

# EXHIBIT 1

## Clerks Paper at 19

**"the undersigned attorney hereby withdraws ... at the request of the Kitsap County Prosecutor based upon an alleged conflict of interest."**

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BEFORE THE BOARD OF TAX APPEALS  
STATE OF WASHINGTON

WILLIAM C. SCHEIDLER and MARY M.  
SCHEIDLER, husband and wife,

Appellants,

v.

CAROL BELAS, KITSAP COUNTY  
ASSESSOR,

Respondent.

Case No. BE-592-97

NOTICE OF WITHDRAWAL

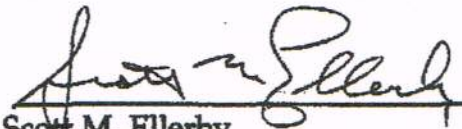
TO: THE CLERK OF THE COURT;

AND TO: ALL PARTIES OF RECORD.

YOU ARE HEREBY NOTIFIED that, effective immediately, the undersigned attorney Scott M. Ellerby hereby withdraws as counsel for appellants at the request of the Kitsap County Prosecuting Attorney's Office based on the allegation of a conflict of interest raised for the first time on November 17, 1998.

DATED this 17<sup>th</sup> day of November, 1998.

MILLS MEYERS SWARTLING  
Attorneys for Appellants

By   
Scott M. Ellerby

COPY

# EXHIBIT 2

## Clerks Paper 17-18

**"we ask that Kitsap County waive any arguable conflicts of interest to allow our continued representation of the Scheidlers."**

Exhibit 2  
PAGE 1 of 2

LAW OFFICES OF

**MILLS MEYERS SWARTLING**

A PROFESSIONAL SERVICE CORPORATION  
1000 SECOND AVENUE, 30TH FLOOR  
SEATTLE, WASHINGTON 98104-1064

TELEPHONE  
(206) 382-1000

FACSIMILE  
(206) 386-7343

SCOTT M. ELLERBY  
E-MAIL  
SELLERBY  
@MMS-SEATTLE.COM

November 16, 1998

**VIA FACSIMILE AND REGULAR MAIL**

Ms. Cassandra Noble  
Kitsap County Prosecuting Attorney's Office  
614 Division Street, Mail Stop 35  
Port Orchard, WA 98366

Re: Scheidler Appeal to Board of Tax Appeals

Dear Ms. Noble:

This letter follows up our telephone conversation this morning in which you informed me of your office's belief that this firm has a conflict of interest in representing the Scheidlers in the above-entitled appeal. As we discussed, the hearing on this appeal is scheduled to commence at 9:00 a.m. in two days, November 18, 1998, in Olympia, Washington. This is the first notice we have had from your office regarding this conflict issue.

You have noted that David Swartling in my firm defended claims against the Kitsap County Sheriff's Department in which the plaintiffs asserted civil rights and other state claims. Those matters concluded well before our representation of the Scheidlers in the above-entitled action began.

When the Scheidlers first approached me regarding representation, I consulted with Mr. Swartling and we concluded that there was no conflict of interest because the Scheidlers' appeal to the Board of Tax Appeals was not related in any manner to the issues involved in the Sheriff's Department litigation. Therefore, we concluded that the Scheidler appeal was not a "substantially related matter" as set forth in RPC 1.9(a). We had also concluded that there was no potential for using confidences or secrets from our defense of Kitsap County in the Sheriff's Department cases in the Scheidler appeal given the dissimilarity of issues and the different county departments involved.

Although we originally concluded, and still believe, that no conflicts of interest exist requiring our withdrawal pursuant to RPC 1.9, we ask that

Exhibit 2  
page 2 of 2

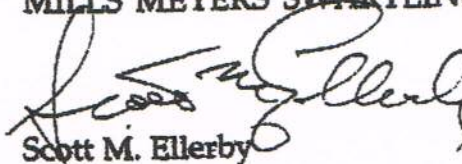
November 16, 1998  
Page - 2

Kitsap County waive any arguable conflicts of interest to allow our continued representation of the Scheidlers.

Because of the timing of this matter, I ask that you respond by noon on Tuesday, November 17, 1998 to allow time to contact the Board of Tax Appeals regarding this matter.

