

**Supreme Court # 87967-2
Court of Appeals 42591-2-II**

In the Supreme Court of the State of Washington

Ex Rel William Scheidler
Plaintiff/Petitioner

v.

Scott Ellerby,
Defendant/Respondent, and Joined by
Jeffrey Downer and Janey Ferguson, Joel Penoyar, J. Armstrong,
A. Johanson, Russell Hartman, Co-Defendants

Petitioner's reply to Respondent's answer and as a consequence
of Respondent's answer,

Cause of Action at law under RCW 7.56 which is proper in this
court under Article 4 Section 4.
JURY TRIAL DEMANDED

William Scheidler
Pro Se
1515 Lidstrom Place E
Port Orchard, WA 98366
60-769-8541

TABLE OF CONTENTS

I. AUTHORITY: JURISDICTION AND VENUE 5

A) RIGHT OF ACTION:..... 5

B) PARTIES: 6

C) THIS COURT HAS PERSONAL JURISDICTION UNDER ARTICLE 4,
SECTION 4 AND RCW 2.04.010 8

II. A JURY TRIAL IS DEMANDED. 8

III. FACTS:..... 9

A) THE FOLLOWING FACTS ARE UNDISPUTED. FINDINGS OF FACT
THAT ARE UNDISPUTED ARE CONSIDERED VERITIES. (CITATION
OMITTED)..... 9

IV. ARGUMENT RE THE UNDISPUTED FACTS 10

V. NEW ISSUES RAISED BY RESPONDENT’S ANSWER 17

A) DISPUTED ISSUES OF FACT RAISED BY ELLERBY, DOWNER,
FERGUSON’S ANSWER. 19

IV. CAUSES OF ACTION 20

A) DEFENDANT JUDGE RUSSELL HARTMAN..... 22

B) DEFENDANT ELLERBY/DOWNER/FERGUSON 24

C) DEFENDANTS JUDGE RUSSELL HARTMAN, ELLERBY. DOWNER,
FERGUSON. 25

D) DEFENDANT JUSTICES PENOYAR, JOHANSON, ARMSTRONG .. 25

E) DEFENDANTS JEFFREY DOWNER, ELLERBY, FERGUSON,
HARTMAN, JUSTICES PENOYAR, JOHANSON, ARMSTRONG 27

V. RELIEF: FEES AND COSTS 35

VI. AFFIDAVIT 35

Cases

BRISTER v. TACOMA CITY COUNCIL 27 Wn. App. 474, 619 P.2d 982..... 11

COALITION FOR THE HOMELESS v. DSHS 133 Wn.2d 894, 949 P.2d 1291 13

DEMOPOLIS v. PEOPLES NAT'L BANK 59 Wn. App. 105, 118 96 P.2d 426 Sept. 1990 7

Hallberg v Goldblatt Bros"., 363 Ill 25 (1936). 8

JAMES N. BATEY, Appellant, v. ELVA L. BATEY et al., 35 Wn.2d 791 11

Johnson v Zerbst", 304 U.S. 458, 58 S.Ct. 1019 8

MISSION SPRINGS v. CITY OF SPOKANE 965 134 Wn.2d 947, 954 P.2d 250 14

PRESTON v. DUNCAN 55 Wn.2d 678 15

Pure Oil Co. v. City of Northlake", 10 Ill.2d 241, 245, 140 N.E. 2d 289 (1956); 8

Reno v. Flores, 507 U.S. 292, 301-02, 113 S. Ct. 1439, 123 L. Ed. 2d 1 (1993) 13

SERVICE CHEVROLET v. SPARKS 99 Wn.2d 199, 660 P.2d 760 20

STATE EX REL. CARROLL v. JUNKER 79 Wn.2d 12, 482 P.2d 775 (1971) 14

STATE EX REL. CARROLL v. JUNKER 79 Wn.2d 12, 482 P.2d 775 (1971), 14

STATE v. ABRAMS 163 Wn.2d 277 (2008)..... 20

STATE v. FORBES 74 Wn.2d 420 10

STATE V. FRY 168 Wn.2d 1 15

STATE v. VERHAREN 136 Wn.2d 888 Dec. 1998 6

Tumey v. Ohio, 273 U. S. 510..... 35

Whalen v. Roe - 429 U.S. 589 (1977)..... 13

WILSON v. STEINBACH 98 Wn.2d 434, 656 P.2d 1030 27

Wuest v. Wuest", 127 P2d 934, 937 8

Statutes

RCW 18.130.180 16, 24, 34

RCW 2.04.010 6

RCW 2.06.085 17

RCW 2.48 7

RCW 2.48.060	7
RCW 4.24.500	23
RCW 4.40.010	14, 20, 26
RCW 4.40.070	15
RCW 42.52.010	7
RCW 5.60.060(9)	12, 14
RCW 7.56.010	5
RCW 7.56.020	5
RCW 9.01.120	6
RCW 9.01.120 and 160	6
RCW 9.73.060	6
RCW 9A.08.010 and 020	6
rovided for.....	15, 20
Title 42 U.S.C BB 1983.....	22, 27
<u>Title 42 U.S.C BB 1986</u>	24
Title 42 U.S.C. 1985.....	22
Title 42 U.S.C. BB 1981, 1983, 1985, 1986, 1988	21
Constitutional Provisions	
Article 1, Section 3, and 7.....	12
Article 1, Sections 1, 4, 29, 32	5
Article 4, Section 4	6

I. **AUTHORITY: JURISDICTION AND VENUE**

A) RIGHT OF ACTION:

1.) Scheidler has implied authority under WA Constitution Article 1, Sections 1, 4, 29, 32.

2.) Scheidler has statutory authority under...

a) RCW 7.56.010 Against whom information may be filed.

(1) An information may be filed against any person or corporation in the following cases:

(a) When any person shall usurp, intrude upon, or unlawfully hold or exercise any public office or franchise within the state, or any office in any corporation created by the authority of the state.

