

**THE WASHINGTON STATE GOVERNOR'S OFFICE  
UNIFORM JUDICIAL EVALUATION QUESTIONNAIRE<sup>1</sup>**

Position Sought (Court/Division/District): **Court of Appeals, Division III**

By Appointment:  By Election:

1. Siddoway Laurel H. 15550  
Last Name First Name Middle Name WSBA Bar Number

2. Business Address: Randall I Danskin  
Business Name  
601 West Riverside Avenue, Suite 1500  
Street or P.O. Box  
Spokane WA 99201  
City State Zip  
Business Phone No. 509-747-2052 After-hours/direct  
dial: x 262  
Work e-mail address: lhs @ randalldanskin.com

3. Home Address:  
Street or P.O. Box  
City State Zip  
Home Phone No. Mobile Phone No.:  
Home e-mail address: None

4. Date of Birth: 5. Social Security Number:<sup>2</sup>

6. City/State/Place of Birth:

7. Please state the date of all other judicial evaluations you sought, bar polls you participated in, and appointment applications you submitted. Please specify whether you sought appointment or election for each, from whom the evaluation was sought, the position sought, and the outcome.

<sup>1</sup> The Governor's Office uses this questionnaire exclusively for candidates seeking judicial appointment. The Washington State Bar Association and other state bar associations noted on the last page also accept this questionnaire in their judicial evaluation process. The Governor's Office reserves the right to update this questionnaire and will post updated versions of the questionnaire on the Governor's webpage. Please direct all questions about the questionnaire to the Governor's Office of General Counsel.

<sup>2</sup> Only include your social security number on the copy of the questionnaire forwarded to the Governor's Office.

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**I have not previously sought judicial evaluations or participated in bar polls. I did submit an application for appointment to the U.S. District Court for the Eastern District of Washington in November 2008.**

**8. Year admitted to practice law in Washington: 1985**

**9. Employment History (in reverse chronological order):**

**a. Start Date: May 1985 End Date: Presently employed**  
**Organization: Randall | Danskin**  
**Address: 601 West Riverside Avenue, Suite 1500, Spokane, WA 99201**  
**Phone No.: 509-747-2052**  
**Position/Title: Attorney and Principal**  
**Supervisor: N/A. Managing principals are Peter J. Grabicki, Donald K. (Kit) Querna and William Buckoldt**  
**Nature of Practice (including frequency of court appearances):**  
**Predominantly commercial litigation and arbitration. A summary of my litigation and litigation-related experience is provided herewith.**

**I appear in court frequently.**

**Reason for leaving: N/A**

**b. Start Date: February 1980 (est.) End Date: June 1984**  
**Organization: Dean Witter Reynolds, Inc.**  
**Address: 5 World Trade Center, New York, N.Y.**  
**Phone No.: As a result of mergers, firm no longer exists.**  
**Position/Title: Senior Litigation Attorney**  
**Supervisor: Dennis Greenwald, General Counsel**  
**Nature of Practice (including frequency of court appearances):**  
**Securities defense, principally in industry arbitration or regulatory administrative proceedings. Some employment defense and advisory work on contract, personal property (securities and accounts) and employment issues.**

**Infrequent court appearances (lag time for cases in New York courts was several years at the time I was at Dean Witter); regular industry arbitration and regulatory hearing appearances (approx. one per calendar quarter).**

**Reason for leaving: Having started a family, my husband and I decided to leave NYC and move to Washington state. To round out my legal experience (it had been quite specialized in issues unique to national securities broker-dealers) I took an extended maternity leave of absence (9 months) during which I attended New York University and earned my LL.M. in Taxation.**

**c. Start Date: December 1979 (Est.) End Date: February 1980 (est.)**  
**Organization: Paine Webber Jackson & Curtis, Inc.**  
**Address: Headquarters in the Wall Street area; I no longer have the address**  
**Phone No.: As a result of mergers, firm no longer exists.**

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**Position/Title: Legal compliance officer**

**Supervisor: George Warner**

**Nature of Practice (including frequency of court appearances):**

**Securities compliance supervision in the Legal / Compliance Department of this national broker-dealer. Investigated customer and regulatory complaints and reviewed and responded up on exception reports for irregular trading activity. Studied for and passed the examination to become Series 7 licensed as a stockbroker during my several months at Paine Webber.**

**No court appearances.**

**Reason for leaving: Opportunity to transition to litigation at Dean Witter Reynolds.**

**d. Start Date: October 1979 End Date: December 1979 (est.)**

**Organization: Loeb Rhoades & Hornblower Co.**

**Address: 40 Wall Street, New York N.Y.**

**Phone No.: Firm no longer exists.**

**Position/Title: Contract lawyer.**

**Supervisor: Janos Racz**

**Nature of Practice (including frequency of court appearances):**

**Upon our arrival in New York City in October 1979 and while looking for other work, I took a contract position working on resolving trading and account issues for Loeb Rhoades, which had been acquired by Shearson Hammill & Co. It entailed working with securities backroom specialists to either figure out and resolve or legally settle all of the outstanding issues and disputes that Loeb Rhoades had with customers and other firms so that it could shut its business down.**

**Reason for leaving: To accept position at Paine Webber.**

**e. Start Date: Fall 1978 (est.) End Date: Spring or Summer 1979**

**Organization: Douglas J. Parry**

**Address: Mr. Parry was practicing privately when I worked for him while in law school; he appears to be with Dorsey & Whitney in Salt Lake City at this time.**

**Phone No.: (801) 933-8919 (currently)**

**Position/Title: Research intern**

**Supervisor: Mr. Parry**

**Nature of Practice (including frequency of court appearances):**

**Mr. Parry was working on the A T & T antitrust defense, compiling a history of telephone regulation and competition in Utah. I was referred to him by my antitrust professor and did contract work researching the history of regulation while in my third year of law school and studying for the bar exam.**

**No court appearances.**

**Reason for leaving: This was a temporary position, as my husband and I planned to move to New York City in the fall of 1979.**

**f. Start Date: Spring 1977 (est.) End Date: Summer 1978 (est.)**

**Organization: Nelson Harding Richards Leonard & Tate**

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**Address: No longer in existence**

**Phone No.: No longer exists**

**Position/Title: Legal intern**

**Supervisor: William Richards**

**Nature of Practice (including frequency of court appearances):**

**Worked as a legal intern at this national law firm; principal areas of practice for the Salt Lake office were Interstate Commerce Commission administrative proceedings (interstate trucking licensing and tariffs) and insurance defense. Legal research; evidence review and summaries; deposition summaries.**

**Reason for leaving: My husband and I had decided to move to New York City; left to do antitrust contract work for Mr. Parry that I believed might be better background for the type of work (complex commercial) that I hoped to do in New York.**

**g. Start Date: June 1975 End Date: May 1976**

**Organization: University of Utah Department of Philosophy**

**Address: 215 South Central Campus Drive, Salt Lake City, UT 84112**

**Phone No.: (801) 581-8161**

**Position/Title: Teaching Fellow**

**Supervisor: Prof. William Whisner and Bangs Tapscott**

**Nature of Practice (including frequency of court appearances): N/A. Taught break-down sessions for Elementary Logic, Advanced Logic and Introduction to Philosophy students**

**Reason for leaving: Enrolled in law school**

**h. Start Date: Spring 1973 End Date: Spring 1975**

**Organization: Daily Utah Chronicle**

**Address: University of Utah**

**Phone No.: 801-581-6397**

**Position/Title: Reporter, later News Editor, later Managing Editor**

**Supervisor: Publications Council**

**Nature of Practice (including frequency of court appearances): N/A.**

**Reason for leaving: Enrolled in graduate school.**

**i. Start Date: Summer 1972 End Date: Fall 1973**

**Organization: Grand Central Stores**

**Address: No longer in business.**

**Phone No.: "**

**Position/Title: Cashier**

**Supervisor: Can't recall**

**Nature of Practice (including frequency of court appearances): N/A**

**Reason for leaving: Better opportunity.**

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Please continue, if necessary, on a separate piece of paper in the above format as needed.

10. Please list all other courts and jurisdictions in which you have been admitted to practice law and the dates of admission. Please provide the same information for administrative bodies having special admission requirements.