Very truly yours,

MILLS MEYERS SWARTLING



Scott M. Ellerby

SME:jr

cc William and Mary Scheidler

8432.001

# EXHIBIT 3

## Clerks Papers at 86

**"if the County does not respond to my letter or waive the conflict, I will be forced to withdraw."**

Bill:

I have attempted to attach my fax letter to Cassandra Noble sent yesterday afternoon. I am sensitive to your anxiety over the County's attempt to force my withdrawal from the case. But I think you must examine this development as a possible gift from above: the BTA will look with disdain upon the County's dirty pool tactic and that will poison the water for the County (mixing my metaphors!). The most that I could achieve during the hearing is to walk the BTA through the documents we submitted, and the only documents that I would use are the letters between you and the Assessor. I have real doubts about the cost effectiveness of your paying me at my hourly rate for most of a day with travel time to go through that limited exercise (\$120 per hour x at least 6 hours). We have made our case with our memo of authorities, our notice of appeal, and the documents submitted. If you or Mary do not feel able to walk the BTA through the letters in chronological order, one of you could merely tell the BTA that you have been deprived the assistance of counsel by the Assessor's last minute allegation of a conflict of interest (when they had our pleading for nearly a year and were fully aware of our identity), that you cannot afford to have the hearing continued, and that you are willing to base your presentation on the documents and pleadings submitted. As we discussed, because of the BTA's lack of authority to award atty. fees, losing at the administrative level may not be the worst possible outcome.

If the County does not respond to my letter or refuses to waive the conflict, I would be forced to withdraw. If they waive, the decision is entirely yours whether you believe it is worth the investment to have me travel to Olypiia with you. As you can tell, I have severe doubts that the investment is worthwhile given the memo we filed with the BTA and the likelihood that I could not add a great deal at the hearing. There is also the consideration of the inability to recover atty. fees at the BTA. Please call ASAP to discuss in more detail.

Scott

# EXHIBIT 4

## Clerks Paper at 60

**"defendant admits Mr. Ellerby voluntarily withdrew his representation of plaintiff at the request of plaintiff's"**



1 complaint, and that Mr. Ellerby voluntarily withdrew his representation of plaintiff in 1998  
2 upon the request of plaintiff. Defendant denies the remaining allegations contained in  
3 paragraph 4.9 of plaintiff's complaint.

4 1.11 In answer to paragraphs 4.10, 4.11, 4.12, 4.13, 4.14, and 4.15 of plaintiff's  
5 complaint, defendant admits Mr. Ellerby voluntarily withdrew his representation of plaintiff at  
6 the request of plaintiff, and that the documents identified in paragraphs 4.10, 4.11, 4.12, 4.13,  
7 4.14, and 4.15 of plaintiff's complaint speak for themselves. To the extent the allegations  
8 contained in paragraphs 4.10, 4.11, 4.12, 4.13, 4.14, and 4.15 of plaintiff's complaint apply to  
9 defendant, defendant denies the same. Defendant lacks knowledge of the truth or falsity of the  
10 remaining allegations contained in paragraphs 4.10, 4.11, 4.12, 4.13, 4.14, and 4.15 of  
11 plaintiff's complaint and therefore denies the same.

12 1.12 The paragraph immediately following paragraph 4.15 of plaintiff's complaint  
13 appears to be mislabeled as paragraph 4.14. The allegations contained in this paragraph appear  
14 to be statements of plaintiff's legal position to which no answer is required. To the extent an  
15 answer is required, defendant denies the same.

16 1.13 Section V of plaintiff's complaint appears to contain statements of plaintiff's  
17 legal position and legal conclusions to which no answer is required. To the extent a answer is  
18 required, defendant re-alleges his answers to the preceding paragraphs, admits that Mr. Ellerby  
19 voluntarily withdrew his representation of plaintiff at the request of plaintiff, and that the  
20 documents identified in section V of plaintiff's complaint speak for themselves. Defendant  
21 denies each and every remaining allegation contained in section V of plaintiff's complaint,  
22 including any and all claims for relief.

23 1.14 Defendant denies each and every allegation contained in plaintiff's complaint  
24 not otherwise specifically admitted herein.  
25

# EXHIBIT 5

## Clerks Paper at 212, 295

**"I represented the plaintiff from May through November 1998, when I voluntarily withdrew from representation at the plaintiff's request."**

FILED  
KITSAP COUNTY CLERK

2009 AUG 20 PM 12:48

DAVID W. PETERSON

SUPERIOR COURT OF WASHINGTON FOR KITSAP COUNTY

WILLIAM SCHEIDLER,

Plaintiff,

vs.

SCOTT ELLERBY,

Defendant.