(b) When any public officer shall have done or suffered any act, which, by the provisions of law, shall work a forfeiture of his or her office.

b) RCW 7.56.020 Who may file.

(1) The information may be filed by ... any other person on his or her own relation, whenever he or she claims an interest in the office, franchise, or corporation which is the subject of the information.

Scheidler, has an interest in the constitutional rights and statutory protections of law enjoyed by all citizens of WA State. Violation of his constitutional rights and statutory rights at the hands of persons who hold a public office and commit violations of law serves to disenfranchise him, cause him special harms and damages. At the vortex of Scheidler's cause of action is for money

damages and all defendants are culpable under law. See RCW 9.01.120 and 160; See RCW 9A.08.010 and 020. See **STATE v. VERHAREN 136 Wn.2d 888 Dec. 1998** regarding Quo Warranto action in which the Supreme Court has held: "if the injury is one that is peculiar to the individual he has his right of action,

c) See also RCW 9.73.060 and RCW 9.01.120

3.) This Court has subject matter jurisdiction under Article 4, Section 4 and RCW 2.04.010

B) PARTIES:

1.) Petitioner,

State Ex Rel William Scheidler plaintiff, is a citizen of WA State a property owner and victim of special harms at the hands of defendants. Petitioner/plaintiff seeks a money judgment for the special harms as pleaded herein and in his pleadings in the Superior court.

2.) Defendants: Individually and in their official capacity.

Joel Penoyar (WSBA # 6407), Johanson (WSBA # 15649), Armstrong (WSBA # 1042), Ellerby (WSBA # 16277), Downer (WSBA # 12625), Ferguson (WSBA # 31246) and Russell Hartman (WSBA # 7104).

All defendants are all state officers as defined by law. RCW 42.52.010, states at §(19)

““State officer” means every person holding a position of public trust in or under an executive, legislative, or judicial office of the state.”

Judges of this state are clearly state officers as they are elected/appointed to fulfil a government office and perform a function of the state, the administration of justice – a matter of public trust.

Attorneys are also state officers by statute RCW 2.48, who, by membership in the WSBA, are under the Judicial Branch. See RCW 2.48.060.

“As an officer of the court, his [attorney’s] duties are both private and public. Where the duties to his client to afford zealous representation conflict with his duties as an officer of the court to further the administration of justice, the private duty must yield to the public duty. He therefore occupies what might be termed a “quasi-judicial office.”” DEMOPOLIS v. PEOPLES NAT'L BANK 59 Wn. App. 105, 118 96 P.2d 426 Sept. 1990.

NOTE: All Defendant Immunities and Defenses Lost when Defendants Act Without Jurisdiction.

Violations of Due Process and Constitutional Principles Remove Jurisdiction. Defendants violated Procedural Due Process, Separation of Powers and Substantive Due Process. When a party violates Due Process or Constitutional constraints, jurisdiction is lost. See "Johnson v Zerbst", 304 U.S. 458, 58 S.Ct. 1019; "Wuest v. Wuest", 127 P2d 934, 937. "Where a court failed to observe safeguards, it amounts to denial of due process of law, court is deprived of jurisdiction", "Pure Oil Co. v. City of Northlake", 10 Ill.2d 241, 245, 140 N.E. 2d 289 (1956); "Hallberg v Goldblatt Bros"., 363 Ill 25 (1936).

C) THIS COURT HAS PERSONAL JURISDICTION UNDER ARTICLE 4,
SECTION 4 AND RCW 2.04.010

II. A JURY TRIAL IS DEMANDED.

RCW 4.40.060 An issue of fact, in an action for the recovery of money only, or of specific real or personal property shall be tried by a jury, unless a jury is waived, as provided by law, or a reference ordered, as provided by statute relating to referees.

III. FACTS:

A) THE FOLLOWING FACTS ARE UNDISPUTED. FINDINGS OF FACT THAT ARE UNDISPUTED ARE CONSIDERED VERITIES. (CITATION OMITTED).

1. Justices Penoyar, Johanson and Armstrong, found as a matter of undisputed fact, Judge Harman's award of attorney fees to Ellerby in the amount of \$132,427.23 was "manifestly unreasonable". Ref: Opinion page 14, ¶1.
2. Justices Penoyar, Johanson and Armstrong, found as a matter of undisputed fact, "Ellerby's counsel did not need to obtain Scheidler's medical records." Ref: Opinion page 14, ¶2
3. Justices Penoyar, Johanson and Armstrong, found as a matter of undisputed fact, "We do not see the relevance of Scheidler's medical records." Ref: Opinion page 14, ¶1.
4. Justices Penoyar, Johanson and Armstrong, found as a matter of undisputed fact, "Ellerby's position amounted to a factual dispute between Ellerby and Scheidler..." (Emphasis) Ref: Opinion page 15 §B.
5. Justices Penoyar, Johanson and Armstrong, found as a matter of undisputed fact, "Scheidler's claim was not devoid of merit." (Emphasis) Ref: Opinion page 17, §V.

IV. ARGUMENT RE THE UNDISPUTED FACTS

1. Re: Attorney fee award: The Court of Appeals' undisputed finding, supra, that Judge Hartman's attorney fee award of \$132,427.23 was manifestly unjust implies one or all of the following:

a) Judge Hartman is incompetent.

Re Incompetence: This Court has held that incompetence on the part of judicial officers denies the parties a fair trial. See STATE v. FORBES 74 Wn.2d 420. "Incompetence, thoughtlessness, or excitability of the state's officers may lead to a mistrial." See STATE v. HOPSON 113 Wn.2d 273, 778 P.2d 1014. Discretionary rulings must meet the test of "The Reasonable Person Standard" it means a sound judgment exercised with regard to what is right under the circumstances and without doing so arbitrarily or capriciously. See STATE EX REL. CARROLL v. JUNKER 79 Wn.2d 12, 482 P.2d 775 (1971) "Reasonableness" is a question of fact and questions of fact are for a "jury to decide". See SERVICE CHEVROLET v. SPARKS 99 Wn.2d 199, 660 P.2d 760, and STATE v. ABRAMS 163 Wn.2d 277 (2008) respectively.