**Supreme Court of the State of Utah – 9/26/79  
U.S. District Court for the District of Utah – 9/26/79;  
Supreme Court of the State of New York – 10/31/83;  
Supreme Court of the State of Washington – 11/26/85;  
Supreme Court of the State of Idaho – 04/11/86;  
U.S. District Court for the Eastern District of Washington – 02/03/86;  
U.S. District Court for the Western District of Washington – 01/04/91;  
Ninth Circuit Court of Appeals – 01/05/93;  
Seventh Circuit Court of Appeals – 07/02/93;  
U.S. District Court for the District of Idaho – 07/15/98;  
U.S. District Court for the Southern District of New York – 04/06/99; and  
United States Supreme Court – 01/07/02.**

11. Please list all bar associations and professional societies of which you are a member and give the titles and dates of any offices that you have held in such groups. I am presently a member of the Spokane County Bar Association and the Federal Bar Association for the Eastern District of Washington. I served as a trustee and officer of the Federal Bar Association in the late 1990s. I am unable to locate information on the precise years.
12. Are you in good standing in every bar association of which you are a member? Yes. If you answered "no", please explain.
13. If you have ever been a judge, please identify any court committees on which you have served or administrative positions you have held. Please state the dates of service for each.  
I have never been a judge.
14. Please list up to five of your most significant professional accomplishments. (If applicable, please provide the case and court name and the citation if a case was reported (and copy of the opinion).

**The evaluation form will not allow me sufficient space to include this answer, which is therefore attached.**

**Item # 14: Five of your most significant professional accomplishments.**

**River Park Square litigation**, which entailed a dozen lawsuits, the most significant of which (each involving from \$1 million to \$31 million) were:

***Nuveen Quality Income Municipal Fund, Inc., et al. v. Prudential Securities, Inc. et al.***; later recaptioned ***City of Spokane v. Koegen***, Case No. CV-01-00127-EFS, U.S. District Court, Eastern District of Washington (bond litigation)

***City of Spokane v. Walker Parking Consultants/Engineers, Inc. et al.***, Spokane County Case No. 00-204173-4 (mandamus and “loan” obligation litigation)

***Spokane Research & Defense Fund et al. v. Spokane County, et al.***, Spokane County Case No. 03-2-00065-6 (tax litigation)

***St. Paul Fire and Marine Insurance Co., v. RWR Management, Inc., dba R.W. Robideaux & Co.***, Case No. CV-05-294-EFS (insurance bad faith claim acquired by assignment)

From January 2001 until January of 2008, I represented the City of Spokane in litigation arising from its decisions to provide financial support for the renovation and expansion of the privately-owned River Park Square mall in downtown Spokane. The City had agreed to loan money to fund operation of a public parking garage adjoining the mall and had pledged its right to receive grants under HUD’s §108 program as security for a HUD loan to the project owner. Both obligations were represented in public meetings as low- to no-risk. But when the renovated mall opened, the projections quickly proved unrealistic and the City faced \$2 million/year losses on its obligation to make “loans” for garage operations and projected \$1 million/year losses of its HUD grants, to cover the under-collateralized construction loan.

The transaction documents did not favor the City. Although there was plenty of blame to go around, the deal had been structured to capture the City alone in a web of obligations subsidizing all of the loss and problems for at least the 20-year life of the project financing. Litigation ensued over what the City’s “loan” obligation meant in the face of a project too insolvent to repay, over fraud in the sale of \$31.5 million in municipal bonds whose net proceeds were paid to the project owner for the garage, and over the project owner’s obligations with respect to the HUD loan. The Internal Revenue Service challenged the tax-exempt status of the bonds based on private inurement to the project owner, and the County challenged the tax-exempt status of the garage facility.

The *Nuveen* lawsuit identified above was the \$31.5 million securities fraud lawsuit brought against all of the financing participants by municipal bond fund investors, the bond insurer and the bond indenture trustee. What made it an especially complex case was that it was not merely a massive securities fraud lawsuit unfolding at the same time litigation a test of the City’s ambiguous “loan” obligation was moving through state courts and an IRS challenge to the tax-exempt status of the project was proceeding, but also that the bond litigation eventually became the vehicle through which the City extricated itself from the mall project, settled with the plaintiffs and pursued contribution claims from its co-defendants. The City paid off the bonds, ultimately recovered multi-million dollar settlements from most of the transaction participants including through assignments and bad faith claims against insurers, successfully litigated the state tax issue, restored its credit rating in due course and ultimately substantially reduced the City’s present and future exposure to the financing.

***John Doe v. Gonzaga University***

**99 Wn.App. 338, 992 P.2d 545 (2000), review granted and reversed by**

**143 Wn.2d 687, 24 P.3d 390 (2001), cert. granted and reversed in part by 536 U.S. 273 (2002) (Washington Supreme Court decision attached)**

This was a defamation, invasion of privacy and breach of education contract case brought to recover damages for a male teaching education student who was falsely accused by third parties (not the alleged victim) of date rape. After Gonzaga employees defended against the defamation action by asserting that they were entitled to sovereign immunity because they were acting on behalf of the state in the teacher certification process (and thereby “state actors”), I amended the complaint to assert a cause of action under 42 U.S.C. § 1983 for violating my client’s rights under the federal Family Education Rights and Privacy Act.

My client recovered \$1.3 million in damages and attorney fees at trial. Gonzaga appealed and the Court of Appeals (Division 1) reversed and remanded for a new trial. I sought discretionary review, which the Supreme Court granted. The Washington Supreme Court reversed and reinstated the verdict.

Gonzaga then file a petition for a writ of certiorari, challenging the damages recovered under 42 U.S.C. § 1983. Unfortunately for my client, his recovery under § 1983 implicated an issue that federalists had been trying to place before the Supreme Court for a couple of years, *viz.*, which federal statute create “rights” that can be vindicated in a civil rights action under § 1983.

John G. Roberts, Jr. (now Chief Justice) represented Gonzaga. I prepared the certiorari briefing, but when certiorari was granted, my client received several offers of representation from experienced Supreme Court practitioners and ultimately decided to retain a former Solicitor General practicing at Morrison & Forster to brief and argue the case to the Supreme Court.

Gonzaga prevailed at the Supreme Court, in what is now a leading case on the scope of 42 U.S.C. § 1983. My client lost the portion of his recovery attributable to the federal claim. Given prejudgment interest, his recovery was not significantly reduced.

***Safeway, Inc. and Albertson’s, Inc. v. Local 1439***

**Case No. 2-90-00424-AAM, U.S. District Court, E.D. Washington**

This was a legal challenge brought by Safeway and Albertsons, represented by Bogle & Gates, to the transaction by which Local 1439 of the United Food and Commercial Workers Union and URM Stores had agreed that local supermarket chain Rosauers Supermakets could become employee-owned. The method of financing the Employee Stock Ownership Plan acquisition was for Rosauers’ employees to take a cut in pay from the salary ranges otherwise negotiated through multi-employer bargaining, with that discount, or “set aside,” applied to pay the acquisition debt. Local 1439 had always bargained with Safeway, Albertsons and Rosauers collectively and the intention was to continue to do so, meaning that the amount that Rosauers would pay its employees in wages would be guaranteed to be less than what Safeway and Albertsons paid as wages for as long as the “set-aside” was in place.

The ESOP transaction raised fascinating questions of first impression under the antitrust laws and under federal labor law. We were able to get the antitrust claims dismissed on summary judgment and after briefing summary judgment addressed to the labor claims, settled the case on terms that did not require any modification to the set-aside. The employee acquisition went forward and the employee-owners sold the store in the late 1990s for a solid profit, making it one of the most successful ESOP transactions ever in the State of Washington.

***City of Spokane v. Dep't of Ecology (the Lincoln Street bridge case)***  
**Shoreline Hearings Board Case No. 98-006**

This was a pro bono matter for us; my husband and I and our firm invested approximately \$100,000 in attorney time and expert costs to represent Friends of the Falls, a local non-profit, in its effort to halt construction of a 100-foot wide bridge over the Spokane River Gorge and falls. The project was favored by City engineers and downtown interests for transportation and economic development reasons. But Friends of the Falls worked hard, and ultimately successfully, to persuade employees of the Department of Ecology to deny a shoreline permit for the bridge construction. The City of Spokane and Department of Transportation geared up for a hard-fought appeal to a Shoreline Hearings Board that was widely-regarded at the time as being pro-local government and anti-Department of Ecology.

Based on a shared concern of Department of Ecology employees and Friends of the Falls that Ecology and its lawyers lacked the manpower and resources to defend the appeal, we agreed to represent Friends of the Falls as an intervenor and to take the lead on proving that there was no traffic need for the bridge, with Department of Ecology lawyers taking the lead on the air quality impacts of bridge construction. Together, we successfully defended the Department of Ecology's denial of the shoreline permit and the bridge was not built.