No. 09-2-00660-3

DECLARATION OF SCOTT ELLERBY  
IN SUPPORT OF MEMORANDUM IN  
OPPOSITION TO MOTION TO  
COMPEL

Scott Ellerby states and declares as follows:

1. I am the defendant in this matter and make the following statements based on my personal knowledge and experience.
2. I represented the plaintiff from May through November 1998, when I voluntarily withdrew from representation at the plaintiff's request.
3. I had no substantive contact with Mr. Scheidler until July 14, 2008.
4. On July 14, 2008, I received an e-mail from Mr. Scheidler containing a demand that my firm refund the fee paid for his representation of Mr. Scheidler in 1998. The fee paid was \$2,045.00. A true and accurate copy of the e-mail received from Mr. Scheidler is attached hereto as **Exhibit 1**.
5. My law firm rejected Mr. Scheidler's demand for fees and denied that I wrongfully withdrew in 1998.

DECLARATION OF SCOTT ELLERBY IN SUPPORT  
OF MEMORANDUM IN OPPOSITION TO MOTION  
TO COMPEL I  
5231418

LEE SMART

P.S., Inc. · Pacific Northwest Law Offices

ORIGINAL 1800 One Convention Place · 701 Pike Street · Seattle · WA · 98101-3929  
Tel. 206.624.7990 · Toll Free 877.624.7990 · Fax 206.624.5944

FILED  
KITSAP COUNTY CLERK

2009 AUG 20 PM 12:48

DAVID W. PETERSON

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SUPERIOR COURT OF WASHINGTON FOR KITSAP COUNTY

WILLIAM SCHEIDLER,

Plaintiff,

vs.

SCOTT ELLERBY,

Defendant.

No. 09-2-00660-3

DECLARATION OF SCOTT ELLERBY  
IN SUPPORT OF MEMORANDUM IN  
OPPOSITION TO MOTION FOR  
PROTECTIVE ORDER

Scott Ellerby states and declares as follows:

1. I am the defendant in this matter and make the following statements based on my personal knowledge and experience.
2. I represented the plaintiff from May through November 1998, when I voluntarily withdrew from representation at the plaintiff's request.
3. I had no substantive contact with Mr. Scheidler until July 14, 2008.
4. On July 14, 2008, I received an e-mail from Mr. Scheidler containing a demand that my firm refund the fee paid for his representation of Mr. Scheidler in 1998. The fee paid was \$2,045.00. A true and accurate copy of the e-mail received from Mr. Scheidler is attached hereto as **Exhibit 1**.
5. My law firm rejected Mr. Scheidler's demand for fees and denied that I wrongfully withdrew in 1998.

DECLARATION OF SCOTT ELLERBY IN SUPPORT  
OF MEMORANDUM IN OPPOSITION TO MOTION  
FOR PROTECTIVE ORDER- 1  
5231476

LEE SMART

P.S., Inc. - Pacific Northwest Law Offices

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Tel. 206.624.7990 • Toll Free 877.624.7990 • Fax 206.624.5944

ORIGINAL

Handwritten initials/signature

# EXHIBIT 6

## Clerks Paper at 1167

**"Kitsap County would not waive the conflict allegation and I voluntarily withdrew from representation at Mr. Scheidler's request on November 17, 1998."**

1 disqualification, as well as the disqualification of my firm, at the November 18, 1998 hearing.

2 5. Attached hereto as **Exhibit 2** is a true and correct copy of the letter that I sent to  
3 Kitsap County on November 16, 1998 after I spoke with the attorney for Kitsap County  
4 regarding the conflict of interest allegation.

5 6. I met with the Scheidlers on November 17, 1998 to prepare for the November  
6 18, 1998 hearing. During this meeting I notified the Scheidlers that they could request a  
7 continuance in light of the last-minute conflict of interest allegation. However, Mr. Scheidler  
8 told me that he would not request a delay of the hearing.

9 7. Kitsap County would not waive the conflict of interest allegation, and I  
10 voluntarily withdrew from representation at Mr. Scheidler's request on November 17, 1998.  
11 The circumstances surrounding my withdrawal from representation are more fully set forth in  
12 my response to Mr. Scheidler's bar grievance, which was dismissed.

13 8. I had no further substantive contact with Mr. Scheidler until July 14, 2008.

14 9. On July 14, 2008, I received an e-mail from Mr. Scheidler containing a demand  
15 that my firm refund the fee paid for his representation of Mr. Scheidler in 1998. The fee paid  
16 was \$2,045.00. A true and accurate copy of the e-mail received from Mr. Scheidler is attached  
17 hereto as **Exhibit 3**.

18 10. On July 15, 2008, I responded to Mr. Scheidler's e-mail. A true and accurate  
19 copy of the e-mail I sent to Mr. Scheidler is attached hereto as **Exhibit 4**.