If these standards are violated those persons act “ultri vires” and are subject to suit the moment harm occurs.

b) Judge Hartman is corrupt and or prejudiced against Scheidler.

Re: Prejudice. The COA II has earlier held “Whether a trial judge's intervention into the conduct of a trial indicates a prejudice which denies a party's due process right to a fair trial is determined by examining all the facts and circumstances as they would appear to a reasonably prudent and disinterested person.” BRISTER v. TACOMA CITY COUNCIL 27 Wn. App. 474, 619 P.2d 982.

c) Judge Hartman was defrauded by Ellerby/Downer/Ferguson in claiming attorney fees of \$132,427.23.”

Re: Fraud. This Court has stated, “It is doubtless true that fraud vitiates everything tainted by it, even to the most solemn determinations of courts of justice, but like every other subject of judicial inquiry, it must be investigated in the proper forum and by appropriate methods of procedure.” JAMES N. BATEY, Appellant, v. ELVA L. BATEY et al., 35 Wn.2d 791

c) Commissioner Ernetta Skerlec’s ruling, dated 5 November, 2009, denying review of Kitsap County Superior Court’s orders

denying Scheidler's motion for a protective order, denying his motion to compel and imposing sanctions based upon "frivolousness" was improper. See CASE # 39749-8-II

d) Scheidler's Article 1, Section 3, deprivation of property. Upon Judge Hartman's 'manifestly unreasonable' ruling, defendant's immediately placed a lien on Scheidler's property; Scheidler's property remains encumbered as of this date. Exhibit 1.

e) Scheidler's Article 1, Section 3, deprivation of property. Upon COA II complete reversal of Judge Hartman's 'manifestly unreasonable' ruling, defendants have not released the \$170,000 bond filed with the Kitsap County Clerk. The Kitsap County Clerk retains Scheidler's property in the form of a Supercedes Bond.

2.) Re: Medical Records: The Court of Appeals undisputed finding, supra, that defendants Ellerby/Downer "did not need to obtain Scheidler's medical records." implies the following

a) Ellerby by and through his counsel obtained, unlawfully, Scheidler's privileged medical records.

Medicial records, of the type at issue, are privileged and not discoverable under RCW 5.60.060(9)

Further medical records are subject to Constitutional Privacy protections under the fourteenth Amendment and WA Const. Article 1, Section 3, and 7. "The doctor-patient relationship is one

of the zones of privacy accorded constitutional protection" Whalen v. Roe - 429 U.S. 589 (1977)

3.) Re: Medical Records: The Court of Appeals incontrovertible finding, supra, stating "We do not see the relevance of Scheidler's medical records." implies the following.

a) Judge Hartman failed to provide any rationale in which the Justices of the COA II could evaluate why Ellerby/Downer obtained or should obtain Scheidler's constitutionally and statutorily protected medical records. Courts are required to conduct 'strict scrutiny' in any action infringing upon a fundamental right.

"In order to withstand constitutional scrutiny, any action infringing on a fundamental right must be narrowly tailored to serve a compelling state interest. See Reno v. Flores, 507 U.S. 292, 301-02, 113 S. Ct. 1439, 123 L. Ed. 2d 1 (1993) . COALITION FOR THE HOMELESS v. DSHS 133 Wn.2d 894, 949 P.2d 1291.

Judicial Discretion is a composite of, among other things, conclusions drawn from objective criteria; it means a sound judgment exercised with regard to what is right under the circumstances and without doing so arbitrarily or capriciously.

STATE EX REL. CARROLL v. JUNKER 79 Wn.2d 12, 482 P.2d 775 (1971) ,

Due process is violated the moment harm occurs. MISSION SPRINGS v. CITY OF SPOKANE 965 134 Wn.2d 947, 954 P.2d 250

b) COA II, Commissioner Ernetta Skerlec's ruling, dated 5 November, 2009, denying review of Kitsap County Superior Court's orders denying Scheidler's motion for a protective order, re RCW 5.60.060(9) protected medical records, denying his motion to compel and imposing sanctions based upon "frivolousness" was improper. See CASE # 39749-8-II. Motion for reconsideration, Denied. Petition to Supreme Court review, denied. Sanctions imposed of ~\$2k.

4.) Re: Factual dispute: The Court of Appeals' uncontroverted finding, supra, that "Ellerby's position amounted to a factual dispute between Ellerby and Scheidler..." implies Scheidler has a right to a trial and Summary Judgment was improper. There are disputed issues of fact! Scheidler did not consent to a Bench trial.

The COA II acknowledges there are questions of FACT as that term is defined in RCW 4.40.010 and has made no finding that Scheidler consented to a bench trial.

“Issues arise upon the pleadings when a fact or conclusion of law is maintained by one party and controverted by the other, they are of two kinds -- first, of law; and second, of fact.”

“It is the role of the jury to apply the law to facts presented at a trial. See *Champagne v. Dept of Labor & Indus.*, 22 Wn.2d 412, 419, 156 P.2d 422 (1945).”, *STATE V. FRY* 168 Wn.2d 1 [CHAMBERS, J. (concurring)]

RCW 4.40.060 An issue of fact, in an action for the recovery of money only, or of specific real or personal property shall be tried by a jury, unless a jury is waived, as provided by law, or a reference ordered, as provided by statute relating to referees.

RCW 4.40.070 Trial of other issues of fact. Every other issue of fact shall be tried by the court, subject, however, to the right of the parties to consent, or of the court to order, that the whole issue, or any specific question of fact involved therein, be tried by a jury, or referred.