Since then, there is a growing community consensus that the River Gorge is the crown jewel of the City. I believe I can safely say that even most of those who advocated for the bridge at the time are glad, in retrospect, that it was not built.

***In Re Firestorm 1991.***  
**Spokane County No. 94-2-05256-4**

This was class action litigation against what was then Washington Water Power and our client, Inland Power & Light Co. arising out of extensive fire damage caused when high winds from a late summer storm, occurring after a long drought, downed power wires. I was asked to assist one of my partners, David Kulisch, in defending the case. The case presented all of the usual issues arising in a class action and proceeded virtually to trial before being successfully mediated. I was asked to guest-teach on class action procedure at Gonzaga law school on several occasions following the Firestorm case.

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15. Please summarize up to eight of the most significant matters that you participated in as an advocate. Please include the dates of your participation and the reason each was significant to you. Please provide the citation if a case was reported. If you have been a judge, please include some cases that have been tried before you.

**In addition to the five matters described in response to Item # 14, the following:**

***NextSentry Corporation v. James R. Hereford***  
**(Spokane County Case No. 07-2-04446-3)**

I defended this four-week jury trial in December 2009. The case was significant because it was so vigorously and ruinously pursued by the plaintiff, yet despite being substantially outspent, we prevailed. My client, the former CEO of a high tech start up firm who had admitted to overstating the status of a couple of contracts, was aggressively and vindictively sued. There was no evidence that my client's error had caused any substantial harm, yet the plaintiff was seeking \$11 million, a figure that would bankrupt him, and without any reasonable prospect for settlement. It also reneged on a loan that my client had personally guaranteed for the company, subjecting him to that burden and liability. Simply stated, the plaintiff could afford ruinous litigation (it expended \$1.6 million on the suit) and my client could not (our fees and costs were less than \$350,000).

After a hard-fought four week trial, the jury returned a verdict finding my client liable for breach of fiduciary duty and awarding the plaintiff only \$1. It found that the plaintiff was liable for the guaranteed obligation and awarded my client payments he had been required to make on the loan. In a separate proceeding, the plaintiff was required to indemnify my client for some fees and costs.

***Yoder v. Whitworth College***  
**(Spokane County Case No. Case No. 98-2-01237-9)**

This case, which I filed in 1998 and was settled in early 2000, was significant because I not only obtained a reasonable settlement for my client, a female professor denied tenure, but secured an agreement from the college to engage in a negotiated process of self-evaluation of gender issues, particularly gender bias it was applying in making tenure decisions – an outcome that was very important to my client. Simply stated, tenure decisions exhibited a bias that male candidates who had a reputation of being blunt, candid and even confrontational were not thereby disqualified from tenure, whereas female candidates who exhibited the same characteristics, were. The self-evaluative process was carried out over several years, in the manner agreed by Whitworth.

***Field v. Spokane Radio, Inc., Mark Fuhrman and Mike Fitzsimmons***  
**(Spokane County Case No. 03-2-00578-3)**

This case was brought by a wrongly-accused 18-year old high school valedictorian against KXLY-AM radio personalities Mark Fuhrman and Mike Fitzsimmons and the station, for statements during their "All About Crime" program. They identified the plaintiff as the prime suspect in a beating in Liberty Lake. The victim's family had insisted that the plaintiff was the attacker but the police had failed to make an arrest. Fuhrman and Fitzsimmons questioned the delay. The attackers were later identified and pleaded guilty or were prosecuted; the plaintiff had not been involved.

The case was significant because of its high stakes and its similarity to *Hatfill v. Nicholas Kristof and N.Y. Times*, (involving coverage of an individual wrongly accused of anthrax mailings). We worked hard on a dispositive summary judgment motion, but it was denied. Rather than try the case, the insurer decided to settle.

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16. Please list all undergraduate and graduate (non-law school) colleges and universities attended, years of attendance, degree awarded and reason for leaving if no degree was awarded.

**Master's Degree program, Philosophy, University of Utah, 1975-76 (no degree; elected after first year to begin law school).**

**B.S. (Philosophy), *magna cum laude*, University of Utah, 1975.**

17. Please list all law schools attended, years of attendance, degree awarded and reason for leaving if no degree was awarded.

**LL.M in Taxation, New York University, February 1985.**

**J.D., University of Utah College of Law, May 1979.**

18. Please summarize, briefly, the general nature of your current law practice.

**My practice has been almost exclusively litigation or litigation-related for the last twenty years. Most of my work has been in commercial litigation, representing plaintiffs and defendants in contract, securities, antitrust, trade secret, trademark, real property and other business-related disputes. I have continued to represent investors and broker-dealers in securities arbitration. I have represented clients in tax controversies and in ERISA litigation. I have a long-standing interest in First Amendment jurisprudence and have defended several defamation lawsuits and represented a plaintiff in one defamation lawsuit that ended up in the U.S. Supreme Court, discussed above. I have represented clients in insurance coverage, insurance bad faith litigation and employment discrimination litigation. I worked with another partner of my firm in defending a local utility against class action litigation arising out of the firestorm that occurred in Spokane in 1990.**

19. If you are in practice, please describe your typical clients and any areas of special emphasis within your practice.

**My typical clients are generally business people involved in business disputes. I have also represented consumers, students and employees in actions against businesses, schools and employers – including on a contingent fee basis, if I feel that the client has an important and meritorious claim that she or he would otherwise be unable to pursue.**

20. If your present law practice is different from any previous practice, please describe the earlier practice, including the nature of your typical clients and any area of special emphasis within your practice.

**After our first son was born, we decided to leave New York City, and we moved to Spokane in the spring of 1985. I accepted a position with Randall | Danskin with the objective of migrating to a transaction, tax and business practice, which I thought would be easier for a young mother. My work during my first several years was business and transaction work for our corporate clients, private securities offerings, retirement plan amendment and other**

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**ERISA and tax-related work. Increasingly, however, partners who needed help on litigation pulled me into their cases and I ultimately realized that litigation is what I truly enjoyed.**

21. Within the last 5 years, did you appear in trial court:

Regularly                       Occasionally                       Infrequently

22. Within the last 5 years, did you prepare appellate briefs and appear before appellate courts:

Regularly     TO                       Occasionally                       Infrequently

23. Within the last five years, how often did you appear in the court for which you are applying:

Regularly                       Occasionally                       Infrequently

24. Career Experience

(a) What percentage of your appearances in the last five years was in:

(1) Federal appellate courts	5%
(2) Federal trial courts	20%
(3) State appellate courts	15%
(4) State trial courts	50%
(5) Municipal courts	0%
(6) District courts	0%
(7) Administrative tribunals	3%
(8) Tribal courts	0%
(9) Other (arbitration)	7%
TOTAL	100%

(b) What percentage of your practice in the last five years was:

(1) Civil litigation (excl. family law)	90%
(2) Criminal litigation	0%
(3) Family law litigation	0%
(4) Non-litigation	10%
TOTAL	100%

(c) What percentage of your trials in the last five years were:

(1) Jury trials	50%
(2) Non-jury trials	50%
TOTAL	100%

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- (d) State the number of cases during your total career that you have tried to verdict or judgment (rather than settled) in the following courts, and indicate for each court the following percentages: trials in which you were sole counsel or chief counsel, jury trials, and trials where you were the arbiter/decision maker.

**I have no ability to identify the administrative and arbitration proceedings that I handled in New York between 1980 and 1984, so they are not included. There would have been dozens.**

<u>Number</u>	<u>Court</u>	<u>% as Sole / Chief Counsel</u>	<u>% Jury</u>	<u>% as the Arbiter</u>
0	Municipal	_____	_____	_____
0	State Dist.	_____	_____	_____
13	State Superior	95%_____	40%_____	_____
2	Federal Dist.	100%_____	0%_____	_____
1	Administrative	100%_____	_____	_____
0	Tribal Courts	_____	_____	_____
15	Other (Arbitr.)	95%_____	_____	5%_____

- (e) State the number of appellate cases during your total career where you appeared as counsel of record in the following courts, and indicate for each court the following percentages: cases where you were sole counsel or chief counsel, and cases where you were the arbiter/decision maker (if applicable).