20 11. On July 25, 2008, I received an e-mail from Mr. Scheidler regarding my  
21 response to his request for a refund of fees. A true and accurate copy of the e-mail received  
22 from Mr. Scheidler is attached hereto as **Exhibit 5**.

23 12. Mr. Scheidler also contacted my partner Lawrence Mills and requested a refund  
24 from Mr. Mills. As employees of the firm Mr. Mills and I discussed the complete lack of merit  
25

# EXHIBIT 7

## Clerks Paper 16

**"Mr. Ellerby never declined to represent you and was never disqualified from representing you because of Kitsap County's suggestion that Mr. Ellerby or our firm may have a conflict of interest..."**

Sent: Wednesday, July 30, 2008 3:05 PM  
To: Bill Scheidler <<mailto:billmary@netzero.com>>  
Cc: Scott Ellerby <<mailto:sellerby@mms-seattle.com>>  
Subject: Your E-mail Message to Executives at MMS

Dear Mr. Scheidler,

Your e-mail message, sent through the link on our law firm's website, has been referred to me for response.

I am the President of the Mills Meyers Swartling law firm. I am very sorry that you are experiencing severe depression and that your medications do not provide you relief.

I have investigated your allegations of a breach of ethics or professional malpractice against our law firm, and specifically Scott Ellerby, and I find no factual basis for your contentions.

In 1999, Mr. Ellerby competently and appropriately represented you in connection with your appeal to the Board of Tax Appeals of the assessment of the value of your Kitsap County property for tax purposes. As Mr. Ellerby previously advised you by reply e-mail two weeks ago, after he had assisted you in preparing your presentation for your appeal, you and your wife decided not to have Mr. Ellerby represent you at the hearing before the Board of Tax Appeals because you did not want to incur additional attorneys' fees. Mr. Ellerby never declined to represent you and was never disqualified from representing you because of Kitsap County's suggestion that Mr. Ellerby and our firm may have a conflict of interest because we had previously represented another agency of Kitsap County.

In consideration of your financial situation at that time, Mr. Ellerby discounted the attorneys' fees owed to our firm. You willingly paid the reduced fees and communicated to Mr. Ellerby your appreciation for his assistance.

We respectfully decline your request for a refund of the attorneys' fees you paid our law firm nearly 10 years ago in relation to the Board of Tax Appeals matter.

Please accept my personal concern for your health and wellbeing. I trust you will put this matter behind you and focus on improving your condition and your prospects for the future. Best regards.

Larry Mills

---

**Lawrence R. Mills | Mills Meyers Swartling**  
1000 Second Avenue, Suite 3000 | Seattle, WA 98104  
Tel: 206-382-1000 | Fax: 206-267-6742  
Website: <<http://www.mms-seattle.com>>

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# EXHIBIT 8

## Clerks Paper 347-350

**" Mr. Scheidler's treatment is "privileged" under RCW 18.225.105; 18.83.110 and RCW 5.60.060(9)..."**

FILED  
KITSAP COUNTY CLERK  
2009 SEP -2 PM 3:39  
DAVID W. PEIERSON

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

3 IN PRO PER

5 SUPERIOR COURT OF THE STATE OF WASHINGTON  
6 FOR THE COUNTY OF KITSAP

8 William Scheidler )  
9 Plaintiff, )  
10 vs. )  
11 Scott Ellerby )  
12 Defendant )

Case No.: 09-2-00660-3

Plaintiff's objection to  
Depositions and Subpoena Duces  
Tecum - Dr. Charlstrom

13 Plaintiff hereby objects to the subpoena duces tecum addressed to Dr. Charlstrom PhD. dated August  
14 27, 2009 on the following grounds.