The function of a summary judgment is to avoid a useless trial; however, a trial is not useless, but absolutely necessary, where there is a genuine issue as to any material fact. *PRESTON v. DUNCAN* 55 Wn.2d 678

5.) Re: “Scheidler’s claim was not devoid of merit.” The Court of Appeals’ undisputed finding, supra, “Scheidler’s claim was not devoid of merit.” implies one or more of the following in *Ellerby/Downer/Ferguson’s* claims to the alternate:

- a) Ellerby/Downer/Ferguson were in breach of their oath, RCW 2.48.210, to never seek to mislead a judge with any false statement of fact or law.

- b) Ellerby/Downer/Ferguson were in breach of the Rules of Professional 3.1, A lawyer shall not assert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous,

These, any which one of 1-2 above, are violations of RCW 18.130.180, Professional Misconduct.

Given the findings of the Court of Appeals, which defendant Ellerby accepts a verities, serves to confound the reasoning employed by Justices Penoyar, Johanson and Armstrong. The standards that apply to judicial decisions are “reasonable inference from the facts”. No such “inference” was given by Justices Penoyar, Johanson or Armstrong.

Only Justices who are “protecting their fellow Bar members rather than the public” would allow such bad-actors to escape such despicable conduct and leave them to try it another day, perhaps upon many more victims.

The COA II justices should have, by law – See RCW 4.04.010, declared the rulings of Judge Hartman null and void and remand for trial and report Ellerbt/Downer/Ferguson to the WA State Bar as Elllerby/Downer/Ferguson engaged in fraud and in clear violations of their statutory Oath, RCW 2.06.085, and Professional Conduct!

V. NEW ISSUES RAISED BY RESPONDENT'S ANSWER

With every paper filed by Ellerby through his defense team there are new issues and causes of action to be addressed. There are new concerns about the impartiality of our judges. It is without question that Ellerby is putting the Judicial System in a precarious position given the close associations through the Bar and the close relationships in working under the WA Supreme Court. The more lies Ellerby and his defense team perpetrate upon the courts-- at will, without consequence-- enforces the notion that members of the WA State Bar will support each other in whatever they do or say versus a lay-person litigant.

For example: Exhibit 1, attached to Scheidler's Petition for Review of the COA II ruling, is a copy of Clerks Paper page 19.

This document referenced by Exhibit 1 is Ellerby's "Notice of Withdrawal" in which he states,

"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..."

Compare this sworn statement by Ellerby to Ellerby's declaration filed in the underlying case, included as Exhibit 6, in the same pleading referenced above, which are copies of Clerks Papers 212, 295, 433, 2518, in which Ellerby states, four times, under oath

"I voluntarily withdrew from representation at the plaintiff's request."

Not only are these statements by Ellerby issues of fact for a jury to decide which statement by Ellerby, if any, is the 'truth', but in a Summary Judgment ruling these statements, these facts, must be construed in a light most favorable to Scheidler's case.

No reasonable person would conclude these facts have been construed in any manner by any Judge in any court, let alone in a manner most favorable to Scheidler.

A) DISPUTED ISSUES OF FACT RAISED BY ELLERBY, DOWNER, FERGUSON'S ANSWER.

- 1.) Ellerby/Downer/Ferguson state, page 3, "Mr. Scheidler's petition for review should be denied for its complete failure to comply with the standards of appellate review."

Scheidler denies this allegation and the pleadings are the proof.

- 2.) Ellerby/Downer/Ferguson state, page 7, "Mr. Scheidler's petition for review should be denied because it presents no issue of significant legal merit justifying Supreme Court Discretionary Review."

Scheidler denies this allegation and the pleadings are the proof.

- 3.) Ellerby/Downer/Ferguson state, page 8, "The decision of the Court of appeals does not conflict with a decision of this Supreme Court."

Scheidler denies this allegation and the pleadings are the proof.

- 4.) Ellerby/Downer/Ferguson state, page 9, "The decision of the Court of appeals does not conflict with any decision of either Division Three or Division one."

Scheidler denies this allegation and the pleadings are the proof.

- 5.) Ellerby/Downer/Ferguson state, page 11, "The decision of the Court of appeals raises no constitutional question of law."

Scheidler denies this allegation and the pleadings are the proof.

- 6.) Ellerby/Downer/Ferguson state, page 12, §4 "The decision the (sic) Court of appeals does not raise an issue of substantial public interest." This Section 4 to the extent it is understood...

Scheidler denies this allegation and the pleadings are the proof.

7.) Ellerby/Downer/Ferguson state, page 12, § C “Mr. Scheidler’s petition for review is frivolous and brought for the purpose of delay.”

Scheidler denies this allegation and the pleadings are the proof.

These accusations by Ellerby/Downer/Ferguson are raise issues of FACT as defined by RCW 4.40.010 and a matter for the Jury. See RCW 4.40.060. See STATE v. ABRAMS 163 Wn.2d 277 (2008) ; With respect to accusations of “delay” See also SERVICE CHEVROLET v. SPARKS 99 Wn.2d 199, 660 P.2d 760,

“The cause is remanded for a factual determination of the reasonableness of plaintiff's delay.”

IV. CAUSES OF ACTION

For each and every cause of action Scheidler incorporates by reference, as offers of Proof, all that is contained herein and all records, pleadings, exhibits rulings, orders and any and all other materials that comprise the Court’s file in the matter of Scheidler v Ellerby .

A) This action arises under amendments to the Constitution of the United States, particularly the First – Freedom of Expression, Fourth - searches and seizures, Seventh -trial by jury, Ninth – separation of powers, and Fourteenth - due process.