<u>Number</u>	<u>Court</u>	<u>% as Sole / Chief Counsel</u>	<u>% as the Arbiter</u>
1	State Superior Court	100%_____	_____
1	WA. Div. I COA	100%_____	_____
	WA. Div. II COA	_____	_____
18	WA. Div. III COA	100%_____	_____
3	WA. Supreme Court	100%_____	_____
5	Fed. Cir. COA	100%_____	_____
1	U.S. Supreme Court	100% (briefing the petition for cert only)	

- (f) Briefly describe no more than five significant litigation matters that you directly handled as the sole counsel. For each, please provide the name and telephone number of opposing counsel, the name of the judge or other judicial officer, and the citation (if applicable).

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***Fred A. Brown et al. v. James R. Hereford et al.***, Spokane County Case No. 08-2-00246-7, Hugh Evans and Marcus Louvier of Evans, Craven & Lackie (509) 455-5200, and Hon. Michael Price (509) 477-4766.

***Silver Valley Partners, LLC v. DeMotte***, Case No. CV 06-00429-N-EJL, U.S. District Court for District of Idaho, Renee E. Rothauge and Todd Mitchell, Bullivant Houser Bailey, PC (Portland and Vancouver offices), (503) 499-4639, Hon. Edward J. Lodge, (208) 334-9270 decision reported at 400 F.Supp. 2d 1262 (2005).

***Riley v. Spokane Television, Inc.***, Spokane County Case No. 05-2-04227-8, Susan Troppman, Etter, McMahon, Lamberson, Clary & Troppman, now at (509) 232-7760, Hon. Kathleen O' Connor, (509) 477-4707.

***Zach A. Field v. KXLY Broadcast Group et al.***, Spokane County Superior Court Case No. 03-2-00578-3, Daniel J. Huntington, (509) 455-4201, Hon. Harold Clarke III, (509) 477-5717.

***Doe v. Gonzaga University***, Spokane County Case No. 94-2-03120-6, Jarold Cartwright, Evans, Craven & Lackie, P.S., now at (509) 456-2773, Hon. Kenneth Kato, (509) 220-2237.

- (g) State in detail your experience in adversary proceedings before administrative boards or commissions during the last five years.

**I cannot recall any taking place within the last five years.**

25. Please briefly describe any legal non-litigation experience that you feel enhances your qualifications to serve as a judge.

**As indicated in response to Item #20, above, I spent my first several years in Washington working almost exclusively as a transaction, tax and business lawyer. That, and my work and training in the securities industry in New York, has given me a good understanding of how the commercial world operates when it is operating smoothly and in the absence of disputes and legal problems.**

**From 1987 to 1995, I served as a member of the Board of Directors of the Washington chapter of the American Civil Liberties Union. My work on that Board, monitoring the issues in which the Washington chapter became involved, provided me an understanding of constitutional and other civil liberties issues beyond that encountered in my own legal practice.**

26. If you are now an officer or director of any business organization or otherwise engaged in the management of any business enterprises, please provide the following: the name of the enterprise, the nature of the business, the title of your position, the nature of your duties, and the term of your service. If you are appointed and do not intend to resign such position(s), please state this below along with your reasons for not resigning.

**Not applicable.**

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27. Please list all chairmanships of major committees in bar associations and professional societies and memberships on any committees that you have held and believe to be of particular significance.

**I rotated through the Board of Directors of the Federal Bar Association, ultimately serving as its president, in the late 1990s. The exact years are not available to me.**

28. In 50 words or less, please describe why you should be appointed / elected and are seeking a judicial position.

**I know the value to parties, their lawyers and other trial participants of a judge who has a good judicial temperament, an understanding and respect for the process and its participants, intelligence and the willingness to work hard.**

**I have these attributes and welcome intellectual and professional challenges.**

29. In 50 words or less, please describe your judicial philosophy.

**Justice and reasonable action and expectations are best served when the law is clear and the consequences of conduct are predictable. While it is premature to predict my judicial philosophy, this would be a core belief and value.**

30. Have you ever held a judicial office or have you ever been a candidate for such office?  
**No.** If you answered "yes", please provide details, including the courts involved, whether elected or appointed, and the periods of your service.
31. Have you ever held public office other than a judicial office, or have you ever been a candidate for such an office? **No.** If you answered "yes", please provide details, including the offices involved, whether elected or appointed, and the length of your service.
32. Please briefly identify all of your experience as a neutral decision-maker (e.g. judge (permanent or pro tem) in any jurisdiction, administrative law judge, arbitrator, hearing officer, etc.). Give courts, approximate dates, and attorneys who appeared before you.

**Review of my records reveals that I have served as the arbitrator in 15 mandatory arbitration matters, but 12 settled prior to hearing. The three that I heard and decided were:**

**1999-2000: *Allstot v. Edwards and the Town of Grand Coulee*, Grant County #94-2-00771-4. Attorneys: Jeffrey Finer, (509) 455-3700, Jerry Moberg, (509) 754-2356.**

**2000: *Magnus-Morales v. Douglas*, Spokane County #. 99-206471-7. Attorneys: Chris Varallo, (509) 624-5265, Stephen Eugster, (509) 624-5566.**

**2004: *Hathaway v. Lindquist*, Spokane County # 03-02-05868-2. Attorneys: Lloyd Herman, (509) 922-6600, Robert Sealy, (509) 662-6131.**

The Governor's Office's  
Uniform Judicial Evaluation Questionnaire

33. Please list your community and civic activities, including dates and leadership roles held, over the last 10 years.

**I was active in the Spokane Citizens League, the Unity in the Community celebration and in the Rockwood Neighborhood Association (serving as its chairperson) in the late 1990s and into 2000. I resigned from most of my civic organization positions upon being retained to represent the City the River Park Square litigation (discussed above) because of the exceptional demand it placed on my time.**

**I have assisted in organizing and have spoken at a program on the Bill of Rights that Lewis & Clark has put on after school for several of the last four or five years. It has included several speakers on civil rights issues of interest to students.**

34. Have you ever been held, arrested, charged or convicted by federal, state, or other law enforcement authorities for violation of any federal law, state law, county or municipal law, regulation or ordinance? **No.** If you answered "yes", please provide details. (Do not include traffic violations for which a fine of \$150.00 or less was imposed.) Please feel free to provide your view of how it bears on your present fitness for judicial office.

35. Has a client ever made a claim or suit against you for malpractice? **No.** If you answered "yes", please provide details and the current status of the claim and/or suit.

36. Please describe your direct experience, if any, with domestic violence and sexual harassment.

**As an 18- and 19-year old, I was sexually harassed by the manager of the retail store at which I worked, in the form of repeated sexual advances and comments on my physical appearance. I put him off repeatedly, but at the time (early 1970's) there were no effective avenues for complaint or redress.**

**In later employment I was occasionally subjected to unwanted attentions or advances, but never again was it unrelenting. As legal remedies became better known and more effective and as I gained power in my workplace, it was in most cases easy to point out that the behavior was unwelcome and thereby stop it.**

**I have never had direct experience with domestic violence.**

37. Have you been a party in interest, witness, or consultant in any legal proceeding? **No.** If you answered "yes", please provide details. Do not list proceedings in which you were merely a guardian ad litem or stakeholder.

The Governor's Office's  
Uniform Judicial Evaluation Questionnaire

38. Have you ever been the subject of a complaint to any bar association, disciplinary committee, court, administrative agency or other professional group? Yes. If you answered "yes", please provide details.

**I have had three grievances filed against me with the Washington State Bar Association, each of which was dismissed.**

**The first was filed by Jack Lee Smiley, who complained about the time I had taken to file an action on his behalf seeking prejudgment attachment in connection with a securities matter, in which he claimed to be an innocent investor. I had required that he provide increasing amounts of underlying documentation prior to filing the suit because I was continually coming across information that contradicted his representations about his role in the matter and I doubted his truthfulness in his dealings with me. After several months, he found another attorney and I forwarded the file as requested. I later learned that Mr. Smiley became the target of enforcement action by the Idaho Department of Finance and that a judgment and permanent injunction was entered against him, barring him from the industry and requiring him to pay restitution of \$1.195 million to investors he had defrauded.**

**The other two were filed by Cherie Rodgers, a former member of the Spokane City Council, who was unhappy with me because I would not pursue a conspiracy claim in the River Park Square litigation that I did not believe was supported by evidence.**

**I would be happy to provide you with copies of the notices of dismissal or any additional information you would like to see.**

39. Have you ever been disciplined or cited for breach of ethics or unprofessional conduct? No. If you answered "yes", please provide details.
40. If you have served as a judge, commissioner, or in any judicial capacity, has a complaint for misconduct in that capacity ever been made against you? N/A; no. If you answered "yes", please provide details.