- 15 1. Mr Scheidler is receiving care under RCW 18.225; 18.83
- 16 2. Mr. Scheidler's treatment is "privileged" under RCW 18.225.105; 18.83.110 and RCW  
5.60.060(9), 5.60.060(4)(B) AND CR 26 (b)(1)
- 17 3. Mr. Scheidler has not authorized any waiver of the physician-patient privilege; Mental Health  
provider- privilege; psychologist-patient privilege.
- 18 4. Defendant's are pursuing these depositions in an arrogant and disrespectful manner contrary to  
CR 45:  
19 (i) fails to allow reasonable time for compliance; (ii) fails to comply with RCW 5.56.010 or subsection (e)(2) of this  
20 rule; (iii) requires disclosure of privileged or other protected matter and no exception or waiver applies; or (iv)  
subjects a person to undue burden, provided that the court may condition denial of the motion upon a requirement  
that the subpoenaing party advance the reasonable cost of producing the books, papers, documents, or tangible things.
- 21 5. Defendant's subpoena of Dr. Charlstrom is intended to be an ex parte deposition of Plaintiff's  
physicians .  
22 The Loudon court clarified and narrowed the rule regarding ex parte contacts, holding that a plaintiff-patient's waiver  
of the physician-patient privilege does not authorize ex parte communications between the defendant and the  
23 plaintiff's treating physicians. The court recognized the importance of the fiduciary relationship between doctor and  
patient, stating: "[W]e find it difficult to believe that a physician can engage in an ex parte conference with the legal  
24 adversary of his patient without endangering the trust and faith invested in him by his patient." "The unique nature of  
the physician-patient relationship and the dangers which ex parte interviews pose justify the direct involvement of"  
25 counsel in any contact between defense counsel and a plaintiff's physician." Loudon v. Mhyre, 110 Wn 2d at 671  
1981. Basing its decision on these compelling public policy concerns, the Loudon court prohibited ex parte interviews  
26 of plaintiff's doctor. 67 Wn. App. 457, 836 P.2d 223. CARSON v. FINE

27 1 -  
28 Objection to Dcposition and Subpoena Duces Tecum

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

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DATED: September 2, 2009

  
William Scheidler  
In Pro Se

- 2 -  
Objection to Deposition and Subpoena Duces Tecum

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

[CP 348]

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

3 IN PRO PER

FILED  
KITSAP COUNTY CLERK  
2009 SEP -2 PM 3:39  
DAVID W. PETERSON

5 SUPERIOR COURT OF THE STATE OF WASHINGTON  
6 FOR THE COUNTY OF KITSAP

8 William Scheidler  
9 Plaintiff,

10 vs.

11 Scott Ellerby  
12 Defendant

Case No.: 09-2-00660-3

Plaintiff's objection to  
Depositions and Subpoena Duces  
Tecum - Kim Young-Oak and Dr.  
Curtis Holder

13 Plaintiff hereby objects to the subpoena duces tecum addressed to Kim Youg-Oak and Curtis Holder  
14 M.D. dated August \_\_\_\_, 2009 on the following grounds.

- 15 1. Mr Scheidler is receiving care under RCW 18.225; 18.83
- 16 2. Mr. Scheidler's treatment is "privileged" under RCW 18.225.105; 18.83.110 and RCW  
17 5.60.060(9), 5.60.060(4)(B) AND CR 26 (b)(1)
- 18 3. Mr. Scheidler has not authorized any waiver of the physician-patient privilege; Mental Health  
19 provider- privilege; psychologist-patient privilege.
- 20 4. Defendant's are pursuing these depositions in an arrogant and disrespectful manner contrary to  
21 CR 45:  
22 (i) fails to allow reasonable time for compliance; (ii) fails to comply with RCW 5.56.010 or subsection (c)(2) of this  
23 rule; (iii) requires disclosure of privileged or other protected matter and no exception or waiver applies; or (iv)  
24 subjects a person to undue burden, provided that the court may condition denial of the motion upon a requirement  
25 that the subpoenaing party advance the reasonable cost of producing the books, papers, documents, or tangible things.
- 26 5. Defendant's subpoena of Kim Young-Oak and Dr. Curtis Holder is intended to be an ex parte  
27 deposition of Plaintiff's physicians.  
28 The Loudon court clarified and narrowed the rule regarding ex parte contacts, holding that a plaintiff-patient's waiver  
of the physician-patient privilege does not authorize ex parte communications between the defendant and the  
plaintiff's treating physicians. The court recognized the importance of the fiduciary relationship between doctor and  
patient, stating: "[W]e find it difficult to believe that a physician can engage in an ex parte conference with the legal  
adversary of his patient without endangering the trust and faith invested in him by his patient." "The unique nature of  
the physician-patient relationship and the dangers which ex parte interviews pose justify the direct involvement of  
counsel in any contact between defense counsel and a plaintiff's physician." Loudon v. Mhyre, 110 Wn.2d at 679,  
681. *Basing its decision on these compelling public policy concerns, the Loudon court prohibited ex parte interviews*  
of plaintiff's doctor. 67 Wn. App. 457, 836 P.2d 223, CARSON v. FINE

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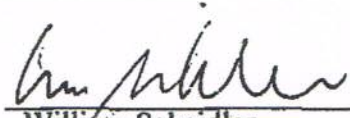
Objection to Deposition and Subpocna Duces Tecum

