in compensatory damages; and in
the form of an award to Plaintiff Scheidler of his costs in
this action and such further relief as justice requires.

20 **CLAIM THREE: Breach of Duty; Breach of Promise; Conspiracy, Fraud.**

- 21 1. Plaintiff Scheidler restates the allegations of all the
22 preceding paragraphs of this Complaint, and incorporates them
23 herein.
- 24 2. Plaintiff Scheidler contracted with Defendant for his
25 services that included representation before the WA State
26 Board of Tax Appeals.
- 27 3. Plaintiff Scheidler's medical condition prevented him from
28 self-representation was known to all parties and certainly
known to Defendant Ellerby.

- 1 4. The nature of Plaintiff Scheidler's medical condition makes
2 reacting to 'spur of the moment' crises impossible and
3 creates obsessive, and unproductive thought as long as the
4 crises persists.
- 5 5. Defendant Ellerby without regard to Plaintiff's medical
6 condition, of which he was well aware, on the eve of formal
7 administrative hearing, fabricated a lie upon which he would
8 breach his duty. This was done in a manner and at a time that
9 would render Scheidler incapable.
- 10 6. Defendant Ellerby through a contrived scheme that included
11 Kitsap's attorney C. Noble, withdrew his representation on
12 the very eve of a scheduled hearing under a fraudulent scheme
13 in order to help conceal another fraudulent scheme of the
14 Assessor.
- 15 7. As alleged in this claim three defendant's disrespect for the
16 law, in his conspiracy with C. Noble to defraud Plaintiff of
17 the duty owed Plaintiff is per se a breach. Plaintiff, by
18 defendant's breach of duty lost the value of his investment
19 in Mr. Ellerby and suffered financial injury that Defendant's
20 representation was to protect.
- 21 8. Defendant Ellerby's, in this claim three, deliberately,
22 through deceit and unlawful acts refused to perform the
23 duties for which he agreed and indeed mandated by his oath to
24 uphold the law and not conspire to conceal illegal activity.
25 This breach of duty has injured plaintiff in mind and body in
26 an amount in excess of \$200,000.
- 27 9. WHEREFORE Plaintiff Scheidler demands judgment against
28 Defendant Ellerby in the form of damages in the amount of
Three Thousand Dollar(s) (\$3,000) in nominal damages; Two
hundred Thousand Dollars (\$ 200,000) in compensatory damages;
and in the form of an award to Plaintiff Scheidler of his
costs in this action and such further relief as justice
requires.

CLAIM FOUR: Intentional Infliction of Emotional Distress

1. Plaintiff Scheidler restates the allegations of all the preceding paragraphs of this Complaint, and incorporates them herein.
2. Defendant Ellerby's conduct as alleged herein was intentional and malicious and done for the purpose of causing Plaintiff to suffer humiliation, mental anguish, emotional and physical distress and done with wanton and reckless disregard of the consequences to plaintiff.

- 1 3. As a proximate cause of the acts alleged above plaintiff
2 suffered humiliation, mental anguish, emotional and physical
3 distress and has been injured in mind and body.
4 4. Defendant Ellerby's acts alleged in this claim four, were
5 willful, wonton, malicious and oppressive and justify
6 awarding exemplary or punitive damages.
7 10. WHEREFORE Plaintiff Scheidler demands judgment against
8 Defendant Ellerby in the form of damages in the amount of
9 Three Thousand Dollar(s) (\$3,000) in nominal damages; Fourty-
10 five Thousand Dollars (\$ 45,000) in compensatory damages; and
11 in the form of an award to Plaintiff Scheidler of his costs
12 in this action and such further relief as justice requires.

9 **CLAIM FIVE: Negligent Infliction of Emotional Distress**

- 10 1. Plaintiff Scheidler restates the allegations of all the
11 preceding paragraphs of this Complaint, and incorporates them
12 herein.
13 2. Defendant Ellerby knew or should have known the acts as
14 alleged herein would cause plaintiff to suffer humiliation,
15 mental anguish and physical and emotional distress.
16 3. As a proximate result of defendants conduct alleged in this
17 claim five, plaintiff suffered severe physical and emotional
18 distress.
19 11. WHEREFORE Plaintiff Scheidler demands judgment against
20 Defendant Ellerby in the form of damages in the amount of
21 Three Thousand Dollar(s) (\$3,000) in nominal damages; Fourty-
22 five Thousand Dollars (\$ 45,000) in compensatory damages; and
23 in the form of an award to Plaintiff Scheidler of his costs
24 in this action and such further relief as justice requires.

19 **CLAIM SIX: Negligence**

- 20 1. Plaintiff Scheidler restates the allegations of all the
21 preceding paragraphs of this Complaint, and incorporates them
22 herein.
23 2. Defendant Ellerby knew or should have known the acts as
24 alleged herein would cause plaintiff to suffer humiliation,
25 mental anguish and physical and emotional distress.
26 3. As a proximate result of defendants conduct alleged herein
27 plaintiff suffered severe physical and emotional distress.
28 12. WHEREFORE Plaintiff Scheidler demands judgment against
29 Defendant Ellerby in the form of damages in the amount of
30 Three Thousand Dollar(s) (\$3,000) in nominal damages; Fourty-
31 five Thousand Dollars (\$ 45,000) in compensatory damages; and

1 in the form of an award to Plaintiff Scheidler of his costs
2 in this action and such further relief as justice requires.

3
4 DATED: May 2, 2009

5 I attest to the foregoing to be my true and accurate belief.
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