41. Are you aware of anything that may affect your ability to perform the duties of a judge? No. If you answered "yes", please provide details.

The Governor's Office's  
Uniform Judicial Evaluation Questionnaire

42. Have you published any books or articles in the field of law? If so, please list them, giving the citations and dates. Also, please give the dates and forums of any Continuing Legal Education presentations that you have made.

**I participated on a panel discussion for the American Judicature Society in the Fall of 2007. The subject matter was judicial free speech and election regulation, and I was asked to speak to the First Amendment concerns of the media.**

**I spoke on a panel at the Northwest Securities Institute in February 2008, on the relative advantages and disadvantages of securities arbitration, as opposed to litigation. Other members of the panel were Thomas Brewer, Lawrence Mills and Brad Keller.**

**I participated in a panel discussion at the annual conference of the National Association of Independent Financial Advisors in October 2008, dealing with the two most recent Washington municipal bond defaults – the Holmes Harbor Sewer District bonds and the River Park Square Garage Bonds.**

**I was asked to speak at the Spokane County Bar Association's annual Ethics CLE in December 2009, on the subject of inadvertent disclosure of privileged communications, waiver and clawback agreements.**

**I will be speaking at the upcoming Northwest Securities Institute in March 2010 on a panel discussing the U.S. Supreme Court's decision in *Tellabs Inc. v. Makor* and its impact on federal securities fraud litigation.**

43. Please list any honors, prizes, awards or other forms of recognition that you have received and whether they were professional or civic in nature.

**Academic and writing awards while in college, but none since then.**

44. Are you aware of anything in your background or any event you anticipate in the future that might be considered to conflict with the Code of Judicial Conduct? No. If you answered "yes", please explain.

45. Please provide a writing sample of your work (between 5 and 10 pages long), written and edited solely by you, within the last 4 years.

*Attached.*

The Governor's Office's  
Uniform Judicial Evaluation Questionnaire

46. Please describe activities that you have engaged in to eliminate bias or improve access to the judicial system for indigent populations and ethnic, racial and sexual minorities. As a member of the bench, what, if any, role do you believe a judge has to enhance equal access to justice?

I was very active in women's issues while in college, and served as the co-chair of the state Women's Conference in Utah in 1977. I served as an adjunct professor of Trial Advocacy at Gonzaga University in the late 1990's and early 2000's and especially enjoyed mentoring women law students interested in trial practice.

My husband and I have consistently supported the annual fundraising efforts of LAW Fund and the Campaign for Equal Justice.

As mentioned above, from 1987 to 1995, I served as a member of the Board of Directors of the Washington chapter of the American Civil Liberties Union and I have continued to be a major donor to that organization.

Members of the bench have the opportunity to see, firsthand, some disparities in delivery of justice – at least those apparent in causes that get to court. Judges, like any lawyer whose work brings particular problems to her attention, should do what she can in individual cases or systemically to address those problems.

47. Please describe the frequency, time commitment and substantive nature of your direct participation of free legal services to indigent populations, and ethnic, racial and sexual minorities.

The substantive areas of law in which I have expertise are not those for which indigent populations and ethnic, racial and sexual minorities have a great need – at least I have never heard about, or had drawn to my attention, opportunities where my substantive knowledge was needed or useful. Accordingly, I have tended to contribute and contribute generously to organizations that can serve those constituencies.

An exception is my interest in civil rights litigation. I have taken on civil rights and employment discrimination representation in meritorious cases that have come to my attention, including where the client was not able to pay. I am presently representing a former corrections officer who is black in a discrimination and retaliation case against Spokane County.

The Governor's Office's  
Uniform Judicial Evaluation Questionnaire

48. Please briefly describe your understanding of the issue of "diversity within the legal profession."

**My view is that diversity is desirable in the legal profession (as it is in other professions) for many reasons: To better serve justice, by having decision-makers who bring diverse backgrounds and life experience to bear on important issues that require a broad perspective; to better serve clients, by giving them the opportunity to be represented by professionals of different races, ethnicity, gender and sexual orientation; to provide full and fair opportunities for all individuals who want to become lawyers or judges; and to raise the public's confidence in the justice system by demonstrating that the system is not dominated by individuals of one race, gender or life experience.**

**I attended law school from 1976 to 1979, at a time when the profession was dominated by white males, so I have witnessed the extent to which increasing diversity has improved the justice system and the profession in all of these ways.**

It is useful for evaluators to speak with attorneys and non-attorneys who are familiar with you. One or more participants in the evaluation process may contact each of your references. All telephone numbers should be current and legible. If a reference is unreachable, your rating/evaluation may be delayed. Please use a separate piece of paper for each list. You may contact references in advance if you so desire. Individuals not listed by you as a reference may be contacted to obtain information about you.

49. If you have been in practice within the past fifteen years, list the names and phone numbers of ten opposing counsels who know you best, including at least three opposing counsels on cases that went to trial. **Provided herewith.**
50. If you have been a judge or otherwise have served as a neutral decision-maker within the past fifteen years, please list the names and phone numbers of the last ten attorneys who have appeared before you. **N/A**
51. List the names and phone numbers of up to six non-attorney references whose opinions or observations – particularly with respect to your commitment to improving access to the judicial system for indigent populations, people of color, and disenfranchised communities – would assist in the consideration of your application. **Provided herewith.**
52. For the last five trials in which you participated (whether as trial lawyer or decision-maker), list as appropriate the following for each: case name, subject matter, court, judge (w/ phone number), and opposing counsel or counsel appearing before you (w/ phone number). **Provided herewith.**
53. List the names and phone numbers of ten additional attorneys familiar with your professional qualifications, skills, experience or attributes. **Provided herewith.**

The Governor's Office's  
Uniform Judicial Evaluation Questionnaire

NOTE: The Governor's Office requires individuals seeking judicial appointment to utilize, to the fullest extent possible, the ratings processes from state, county, and minority bar organizations. Contact information for the minority bar associations can be found on the Washington State Bar Association's website at (<http://www.wsba.org/public/links/minoritybars.htm>). It is the applicant's responsibility, however, to obtain these evaluations in a timely manner, and to forward evaluations received to the Governor's Office. To that end, all applicants are strongly encouraged to commence the evaluation process with the various bar associations as soon as possible. To facilitate the process, the following organizations have agreed to accept this questionnaire as the principal application in their evaluation process and may also require candidates to complete an additional supplement questionnaire:

\*\*\*\*\*

\* PLEASE NOTE: Due to time constraints, I have not contacted any of these organizations, but intend to contact the Washington State Bar Association, the Spokane County Bar Association, and all of the Minority Bar Associations other than the Pierce County Bar Association to evaluate me for the position that I seek.

**State Bar Association**

\*  Washington State Bar Association (WSBA) (appellate court evaluations only)

**County Bar Associations**

\*  King County Bar Association (KCBA)  
\*  Spokane County Bar Association (SCBA)  
 Tacoma-Pierce County Bar Association (TPCBA)

**Minority Bar Associations**

\*  Latina/o Bar Association of Washington (LBAW)  
\*  Loren Miller Bar Association (LMBA)  
\*  The Joint Asian Judicial Evaluations Committee of Washington<sup>3</sup>  
 Pierce County Minority Bar Association (PCMBA)  
\*  Q-Law / GLBT (Gay Lesbian Bisexual Transgender) Bar Association  
\*  Washington Women Lawyers<sup>4</sup> (WWL)

As of the date of your certification below and submission of this questionnaire to the Governor's Office, please check beside each of the above organizations you have contacted to evaluate you for the position for which you seek.

54.

By signing below, I declare under penalty of perjury under the laws of the State of Washington that the information provided by me in responding to this questionnaire is true and correct to the best of my knowledge.

Date:

2-8-2010

Signature:

*Penelope J. J. [Signature]*

*as revised and supplemented 2-9-2010*

<sup>3</sup> A joint committee of the Asian, Korean, South Asian and Vietnamese American Bar Associations of Washington.

<sup>4</sup> Washington Women Lawyers has approved the use of the Governor's Uniform Judicial Evaluation Questionnaire for its statewide and all county chapters.