- B) This action also arises under the laws of the United States, particularly the Civil Rights Act, Title 42 U.S.C. BB 1981, 1983, 1985, 1986, 1988.
- C) This action also arises under the laws of the United States, particularly Conspiracy Against Rights and Deprivation of Rights Under Color of Law, Title 18 U.S.C. Sec. 1, Ch 13, 241, 242.
- D) This action arises under the Constitution of the State of Washington, particularly Article One, Sections 1-5, 7, 10, 21, 29, and 32.
- E) This action arises under the Constitution of the State of Washington, particularly Rules for Superior court and Judicial Oath, Article Four, Sections 24 and 28 respectively.
- F) This action also arises under the laws of the State of Washington, particularly RCW 2.08.230 Uniform rules to be established; RCW 2.48.210 Attorney oath; RCW 4.24.500 Good faith communication; RCW 4.96.010 Tortious conduct of local government official; RCW 9.38 False Representation re title; RCW 9.72 Perjury; RCW 9.73 Violating right of Privacy; RCW 9.81 Subversive activities; RCW 9.94A Criminal street gang; RCW 9.101 Criminal Street gang; RCW 9A.08 Culpability; RCW

9A.28 Criminal attempt/Criminal conspiracy; RCW 9A.60 Fraud; RCW 9A.68 Bribery and Corrupt influence; RCW 9A.72 Perjury and interference with official proceedings; RCW 9A.76 Rendering criminal assistance; RCW 9A.80.010 Abuse of Office; RCW 9A.76 Rendering criminal assistance; RCW 9A.82 Criminal profiteering formerly Racketeering; RCW 9A.84 Public disturbance; RCW 10.14.030 Harassment; RCW 18.130.180 Professional Misconduct; RCW 34.05 Part V Judicial Review and Civil Enforcement, RCW 42.20.040 – False report, RCW 42.52 Ethics in public service.

A) DEFENDANT JUDGE RUSSELL HARTMAN

First Cause of Action:

Civil Rights Act, Title 42 U.S.C BB 1983 and/or Title 42 U.S.C. 1985– Due Process and Conspiracy to interfere with civil rights.

Plaintiff incorporates all the preceding and foregoing paragraphs as if set fourth in full.

Defendant Hartman, individually or in concert with others, created a sham HEARING by which Scheidler’s constitutional and statutory rights were denied.

Defendant’s disrespect for the rule of law - RCW 4.04.010, his oath of office - WA State Constitution Article 4, Section 24, and disrespect for the WA State Constitution Article 1, Section 21, caused, conspired, contributed, by his sham HEARING, to deprive Plaintiff of his procedural and substantive due process rights.

Defendant Hartman’s sham HEARING, deprived Plaintiff of his constitutional rights to free speech, petition for a redress of grievances, jury trial, equal protections, unnecessary delay.

Defendant Hartman's sham HEARING is a direct affront to the anti-slaap statute RCW 4.24.500 and RCW 9.81.120 Constitutional rights — censorship or infringement.

Defendant Hartman's purpose in creating a sham HEARING was to aid and abet defendants Ellerby/Downer/Ferguson in their unlawful scheme to deprive Plaintiff of his personal property, constitutional and statutory rights.

Second Cause of Action:

Civil Rights Act, Title 42 U.S.C 1981 – Equal protections violations

Plaintiff incorporates all the preceding and foregoing paragraphs as if set fourth in full.

Defendant's stated rules, polices, procedures and training are unconstitutional because they are unauthorized and are discriminatory. For example: Hartman's, "Order", 8-21-2009, is unconstitutional and unlawful. Hartman's order lacks the substantial content and reasoning required by well-established precedent so reasonable persons can come to the same conclusion as Hartman. See STATE v. CUNNINGHAM 96 Wn.2d 31,

Defendant Hartman's "order" noted above, and for example, 2-08-2011 denying reconsideration and then the order entered 2-25-2011 deprives plaintiff, arbitrarily without reasoning, of the benefit of law.

Defendant Hartman's conduct violates law, established precedent and constitutional requirements, his oath, and equal protections.

Third Cause of Action:

Civil Rights Act, Title 18 U.S.C BB 241 and 242 and RCW 9A.76 Rendering criminal assistance.

Plaintiff incorporates all the preceding and foregoing paragraphs as if set fourth in full.

Defendant subjected Plaintiff and caused and created the environment to deprive him of his rights covered in the Civil Rights Act due to his sham HEARING and sham procedures and guidelines.

Fourth Cause of Action:
Civil Rights Act, Title 42 U.S.C BB 1986– Neglect to prevent harm.

Plaintiff incorporates all the preceding and foregoing paragraphs as if set fourth in full.

Defendant Hartman's ultra vires conduct using sham HEARING was to aid and abet defendants Ellerby/Downer/Ferguson in their unlawful scheme to deprive Plaintiff of his constitutional rights, among them, right to a jury trial, and right to an unnecessary delay -- 3-year senseless litigation, denial of free speech, right to petition re grievances, among other WA and US Constitutional rights and statutory rights.

Defendant Hartman's disrespect for the rule of law in his sham rules and sham hearings, fraud upon the court and other violations of law too numerous to list, caused, conspired, contributed to the deprivation of plaintiff's constitutional and statutory rights.

B) DEFENDANT ELLERBY/DOWNER/FERGUSON

First Cause of Action:

Violation of an attorney's oath RCW 2.48.210

Plaintiff incorporates all the preceding and foregoing paragraphs as if set fourth in full.

Defendants' disrespect for the rule of law caused, conspired, contributed to the deprivation of plaintiff's constitutional and statutory rights.

Defendants' disrespect for the rule of law is a violation of RCW 18.130.180, professional misconduct, official misconduct among other violations noted below.

Second Cause of Action:

Criminal Code, Harassment RCW 10.14.030

Plaintiff incorporates all the preceding and foregoing paragraphs as if set fourth in full.

Defendants' course of conduct appears designed to alarm, annoy, or harass the petitioner;

Defendants' course of conduct has the purpose or effect of unreasonably interfering with the plaintiff's privacy or the purpose or effect of creating an intimidating, hostile, or offensive living environment for the plaintiff;

Third Cause of Action:

Criminal Code, RCW 9A.72 Perjury and interference with official proceedings and RCW 42.20.040 – False Report

Plaintiff incorporates all the preceding and foregoing paragraphs as if set fourth in full.