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

ORIGINAL  
CP 349

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DATED: August 31, 2009



William Scheidler  
In Pro Se

- 2 -  
Objection to Deposition and Subpoena Duces Tecum

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

CP 350

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

3 IN PRO PER

4  
 5 **SUPERIOR COURT OF THE STATE OF WASHINGTON**  
 6 **FOR THE COUNTY OF KITHAP**

7  
 8 William Scheidler  
 9 Plaintiff,  
 10 vs.  
 11 Scott Ellerby  
 12 Defendant

) Case No.: 09-2-00660-3

) **Plaintiff's objection to**  
 ) **Depositions and Subpoena Duces**  
 ) **Tecum - Dr. Pryor and Kim Young**  
 ) **Oak**

13 Plaintiff hereby objects to the subpoena duces tecum addressed to Dr. Pryor PhD and Kim Young  
 14 Oak dated August 27, 2009 on the following grounds. Plaintiff demands defendant halt their  
 15 assault on Dr. Pryor obtain an order to compel

- 16 1. Mr Scheidler is receiving care under RCW 18.225; 18.83  
 17 2. Mr. Scheidler's treatment is "privileged" under RCW 18.225.105; 18.83.110 and RCW  
 18 5.60.060(9), 5.60.060(4)(B) AND CR 26 (b)(1)  
 19 3. Mr. Scheidler has not authorized any waiver of the physician-patient privilege; Mental Health  
 20 provider- privilege; psychologist-patient privilege.  
 21 4. Defendant's are pursuing these depositions without authority in an arrogant and disrespectful  
 22 manner contrary to CR 45:  
 23 (i) fails to allow reasonable time for compliance; (ii) fails to comply with RCW 5.56.010 or  
 24 subsection (e)(2) of this rule; (iii) requires disclosure of privileged or other protected matter and  
 25 no exception or waiver applies; or (iv) subjects a person to undue burden, provided that the court  
 26 may condition denial of the motion upon a requirement that the subpoenaing party advance the  
 27 reasonable cost of producing the books, papers, documents, or tangible things.  
 28 5. Defendant's subpoena of Dr. Pryor and Kim Young-Oak is intended to be an ex parte deposition  
 of Plaintiff's physicians .

The Loudon court clarified and narrowed the rule regarding ex parte contacts, holding that a  
 plaintiff-patient's waiver of the physician-patient privilege does not authorize ex parte  
 communications between the defendant and the plaintiff's treating physicians. The court  
 recognized the importance of the fiduciary relationship between doctor and patient, stating:

1 -  
 Objection to Deposition and Subpoena Duces Tecum

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

Exhibit 3

CP-852

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"[W]e find it difficult to believe that a physician can engage in an ex parte conference with the legal adversary of his patient without endangering the trust and faith invested in him by his patient." "The unique nature of the physician-patient relationship and the dangers which ex parte interviews pose justify the direct involvement of counsel in any contact between defense counsel and a plaintiff's physician." *Loudon v. Myhre*, 110 Wn.2d at 679, 681. Basing its decision on these compelling public policy concerns, the Loudon court prohibited ex parte interviews of plaintiff's doctor. 67 Wn. App. 457, 836 P.2d 223, *CARSON v. FINE*

6. Plaintiff Scheidler, demands Defendant obtain a Court Order to Compel production/deposition of Dr. Pryor and Kim Young-Oak.

DATED: September 10, 2009

  
\_\_\_\_\_  
William Scheidler  
In Pro Se

- 2 -  
Objection to Deposition and Subpoena Duces Tecum

Exhibit 9  
CP-853

WILLIAM SCHEIDLER  
1515 Lightroom Place E  
Port Orchard, WA 98366  
360-769-8531

# EXHIBIT 9

## Clerks Paper 858

**" Mr. Ellerby has a statutory right to Mr. Scheidler's medical information based purely on RCW 5.60.060(4)(b)."**



1 within the scope of permissible discovery under CR 26. Unfortunately, this motion is needed  
2 due to Mr. Scheidler's failure to abide by the court's previous ruling with regard to his  
3 discovery obligations.

4 As set forth above and in earlier motion practice, Mr. Scheidler's allegations in his  
5 complaint alone require a waiver of the privilege, and further, such privilege is automatically  
6 waived by filing suit for personal injury. Mr. Ellerby has a statutory right to Mr. Scheidler's  
7 medical information based purely on RCW 5.60.060(4)(b).

8 A fair administration of justice cannot occur without the records or an inquiry by Mr.  
9 Ellerby without unreasonable restriction of Mr. Scheidler's records as to what stressors existed  
10 during the time period at issue. This includes eliciting deposition testimony from non-party  
11 fact witness Mary Scheidler. As the information sought is reasonably calculated to lead to the  
12 discovery of admissible evidence, disclosure must be permitted to permit the defense to defend  
13 fully against Mr. Scheidler's claims, and this court should disregard plaintiff's arguments in  
14 opposition to defendant's motion to compel that are based on privilege.