**Item #49 - Ten opposing counsels who know you best, including at least three opposing counsels on cases that went to trial.**

**Cases that went to trial:**

Richard Kuhling (Spur v. Avista)  
Paine Hamblen LLP  
717 West Sprague Avenue, Suite 1200  
Spokane, Washington 99201  
(509) 455-6000

Stanley Schwartz (Department of Ecology v. City of Spokane)  
Witherspoon Kelley Davenport & Toole P.S.  
422 West Riverside Avenue, Suite 1100  
Spokane, Washington 99201  
(509) 624-5265

Mark Louvier (FAB Ventures v. Wave Ventures)  
Evans Craven & Lackie P.S.  
818 West Riverside Avenue, Suite 250  
Spokane, Washington 99201  
(509) 455-5200

**Others:**

Michael Hines (Vaagen v. D.A. Davidson & Co.)  
Lukins & Annis P.S.  
717 West Sprague Avenue, Suite 1600  
Spokane, Washington 99201  
(509) 455-9555

Thomas McLane  
(Now at) Randall | Danskin  
601 West Riverside Avenue, Suite 1500  
Spokane, WA 99201  
(509) 747-2052

Heather Yakely (In Re River Park Square Bond Litigation)  
Evans Craven & Lackie P.S.  
818 West Riverside Avenue, Suite 250  
Spokane, Washington 99201  
(509) 455-5200

Peter Vial (In Re River Park Square Bond Litigation)  
McNaul Ebel Nawrot Helgren  
600 University Street, Suite 2700  
Seattle, Washington 98101  
(206) 467-1816

Dan Huntington (Fields v. Spokane Radio, Inc.)  
Richter-Wimberley P.S.  
422 West Riverside Avenue, Suite 1300  
Spokane, Washington 99201  
(509) 455-4201

Richard Eymann (In Re Firestrom Litigation)  
Eymann, Allison, Hunter & Jones P.S.  
2208 West Second Avenue  
Spokane, Washington 99201  
(509) 747-0101

Gavin Skok (In Re River Park Square Bond Litigation)  
Riddell Williams, P.S.  
1001 4th Avenue  
Seattle, WA 98154-1192  
(206) 624-3600

***Mr. Skok was adverse through the original case, but I later associated Riddell \ Williams in pursuing contribution claims against co-defendants.. If he is not considered adverse, then:***

Ron Arkills (Spokane Research and Defense Fund v. Spokane County)  
Deputy County Prosecutor, Spokane County  
1115 West Broadway Avenue  
Spokane, Washington 99201  
(509) 477-5756

**Item #51 - six non-attorney references whose opinions or observations – particularly with respect to your commitment to improving access to the judicial system for indigent populations, people of color, and disenfranchised communities – would assist in the consideration of your application.**

Stephen R. Herling  
General Manager, KXLY Broadcast Group  
500 West Boone Avenue  
Spokane, Washington 99201  
(509) 324-4000

Gavin Cooley  
Treasurer, City of Spokane  
808 West Spokane Falls Boulevard  
Spokane, Washington 99201  
(509) 995-3376

George Critchlow (an attorney, but a full time professor)  
Associate Professor, Clinical Law Programs  
721 N Cincinnati St.  
Spokane, WA 99202  
(509) 313-3791

Robert Herold  
Professor, Gonzaga University and columnist, Pacific Northwest Inlander  
303 West 13<sup>th</sup> Avenue  
Spokane, Washington 99204  
(509) 624-0556

Kathleen Taylor  
Executive Director, American Civil Liberties Union of Washington Foundation  
705 Second Avenue, Suite 300  
Seattle, Washington 98104  
(206) 624-2180

Beverley Ridley-Gardner (current client)  
5419 W. Conestoga Ave.  
Spokane, Washington 98104  
(509) 747-4240

Olivette Orme  
Realtor, Windemere Real Estate  
908 North Howard, Suite 101  
Spokane, Washington 99201  
(509) 599-4849, or

Eric Orme, M.D.  
Heart Clinics Northwest  
122 West Seventh Avenue  
Spokane, Washington 99204  
(509) 838-7711

**Item #52 - For the last five trials in which you participated (whether as trial lawyer or decision-maker), list as appropriate the following for each: case name, subject matter, court, judge (w/ phone number), and opposing counsel or counsel appearing before you (w/ phone number).**

Case Name	Subject matter	Court and judge	Opposing counsel
<i>Fred A. Brown et al. v. James R. Hereford et al.</i> (Spokane County Case No. 08-2-00246-7)	Breach of contract	Spokane County Superior Court Hon. Michael Price (509) 477-4766	Hugh O. Evans and Marcus Louvier, Evans, Craven & Lackie, P.S. (509) 455-5200
<i>NextSentry Corporation v. James R. Hereford</i> (Spokane County Case No. 07-2-04446-3)	Corporate governance, breach of fiduciary duty	Spokane County Superior Court Hon. Robert Austin, Ret'd – home number is (509) 280-2799	Michael Patterson, Adam Cuff and Sasha, Philip, Patterson Buchanan (206) 462-6700
<i>Riley v. Spokane Television, Inc.</i> (Spokane County Case No. 05-2-04227-8)	Employment discrimination	Spokane County Superior Court Hon. Kathleen O'Connor (509) 477-4707	Susan Troppman, Paukert & Troppman (509) 232-7760
<i>Connor v. City of Spokane</i> (Spokane County Case No. 01-2-03665-8)	Public records act	Spokane County Superior Court Hon. Richard Schroeder (pro tem), Ret'd – home number is (509) 465-8482	Center for Justice - Breean Beggs, (509) 835-5211, or David Blair-Loy, now at (619) 232-2121
<i>Spur v. Avista</i> (Spokane County Case No. 00-2-06189-1)	Title insurer liability for undisclosed easement	Spokane County Superior Court Hon. Larry Kristianson (509) 684-7520	Richard Kuhling, Paine Hamblen (509) 455-6000

**Item #53 - Ten additional attorneys familiar with your professional qualifications, skills, experience or attributes**

**My long-time partners:<sup>1</sup>**

All at Randall | Danskin  
1500 Bank of America Financial Center  
601 West Riverside Avenue, Suite 1500  
Spokane, Washington 99201  
(509) 747-2052

Keith D. Brown

Anthony Grabicki

Peter J. Grabicki

Robert P. Hailey

David A. Kulisch

Donald "Kit" Querna

Carole Rolando

Douglas Siddoway

Michael Wolfe

**Other attorneys and judges:**

George Ahrend  
Dano, Gilbert & Ahrend, PLLC  
100 East Broadway Avenue  
Moses Lake, Washington 98837  
(509) 764-8426

John Powers  
(Former Mayor, City of Spokane)  
Powers Economics  
2821 Second Avenue, Suite 703  
Seattle, Washington 98121  
(206) 300-6244

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<sup>1</sup> I have not included the six lawyers who recently joined Randall | Danskin.

**Raymond Clary**  
**Etter, McMahon, Lamberson & Clary, P.C.**  
**421 W. Riverside, Ste. 1600**  
**Spokane, WA 99201-0401**  
**(509) 747-9100**

**Gavin Skok**  
**Riddell Williams, P.S.**  
**1001 Fourth Avenue Plaza, Ste. 4500**  
**Seattle, WA 98154-1065**  
**(206) 624-3600**

**Milton Rowland**  
**Foster Pepper PLLC**  
**West 422 Riverside Avenue, Suite 1310**  
**Spokane WA 99201**  
**(509) 777-1600**

**Hon. Gregory J. Tripp**  
**Spokane County District Court Judge**  
**1100 West Mallon**  
**Spokane, Washington 99260**  
**(509) 477-2965**

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR SPOKANE COUNTY

NEXTSENTRY CORPORATION,

Plaintiff,

v.

JAMES R. HEREFORD,

Defendant.

NO. 07-2-04446-3

MEMORANDUM BRIEF IN SUPPORT  
OF MOTION FOR IMPOSITION  
OF SANCTIONS FOR DISCOVERY  
ABUSE

**Introduction**

Through document production from another law firm in a separate piece of litigation, defendant James R. (Jim) Hereford has received documents belonging to NextSentry Corporation that were never produced in discovery in this case. The documents can fairly be characterized as "smoking guns" that would unquestionably have been used by the defense as trial exhibits and in cross examination had they been available. They were created at a critical time and were clearly material. It would have been impossible for NextSentry to overlook them in preparation of what it has reported was a \$1.6 million investigation and prosecution. They were responsive to no less than

MEMORANDUM BRIEF IN SUPPORT OF  
MOTION FOR IMPOSITION OF  
SANCTIONS FOR DISCOVERY ABUSE - 1

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1 five subpoenas and document requests served in this case.