Defendant, in the course of one or more official proceedings, makes inconsistent material statements under oath: Example: Ellerby/Downer/Ferguson claims attorney fees of ~\$132k, which the COA II found to be improper. Example, Ellerby's reason noted in his notice of withdrawal v Ellerby's declarations made in this case. One or both are lies and both caused a material and adverse consequence to plaintiff's right to unnecessary delay and to petition for a redress of grievances – in addition to other damages discussed within the records cited above together with the facts offered as proof.

. Defendants' disrespect for the rule of law, in disrespect for the rights of plaintiff caused, conspired, contributed to engage in perjury and interference with official proceedings.

C) DEFENDANTS JUDGE RUSSELL HARTMAN, ELLERBY. DOWNER, FERGUSON.

First Cause of Action:

Criminal Code, RCW 4.24.510-525 ... anti SLAAP statute.

Plaintiff incorporates all the preceding and foregoing paragraphs as if set fourth in full.

Defendant's sham application of CR 12(f), Order, Sept 14, 2012, is intended to censure, chill plaintiff's constitutional and statutory rights.

Court Rules have no precedent value over constitutional or statutory rights.

Defendants' disrespect for the rule of law, in disrespect for the rights of plaintiff caused, conspired, contributed to denying plaintiff's 'good faith' communication as protected by the anti SLAAP statute.

D) DEFENDANT JUSTICES PENOYAR, JOHANSON, ARMSTRONG

First Cause of Action:

Violation of law RCW 4.04.010. The Common Law

Plaintiff incorporates all the preceding and foregoing paragraphs as if set fourth in full.

Defendant's failure to address plaintiff's cause of action, exhibits, facts, pleadings, etc., are all violations of defendant Justices Penoyar, Johanson, Armstrong's obligations prescribed by law and cause unnecessary proceedings.

Defendant's disrespect for the rule of law caused, conspired, contributed to the deprivation of plaintiff's' constitutional and statutory rights.

Defendants' ultra vires conduct is a violation of RCW 4.04.010.

Second Cause of Action:

Criminal Code, Violation of RCW 9A.72 Perjury and tampering with evidence and RCW 42.20.040 – False Report.

Plaintiff incorporates all the preceding and foregoing paragraphs as if set fourth in full.

Defendants, in the course of one or more official proceedings makes inconsistent material statements under oath,

Defendant knowingly presents false statements when the present no facts that meet RCW 4.40.010 – Issues of fact. When in fact Scheidler refuted the claims of Ellerby/Downer/Ferguson. This creates an issue of fact per RCW 4.40.010. Additionally Plaintiff Scheidler had submitted exhibits and conducted personal review of the controlling law that is at issue and discussed in Scheidler's pleadings. Defendant Justices Penoyar, Johanson, Armstrong never addressed these facts, the law and the differences between the law and the differences between plaintiff's lawful analyses and Defendants Ellerby/Downer/Ferguson and Downer's sham arguments.

Defendant Justices Penoyar, Johanson, Armstrong's sham standard for their perjured statement is a corruption of court precedent for 'summary judgment' and violates RCW 4.40.010. The true standard is that defendants Ellerby/Downer/Ferguson and Justices Penoyar, Johanson, Armstrong must address the facts already part of the record, which they had not. Scheidler was under no obligation to respond until Ellerby/Downer/Ferguson and Downer addressed all the facts in the record.

"A summary judgment motion under CR 56(c) can be granted only if the pleadings, affidavits, depositions, and admissions on file demonstrate there is no genuine issue as to any

material fact, and that the moving party is entitled to judgment as a matter of law. BARRIE v. HOSTS OF AM., INC., [94 Wn.2d 640](#), 642, 618 P.2d 96 (1980). WILSON v. STEINBACH 98 Wn.2d 434, 656 P.2d 1030.

Defendant's disrespect for the rule of law caused, conspired, contributed (culpability RCW 9A.08) to the deprivation of plaintiff's constitutional and statutory rights.

Defendant Justices Penoyar, Johanson, Armstrong's disrespect for the rule of law is a violation of RCW 9A.72; RCW 4.04.010; RCW 42.20.040 and established court precedent.

Defendant Justices Penoyar, Johanson, Armstrong's disrespect for the rule of law, in disrespect for the rights of plaintiff caused, conspired, contributed to engage in perjury and interference with official proceedings.

E) DEFENDANTS JEFFREY DOWNER, ELLERBY, FERGUSON, HARTMAN, JUSTICES PENOYAR, JOHANSON, ARMSTRONG

First Cause of Action:

Civil Rights Act, Title 42 U.S.C BB 1983 and 1985.

Plaintiff incorporates all the preceding and foregoing paragraphs as if set fourth in full.

Defendants' disrespect for the rule of law in its sham pleadings, hearings, orders, is ultra vires conduct, and violations of law too numerous to list, caused, conspired, contributed to the deprivation of plaintiff's' constitutional and statutory rights.

Defendants subjected Plaintiff and caused and created the environment to deprive him of his rights covered in the Civil Rights Act due to their unlawful procedures and unlawful guidelines.

Second Cause of Action:

Civil Rights Act, Title 18 U.S.C BB 241 and 242.

Plaintiff incorporates all the preceding and foregoing paragraphs as if set fourth in full.

Defendants' disrespect for the rule of law by their false statements of fact and law, sham hearings, fraud upon the court and other violations of law too numerous to list, caused, conspired, contributed to the deprivation of plaintiff's' constitutional and statutory rights.

DEFENDANTS subjected Plaintiff and caused and created the environment to deprive him of his rights covered in the Civil Rights Act due to their ultra vires conduct.

Third Cause of Action

U.S. Const. First Amendment /WA Art. 1, Sec. 5

Plaintiff incorporates all the preceding and foregoing paragraphs as if set fourth in full.

Defendants' disrespect for the rule of law, in disrespect for the rights of plaintiff's caused, conspired, contributed to the deprivation of plaintiff's' constitutional free speech rights.

The actions of defendants have been a deliberate attempt to suppress Scheidler's right to due process, chill his inclination for seeking relief and interfere with Scheidler's constitutional and statutory rights to seek a redress of grievances.