15  
16 **C. This court should, at a minimum, assess monetary sanctions against Mr. Scheidler based on his unjustified resistance to discovery.**

17 The purpose of discovery sanctions is to deter, to punish, to compensate, to educate, and  
18 to ensure that the wrongdoer does not profit from the wrong. See *Burnet v. Spokane*  
19 *Ambulance*, 131 Wn.2d 484, 494, 933 P.2d 1036 (1997) (citing *Fisons*, 122 Wn.2d 299 at 355).  
20 There is no abuse of discretion where the record indicates that a discovery violation resulted  
21 from intentional nondisclosure, willful violation of a court order, or other unconscionable  
22 conduct. *Burnet*, 131 Wn.2d at 494.

23 CR 26(i) provides that an award of sanctions under CR 37(b) applies to the award of  
24 expenses incurred in relation to bringing a motion to compel where a party has willfully refused  
25 to confer in good faith:

# EXHIBIT 10

## Excerpt of Appellant's Brief

"Scheidler basis his argument on the plain reading of statute RCW 5.60.060(9). Ref: VRP, Transcript of August 21, 2009, CP 461-625:

**Scheidler:** "Mental health records are privileged. They are under RCW 5.60.060(9). He (Downer) wants to pretend they are under (4)(b)." [RP at 588]

**Downer:** "the waiver of the physician patient privilege is cut and dried 90-days after filing a suit like this one." [RP at 593]

**The Court:** "Now with respect to your protection order for your medical records, Civil Rule 26 defines what's the appropriate scope of discovery in a civil lawsuit.." "you waive those protections when you file a complaint for these kinds of damages based on the claim you submitted." [RP at 603-604].

Scheidler consulted attorney David Zuckerman re this issue and Mr. Zuckerman supports Scheidler's legal position. [RP at 1700]. Scheidler consulted with Senator Delvin, who sponsored the passage of RCW 5.60.060(9) ...

The legislative enactment of RCW 5.60.060(9) is their statement on behalf of the citizens that the courts are no longer free to find for themselves that an "implied waiver," or an "accelerated waiver" of the mental health privilege occurred. Certainly Ellerby cannot unilaterally determine for himself, as he has [CP 764-944], what he can discover and by what means he can use to that end."

DENIED it stating the motion was presented inappropriately! [RP December 18, 2009, page 30; CP 1622] [Assignment of Error #1-12]

- 6) Court Rules 26-37 explicitly state that any party may obtain discovery regarding any matter not privileged.

First and foremost, CR 37 applies to non-privileged discovery issues. Sanctions imposed by the court under CR 37 for Scheidler's motion for a protective order, and Defendant's allegations of interference with the depositions of Dr. Holder and Mary Scheidler are outside the gambit of CR 37 issues and governed by statutory privileges under RCW 5.60.060.

Did the lower court, and Ellerby, disregard Scheidler's RCW 5.60.060 privacy in abrogation of RCW 4.04.010 to arrive at a CR 37 sanction? Why is it that Ellerby, as Scheidler's attorney in 1998, sought to protect Scheidler's sensitive privacy [CP 100-109] and now Ellerby, as defendant, is seeking to invade that sensitive **AND** protected privacy? RCW 5.60.060 specifies the method by which the statutory privileges may be waived.

"The scope of statutory privileges is a legislative determination.  
STATE v. BUSS 76 Wn. App. 780 (1996)  
<http://www.mrsc.org/mc/appellate/archive/076wnapp/076wnapp0780.htm>

The legislative enactment of RCW 5.60.060(9) is their statement on behalf of the citizens that the courts are no longer free to find for themselves that an “implied waiver,” or an “accelerated waiver” of the mental health privilege occurred. Certainly Ellerby cannot unilaterally determine for himself, as he has [CP 764-944], what he can discover and by what means he can use to that end.

This court states in *PHYSICIANS INS. EXCH. v. FISIONS CORP* 122 Wn.2d 299, P.2d 1054 (1993) citing Taylor v. Cessna Aircraft Co., [39 Wn. App. 828](#), 836, 696 P.2d 28 (*defendant and its counsel could not unilaterally decide what was relevant in a particular case, defendant's remedy was to seek a protective order, not to withhold discoverable material*), review denied, [103 Wn.2d 1040](#) (1985).