2 The withholding of evidence was so blatantly wrong and obviously intentional  
3 that sanctions must be imposed.  
4

5 **Background and relevance**

6 This case involved NextSentry Corporation's contested claims that Jim Hereford,  
7 its former chief executive officer, destroyed the value of the corporation through his  
8 report (and belief) that two license and equipment sales for which he had not received  
9 signed contracts were committed and "closed;" that Hereford, ostensibly without the  
10 knowledge or authorization of his board of directors, committed NextSentry to a  
11 \$250,000 loan from the Bank of Whitman that the board claims to have believed was  
12 Hereford's personal loan; and that members of the board allegedly only learned as the  
13 result of an internal investigation that the salary he was paid as CEO of NextSentry was  
14 more than he had been paid as COO of its affiliate, Next IT. NextSentry claimed to have  
15 been required to embark on an internal investigation that led to discovery of further  
16 wrongdoing and to a need to buy out NextSentry shareholders other than Next IT.  
17

18 Hereford contended that the unsigned contracts had not caused harm, that the  
19 corporate board was aware of the Bank of Whitman loan and that it had never formally  
20 acted on his salary, and that these feigned "problems" with NextSentry were blown out of  
21 proportion as a pretext for a squeeze out of other shareholders and reabsorption of  
22 intellectual property by Next IT.  
23

24 Although Hereford substantially prevailed in his defense and prevailed on his  
25 counterclaim, the two withheld communications that prompt this motion for sanctions  
26  
27  
28

1 would have made his defense and counterclaim much easier to establish. They consist of:

2 A July 15, 2007 email from Fred Brown to other NextSentry board members and  
3 acting CEO John Gilbert, with copies to Paula Kenney and Andrew Schultheis,  
4 conveying "my [Brown's] current thoughts," which are "open for discussion," and

5 A July 15, 2007 email from Tom Tilford to Fred Brown, conveying an email that  
6 he had circulated to NextSentry shareholders John Stone, John Luger and Dave  
7 Sabey, addressing "where we are."

8 Copies are attached to as Exhibit A and Exhibit B, respectively, to the Declaration of  
9 Counsel in Support of Motion for Imposition of Sanctions for Discovery Abuse (hereafter  
10 "Decl. Counsel") filed herewith.

11 Both communications were prepared within days of the July 9, 2007 date on which  
12 Jim Hereford was suspended as CEO of NextSentry and prior to the morning of July 16,  
13 2007, when he was fired. Both pre-date NextSentry's engagement of William Partin.  
14 Decl. Counsel, ¶ 4. The documents establish, among other things, that

- 17 • Key board members and shareholders believed even after the matter of the two  
18 unsigned contracts came to light that their interest in NextSentry "has value equal  
19 to or in excess of our current investment."
- 20 • Key board members and shareholders knew that NextSentry (not Hereford) had  
21 "Bank debt of \$250,000."
- 22 • The lack of formal approval for Jim Hereford's salary was not a discovery by the  
23 forensic accountant; even before the expert was brought in to "scrub the books"  
24 for "bad acts" by Hereford, key board members and shareholders believed that  
25 Hereford's salary could be made an issue.  
26  
27  
28

- 1           • An original board objective *was* to dissolve NextSentry, return its intellectual  
2 property to Next IT, and have Next IT assume maintenance obligations – a plan  
3 that was apparently frustrated by Jim Hereford’s refusal to relinquish his 117,000  
4 NextSentry shares, for which he would have to have been paid.  
5  
6           • The alleged “bad acts” of Jim Hereford were not discovered or identified through  
7 the costly investigation by William Partin that commenced on July 17, 2007;  
8 rather, Partin was brought in to justify an already-formulated strategy for  
9 squeezing out NextSentry’s shareholders and uploading NextSentry’s technology  
10 to Next IT.  
11

12  
13 To avoid or minimize sanctions, NextSentry will undoubtedly try to downplay the  
14 importance of the documents, but the fact is that from a defense perspective, they were  
15 critical.<sup>1</sup> The defense should have had the opportunity to use them and demonstrate their  
16 persuasiveness. And the fact that they were intentionally withheld speaks loudest of all  
17 to NextSentry’s recognition that they were important.  
18

19  
20           **The documents were responsive to five requests for discovery.**  
21           **They could not have been inadvertently overlooked.**

22           The documents were unquestionably withheld intentionally. Each communication  
23

---

24 <sup>1</sup> In questioning what excuse NextSentry might invent for its withholding of the evidence,  
25 the defense has noted that the attachment to Fred Brown’s July 15, 2007 email was  
26 apparently prepared by John Dale, Next IT’s finance vice president, and Dan Cadagan,  
27 Next IT’s counsel. But the participation of *Next IT’s* (not NextSentry’s) attorney as a  
28 scrivener does not turn a non-privileged communication into a privileged one. The memo  
does not contain legal advice. As Brown himself states, the attachment represents his  
[Brown’s] thoughts. It was shared with non-clients of Cadagan: the directors of  
NextSentry. It was not marked as a privileged communication. It was recently produced  
by NextSentry, with no contention of privilege.

1 was responsive to five different requests for discovery served on different individuals at  
2 different times, over approximately a year. As set forth in much more detail in the  
3 Declaration of Counsel, filed herewith (the detail will not be repeated here), the two July  
4 15, 2007 communications were responsive to two requests for production served on  
5 NextSentry and at least four subpoenas duces tecum served on Next IT and NextSentry  
6 directors Fred Brown, Jim Brockett and Tom Tilford. As further set forth in counsel's  
7 declaration, the question of whether production of Fred Brown's emails had been  
8 complete was discussed in the course of Fred Brown's deposition, and assurances were  
9 given by him and his counsel that all relevant emails had been produced. Now,  
10 obviously, that was not true.  
11

12  
13  
14 It is impossible that the documents were overlooked. They were located by Jim  
15 King's office within a matter of weeks in *Hereford & Koto v. Next IT*, in response to one  
16 simple subpoena that resulted in production of less than 175 pages of documents.  
17 Contrast that with this case, in which NextSentry claims to have spent \$1.6 million on its  
18 investigation and prosecution of Hereford, and in which, in the course of responding to  
19 requests for documents over a period of a year, NextSentry produced *thousands* of pages  
20 documents.  
21

22  
23 Obviously a decision was made at some high level (management and/or counsel)  
24 not to produce the July 15, 2007 communications. The defense can not know who made  
25 the decision. The Court will have to determine that from NextSentry.  
26

27  
28 **Sanctions are required.**

Hereford has moved the Court to impose sanctions under CR 26(g) and its

MEMORANDUM BRIEF IN SUPPORT OF  
MOTION FOR IMPOSITION OF  
SANCTIONS FOR DISCOVERY ABUSE - 5

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(509) 747-2052

1 inherent authority. NextSentry's and Next IT's objections to and failure to produce the  
2 documents in response to discovery is subject to sanction under CR 26(g). The failure of  
3 the three NextSentry directors to produce the documents (on their own volition, or  
4 because they were counseled to withhold the document by corporate management or  
5 counsel) is subject to sanction under the Court's inherent authority.  
6

7  
8 Like its federal counterpart and like CR 11, CR 26(g) is aimed at reducing  
9 delaying tactics, procedural harassment and mounting legal costs. *Physicians Ins. Exch.*  
10 *v. Fisons Corp.*, 122 Wn.2d 299, 341, 858 P.2d 1054 (1993). Such practices tend to  
11 impose unjustified burdens on other parties, frustrate those who seek to vindicate their  
12 rights in the courts, obstruct the judicial process, and bring the civil justice system into  
13 disrepute. *Id.*, citing Schwarzer, *Sanctions Under the New Federal Rule 11 – A Closer*  
14 *Look*, 104 F.R.D. 181, 182 (1985).  
15

16  
17 Rule 26(g) imposes an affirmative duty to engage in pretrial discovery in a  
18 responsible manner that is consistent with the spirit and purposes of Rules 26 through 37,  
19 and Rule 26(g) is designed to curb discovery abuse by explicitly encouraging the  
20 imposition of sanctions. *Fisons*, 122 Wn.2d at 342, citing the federal advisory committee  
21 notes to federal Rule 26(g).  
22

23  
24 Whether an attorney has made a reasonable inquiry before certifying discovery  
25 objections and responses under CR 26(g) is to be judged by an objective standard;  
26 subjective belief or good faith alone no longer shields an attorney from sanctions under  
27 the rules. *Fisons*, 122 Wn.2d at 343. In determining whether an attorney has complied  
28 with the rule, the court should consider all of the surrounding circumstances, the

1 importance of the evidence to its proponent, and the ability of the opposing party to  
2 formulate a response or to comply with the request. *Id.*

3  
4 A motion to compel compliance with the rules is not a prerequisite to a sanctions  
5 motion. *Id.* 122 Wn.2d at 344. If a violation of CR 26(g) is found, then sanctions are  
6 mandated. *Id.* at 346. In determining what sanctions are appropriate, the trial court is  
7 given wide latitude. *Id.* at 354. This wide latitude is intended to reduce the reluctance of  
8 courts to impose sanctions. *Id.* at 339.