The ultra vires conduct of these defendants were to silence Plaintiff's rights to speak on matters of public importance in the forums instituted for such 'meaningful' discussion.

Fourth Cause of Action:

U.S. Const. Fourth Amendment Violations/WA Const. Art.1

Sec. 3:

Plaintiff incorporates all the preceding and foregoing paragraphs as if set fourth in full.

Defendants' disrespect for the rule of law – RCW 5.60.060(9), in disrespect for the privacy rights of plaintiff caused, conspired, contributed to the deprivation of plaintiff's constitutional and statutory rights to privacy.

Defendants have no rules, policies or training of its employees to protect the public of illegal intrusion by defendants into the private affairs of citizens.

Defendants and its employees do not know as a matter of law that searches and seizures beyond a statutory need in investigation of a persons finances are governed by the same principles as other searches and seizures at a home.

Defendants must have rules, policies and training for its employees that one's awareness of his or her right to refuse consent to warrantless entry is relevant to the issue of voluntariness.

Defendants' coercive and intimidating behavior supports a reasonable belief that compliance is compelled in excess of a statutory need. Coercion can be mental as well as physical.

Consent to warrantless entry must be voluntary and not the result of duress or coercion. Lack of intelligence, not understanding the right not to consent, or trickery invalidate voluntary consent.

Defendants do not have policies or rules that protects Plaintiff from such abuses.

Defendants must have policies and rules that medical information of the type demanded and obtained are "seizures" under the Fourth Amendment. Seizure is unconstitutional without court order or exigent circumstances. Court order obtained based on knowingly false information violates Fourth Amendment.

Defendants and its employees implemented intimidation tactics to gain financial information using trickery.

Search and Seizures reasonableness depends on not only when a seizure is made, but also how it is carried out.

Fifth Cause of Action:

Ninth Amendment Violations and Fourteenth Amendment Violations; WA Constitution Art. 1, Sec. 3,

Plaintiff incorporates all the preceding and foregoing paragraphs as if set fourth in full.

Defendants' disrespect for the rule of law, by its sham procedures, fraud upon the court and in other *ultra vires* conduct, conspired, contributed to the deprivation of plaintiff's constitutional and statutory rights.

Defendants have circumvented the due process of adjudication by committing perjury, condoning/

Defendants have over stepped their power and authority.

Defendants directed the unconstitutional deprivation and was the moving force behind the deprivation of rights and was responsible for causing unconstitutional behavior on the part of Defendants' employees.

Sixth Cause of Action:

Seventh amendment violation – civil trials; WA Const. Art. 1, Sec. 21.

Plaintiff incorporates all the preceding and foregoing paragraphs as if set fourth in full.

Defendants do not protect the Constitutional rights of Plaintiff. Defendants trample on the rights of plaintiff and systematically go out of their way to avoid having their conduct exposed to the light of day as a jury trial would ensure.

As a matter of policy and rules, defendants deprive plaintiff of a jury trial.

A sham proceeding does not constitute due process. DEFENDANTS are all engaged in a fraud, which denies the Plaintiff his right to a jury trial.

Seventh Cause of Action:

Criminal Code, RCW 4.24.510-525 ... anti SLAAP statute.

Plaintiff incorporates all the preceding and foregoing paragraphs as if set fourth in full.

Defendants' disrespect for the rule of law, in disrespect for the rights of plaintiff's caused, conspired, contributed to denying plaintiff's 'good faith' communication as protected by the anti SLAAP statute.

Eighth Cause of Action:

Criminal Code, RCW 4.96.010 Tortious conduct of local governmental entities.

Plaintiff incorporates all the preceding and foregoing paragraphs as if set fourth in full.

Defendants' disrespect for the rule of law, in disrespect for the rights of plaintiff caused, conspired, contributed to tortious conduct of local governmental entities.

Ninth Cause of Action:

Criminal Code, RCW 9A.60.030 Obtaining a signature by deception or duress. (e.g. CP 335-337)

Plaintiff incorporates all the preceding and foregoing paragraphs as if set fourth in full. (re: privileged medical records and depositions health care providers re privileged medical records)

In all of its policies, rules, official and unofficial procedures, the due process rights of the Plaintiff are violated.

The whole entire procedure orchestrated by these defendants violates the procedural and substantive due process rights of the Plaintiff.

The Plaintiff was denied a pre deprivation hearing.

These defendants have in effect created their own "Exemption Law" and "judicial procedures" which are illegal.

Defendants denying Plaintiff's or any other citizen the safeguards against arbitrary and capricious conduct, they have denied the Plaintiff's due process rights and the right and freedom to pursue life, liberty and the pursuit of happiness.

Defendants have over stepped their power and authority by making law and by forcing plaintiff and others to engage in activities under duress that are unlawful.

Defendant directed the unconstitutional deprivation and was the moving force behind the deprivation of rights and was responsible for causing unconstitutional behavior on the part defendants' employees.

Defendants' disrespect for the rule of law, in disrespect for the rights of plaintiff caused, conspired, contributed to Obtaining a signature by deception or duress.

Tenth Cause of Action:

Criminal Code, RCW 9A.60.050 False certification and RCW 42.20.040-050 False Report/certification (e.g., Ref: CP 1784-1787)

Plaintiff incorporates all the preceding and foregoing paragraphs as if set fourth in full.

As a matter of policy and rules, defendants condone and allow judicial officers, under the color of law to use known false statements and to fabricate sham instructions that produce false results that are then certified by defendants.

Defendants' disrespect for the rule of law, in disrespect for the rights of plaintiff caused, conspired, contributed to False certification and false report.

Eleventh Cause of Action:

Criminal Code, RCW 9A.72 Perjury and tampering with evidence and RCW 42.20.040-50 False Report/certification. (e.g. CP 19; 58-63; 212-229; 295-298...)

Plaintiff incorporates all the preceding and foregoing paragraphs as if set fourth in full.