The statute states explicitly, only by *written waiver* may the mental health provider privilege be surrendered. In this way Scheidler's most sensitive privacy issues are protected until he willingly allows for the intrusion.

“The Legislature is presumed to be familiar with past judicial interpretations of statutes. New legislation is presumed to conform to past judicial *decisions absent a clear legislative intent to overrule the common law.* **CLARK v. PAYNE 61 Wn. App. 189, 810 P.2d 931 May 1991**

Furthermore RCW 5.60.060 – the witness statute, is of substantial public importance; and Subsection 5.60.060(9) is a

matter of first Impression and not sanctionable under CR 11.<sup>38</sup> Statutes trump court rules regarding substantive issues – privacy is a substantive issue<sup>39</sup> and Scheidler basis his argument on the plain reading of statute RCW 5.60.060(9). Ref: VRP, Transcript of August 21, 2009, CP 461-625:

**Scheidler:** “Mental health records are privileged. They are under RCW 5.60.060(9). He (Downer) wants to pretend they are under (4)(b).” [RP at 588]

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**The Court:** “Now with respect to your protection order for your medical records, Civil Rule 26 defines what’s the appropriate scope of discovery in a civil lawsuit..” “you waive those protections when you file a complaint for these kinds of damages based on the claim you submitted.” [RP at 603-604].

Scheidler consulted attorney David Zuckerman re this issue and Mr. Zuckerman supports Scheidler’s legal position. [RP at 1700]. Scheidler consulted with Senator Delvin, who sponsored the passage of RCW 5.60.060(9), and he supports Scheidler’s legal position [RP at 1702-1707]. Scheidler filed a Motion for Discretionary Review to the Court of Appeals II, but the COAll

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<sup>38</sup> **MOORMAN V. WALKER 54 Wn. App. 461, 773 P.2d 887 (1989)**

<sup>39</sup> If the right is substantive, the statute prevails; if the right is procedural, the court rule prevails. *City of Spokane v. Ward* 122 Wn. App. 40, 41 June 2004

chose to sit idly by and let the issue fester. Clearly, whoever argues the correct legal basis, it is a debatable issue... therefore not sanctionable under CR 11 nor sanctionable under CR 37(b)(e) – resistance was substantially justified or that other circumstances make the sanction unjust.

Is there a Court Order to provide and permit discovery – I cannot find one? For argument, assuming a court order exists, is a sanction appropriate if the substantive issues underlying the sanction are issues of “privilege” – specifically RCW 5.60.060(1) and (9), and a medical disability –GR 33? Did Judge Hartman provide a record for review so the ‘sanctioned’ behavior is identified and the court’s order being violated is identified and that defendant has been prejudiced by the conduct complained of?

A trial court’s reasons for imposing a sanction on a party for noncompliance with a discovery order should be stated on the record so as to permit meaningful appellate review.  
RIVERS v. CONF. OF MASON CONTRACTORS 145 Wn.2d 674, (2002)

Chambers, J. (concurring) with the majority in *Rivers*.  
“Further, while the trial court stated that it had considered lesser sanctions and found them inadequate, our record is bare of reasoning that would allow us to review the trial court’s reasoning. Because the case was summarily dismissed, we do not know if the trial court considered the reasons for the delay. We do not know if the trial court considered the logistical difficulties inherent in complying with an order requiring actions in the past. We have no reason to believe the failure to comply

was willful. Nor do we know if the Defendant was actually prejudiced. And we do not know why lesser sanctions were deemed inadequate." Sanders, J., concurs with Chambers, J.

Judge Hartman's propensity to "throw the book at Scheidler" is an arbitrary administration of justice. He knowingly permitted, by re-writing the past and refusing to address Scheidler's allegations of misconduct that involved Ellerby's invasion into Scheidler's mental health counselor communication and invasion via subpoenas, phone calls, threats of legal action, and in person into Scheidler's mental health counselor's place of business *without a written waiver, without court order, in breach of written objections?*<sup>40</sup>

[Scheidler's dec at 16] [CP at 347-350, **529-541**, 763-944, 957-976; 1008-1098; 1124-1258; 1558-1780]

[This issue is germane to the Assignment of Errors 2-12]

- 7) CR 11 states a signature upon a pleading, motion or memorandum constitutes the pleading, motion or memorandum is 1) well grounded in fact and 2) warranted by existing law. RCW 2.48.210 (Oath) states an attorney "will employ for the purpose of maintaining the causes confided to me such means only as are consistent with truth and honor, and will never seek to mislead the judge or jury by any artifice or false statement of fact or law;"

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<sup>40</sup> Id., RCW 9A.50.020 Interference with health care facility.