Defendant, in the course of one or more official proceedings made inconsistent material statements under oath,

Defendants knowingly presents false physical evidence-
See CP

Defendants' disrespect for the rule of law, in disrespect for the rights of plaintiff caused, conspired, contributed to engage in perjury and interference with official proceedings and false report/certification.

Twelfth Cause of Action:

Criminal Code, RCW 9A.80.010 Abuse of Office and RCW 42.20 misconduct of public officer.

Plaintiff incorporates all the preceding and foregoing paragraphs as if set fourth in full.

Defendants intentionally commits an unauthorized act under color of law; and intentionally refrains from performing a duty imposed upon him or her by law.

Defendants' disrespect for the rule of law, in disrespect for the rights of plaintiff caused, conspired, contributed to engage in abuse of office and misconduct of public officer.

Thirteenth Cause of Action:

Criminal Code, RCW 9A.76 Rendering criminal assistance

Plaintiff incorporates all the preceding and foregoing paragraphs as if set fourth in full.

Defendants acted with the intent to prevent, hinder, or delay the apprehension or prosecution of another persons – Ellerby/Downer/Ferguson and Jeffrey Downer, for their violations of law and oath of office.

Defendants' disrespect for the rule of law, in disrespect for the rights of plaintiff caused, conspired, contributed to engage in rendering criminal assistance.

Fourteenth Cause of Action:

Criminal Code, RCW 9.72 Perjury; RCW 9.38 False Representation;

Plaintiff incorporates all the preceding and foregoing paragraphs as if set fourth in full. Example Exhibit 1 re clouded title.

Defendants' disrespect for the rule of law, in disrespect for the rights of plaintiff caused, conspired, contributed to engage in perjury and False report and false certification and representation re title.

Fifteenth Cause of Action:

Criminal Code RCW 9.73 Violating right of Privacy;

Plaintiff incorporates all the preceding and foregoing paragraphs as if set fourth in full.

Defendants' disrespect for the rule of law, in disrespect for the rights of plaintiff caused, conspired, contributed to engage in violating right of privacy

Sixteenth Cause of Action:

Criminal Code RCW 9.81 Subversive activities; RCW 9A.68 Bribery and Corrupt influence.

Plaintiff incorporates all the preceding and foregoing paragraphs as if set fourth in full.

Defendants' disrespect for the rule of law, in disrespect for the constitution of the United States and the State of Washington and in disregard for the rights of plaintiff caused, conspired, contributed to engage in a revolution to alter our form of government and is subversive activities.

Seventeenth Cause of Action:

Criminal Code RCW 9.94A Criminal street gang;

Plaintiff incorporates all the preceding and foregoing paragraphs as if set fourth in full.

Defendants' disrespect for the rule of law, in disrespect for the rights of plaintiff caused, conspired, contributed to engage in conduct of a criminal street gang.

Eighteenth Cause of Action:

Criminal Code, RCW 9.101 Criminal Street gang;

Plaintiff incorporates all the preceding and foregoing paragraphs as if set fourth in full.

Defendants' disrespect for the rule of law, in disrespect for the rights of plaintiff caused, conspired, contributed to engage in conduct of a criminal street gang.

Nineteenth Cause of Action:

Criminal Code, RCW 9A.28 Criminal attempt/Criminal conspiracy;

Plaintiff incorporates all the preceding and foregoing paragraphs as if set fourth in full.

Defendants' disrespect for the rule of law, in disrespect for the rights of plaintiff caused, conspired, contributed to engage in criminal attempt/criminal conspiracy

Twentieth Cause of Action:

Criminal Code, RCW 9A.82 Criminal profiteering formerly Racketeering;

Plaintiff incorporates all the preceding and foregoing paragraphs as if set fourth in full.

Defendants' disrespect for the rule of law, in disrespect for the rights of plaintiff caused, conspired, contributed to engage in criminal profiteering formerly racketeering.

Twenty-first Cause of Action:

Criminal Code, RCW 9A.84.030(a) Public disturbance;

Plaintiff incorporates all the preceding and foregoing paragraphs as if set fourth in full.

Defendants' disrespect for the rule of law, in disrespect for the rights of plaintiff caused, conspired, contributed to engage in public disturbance

Twenty-second Cause of Action:

RCW 18.130.180 Professional Misconduct;

Plaintiff incorporates all the preceding and foregoing paragraphs as if set fourth in full.

Defendants' disrespect for the rule of law, in disrespect for the rights of plaintiff caused, conspired, contributed to engage in professional misconduct.

Twenty-third Cause of Action:

Criminal Code, RCW 9A.08 Culpability;

Plaintiff incorporates all the preceding and foregoing paragraphs as if set fourth in full.

Defendants' disrespect for the rule of law, in disrespect for the rights of plaintiff caused, conspired and contributed to these violations and are culpable.

Twenty-fourth Cause of Action

Violation of 42 U.S. Code 12132 – Discrimination against individuals with disabilities.

Plaintiff incorporates all the preceding and foregoing paragraphs as if set fourth in full.

Defendants' sham procedures, sham hearings, ultra vires conduct is designed to discriminate against individuals with disabilities by their arbitrary and capricious administration of GR 33 accommodations. Defendants' disrespect for the rule of law, in disrespect for the rights of plaintiff caused, conspired and contributed to violations of 42 USC 12132.

V. RELIEF: FEES AND COSTS

In addition to the damages and claims for relief due plaintiff individually and noted in plaintiff's "Complaint" filed 3-18-2009, plaintiff request an award of cost and fees under 42 US Code 1988 and RCW 4.84.

Plaintiff request the Court mandate a special prosecutor to address those issues of substantial public importance raised by the pleadings.

With respect to Judge Hartman, plaintiff requests both equitable and legal relief in an amount to be determined.

With respect to Justices Penoyar, Johanson, and Armstrong, Plaintiff requests equitable relief and legal relief in an amount to be determined.

VI. AFFIDAVIT

I, the undersigned, attest under penalty of perjury that all that is presented herein is true.

Dated this November 14, 2012

By:



William Scheidler, Pro Se