10 Where compensation to litigants is appropriate, then sanctions should include a  
11 compensation award. *Id.* at 356. Accordingly, and because the withholding of the two  
12 documents deprived the defense of important evidence disproving plaintiff's contentions  
13 and proving their own, the discovery abuse should be an additional factor in the  
14 defendant's motion for attorney fees presently pending before the Court. Alternatively,  
15 this Court can impose a sanction to be paid to a court fund or court-related fund. *Id.*

#### 18 Conclusion

19 The Court is respectfully requested to treat the discovery abuse as an additional  
20 basis for the award of attorney fees earlier requested by the defendant or impose such  
21 other sanctions as it deems appropriate.  
22

23 DATED this 18th day of September, 2009.

24 RANDALL | DANSKIN

25 By: \_\_\_\_\_

26  
27 Laurel H. Siddoway, WSBA #15550  
28 Attorneys for Defendant

MEMORANDUM BRIEF IN SUPPORT OF  
MOTION FOR IMPOSITION OF  
SANCTIONS FOR DISCOVERY ABUSE - 7

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<b>Case Name and Number</b>	<b>Judge</b>	<b>Opposing counsel</b>		<b>Party Represented</b>	
<b>Trials</b>					
<b>STATE</b>					
<i>Fred A. Brown et al. v. James R. Hereford et al.</i> (Spokane County Case No. 08-2-00246-7)	Hon. Michael Price	Hugh O. Evans, Evans, Craven & Lackie, P.S.	Jury Trial	Defendants	Breach of contract
<i>NextSentry Corporation v. James R. Hereford</i> (Spokane County Case No. 07-2-04446-3)	Hon. Robert Austin	Michael Patterson, Patterson Buchanan	Jury Trial	Defendant	Corporate governance, fiduciary duty
<i>Riley v. Spokane Television, Inc.</i> (Spokane County Case No. 05-2-04227-8)	Hon. Kathleen O'Connor	Susan Troppmann, Etter McMahon Lamberson Oreskovich & Troppmann	Jury trial	Defendant	Employment discrimination
<i>Connor v. City of Spokane</i> (Spokane County Case No. 01-2-03665-8)	Hon. Richard Schroeder	David Blair-Loy	Bench trial	Defendant	Public Records Act
<i>Spur v. Avista</i> (Spokane County Case No. 00-2-06189-1)	Hon. Larry Kristianson	Richard Kuhling, Paine Hamblen, LLP	Bench trial	Plaintiff	Title insurer liability for undisclosed easement

<i>Doe v. Gonzaga University</i> (Spokane County Case No. 94-2-03120-6)	Hon. Kenneth Kato	Jarold Cartwright, Evans, Craven & Lackie	Jury trial	Plaintiff	Defamation, invasion of privacy, § 1983
<i>Weaver v. McCalley</i> (Bonner County Case No. CV-93-0001057)	Hon. James Michaud	Stephen McCrea, Coeur d'Alene, ID	Jury trial	Defendant	Breach of contract
<i>West One Bank v. Hebener</i> (Spokane County Case No. 91-2-01117-1)	Hon. William J. Grant	Leo Driscoll, Winston & Cashatt	Bench trial	Defendant	Liability on guarantee
<i>Contract Design v. Gray</i> (Spokane County Case No. 90-2-01053-2)	Hon. James Murphy	Joan Antonietti	Bench trial	Plaintiff	Non-compete agreement, trade secrets
<i>Machen v. Aircraft Design</i> (Spokane County Case No. 88-2-04058-8)	Hon. Kathleen O'Connor	James Perkins, Bogle & Gates	Jury trial	Defendant and Counterclaimant	Trade secrets, commercial disparagement
<i>Phinney v. Rappe</i> (Spokane County Case No. 85-2-03058-8)	Hon. Harold Clarke	Richard Agman	Bench trial	Plaintiff	Partnership, contract
<i>Gearheart v. Gearheart</i> (Adams County)	Hon. Gordon Swyter	Stan Moore and Maris Baltins, then at Winston & Cashatt	Bench trial, case settled during trial	Defendant	Partnership, accounting
<i>Johnson v. Johnson</i> (Spokane County)	Hon. Sam Cozza	John Riseborough, Paine Hamblen LLP	Bench trial	Defendant	Partnership, accounting

<i>Johnson v. _____</i> (Spokane County)	Hon. Larry Kristianson	Frank Johnson, then at Paine Hamblen	Bench trial	Plaintiff	Permanent injunction proceeding, real property
<i>Charbonneau v. Charbonneau</i> (Spokane County)	Hon. Robert Whaley	Robert Seines	Bench trial, case settled during trial	Defendant	Partnership, accounting
<b>FEDERAL</b>					
<i>Carel v. Duval</i> (01-20043 Chapter 7 Adversary Case No. 01-6098)	Hon. Terry L. Myers, Bnkrtcy Ct. D.Idaho	Roger Duval	Bench trial	Plaintiff	Avoidance of discharge; bankruptcy
<i>City of Spokane v. Koegen</i> (CV-01-00127-EFS)	Hon. Edward Shea	Ralph Cromwell, Byrnes & Keller, Seattle  Karl Oles, Stoel Rives LLP	Jury trial, case settled during trial	Plaintiff	Legal malpractice, contribution
<i>ASCAP v. Kovanen</i> (CV-91-00450-WFN)	Hon. Wm. Fremming Nielsen	Harry Schneider, Perkins Coie	Bench trial	Defendant	Copyright
<b>Administrative Hearings (Evidentiary)</b>					
<i>Dep't of Ecology v. City of Spokane, Shoreline Hearings Board</i>	Shoreline Hearings Board	Stanley Schwartz and James Richman, Senior Assistant city Attorneys	Week long hearing	Intervenor Friends of the Falls	Challenge to City permitting of Lincoln Street Bridge

<b>Securities Industry Arbitration</b> <b>Copies of awards post-1998 are available at</b> <b><a href="http://finraawardsonline.finra.org">finraawardsonline.finra.org</a></b>					
<i>JP Turner v. Dennis Trainor</i> (NASD Case No. 98-02300)	Laurie Law, John Casey, Jane Lane	Laurie Dolinger, Sichenzig, Ross & Friedman, LLP, New York, N.Y.	3-day hearing	Respondent and counterclaimant	Securities purchase dispute and securities misrepresentation
<i>Thomas Boulet, Jr., Trustee v. D.A. Davidson &amp; Co.</i> (NASD Case No. 98-04481)	Howard Gaines, Darrell Ladmirault, Stephen Lyders	John T. Oitzinger, Helena, MT	2-day hearing	Respondent	Securities misrepresentation
<i>John Burton and Patricia Sgrecci v. Wheat First Securities</i> (Case No. 99-03729)	Paul Meyer, Kenneth Domingues, George Wiener	Bernard Daly, Ulmer & Berne, New York, N.Y.	2.5 day hearing	Claimant	Securities misrepresentation
<i>Yuditsky v. D.A. Davidson &amp; Co. and Bryan Ross</i> (NASD Case No. 97-04396)	Frederic Dorkin, Joseph Crowe, David Pollock	Timothy Giesa, Reed & Giesa	4 day hearing	Respondent	Securities misrepresentation
<i>Nancy Konn v. Merrill Lynch</i> (NASD Case No. 03-1720)	H. Yancey Reser, David Wagoner, Robert L. Brown	Julie Thrall, Dorsey & Whitney, Seattle, WA	3.5-day hearing	Claimant	Securities misrepresentation
<i>Barbara Goodridge Douglass Trust v. Davidson Trust Co.</i> (NASD Case No. 01-01932)	James B. Gilchrist	Kelly Brown, Irwin Myklebust Savage & Brown, Pullman, WA	1-day hearing	Respondent	Securities misrepresentation
<i>Bruce A. Myers Exemption Trust v. UBS Financial Services et al.</i>	Laurie Law, Jonathan Kaiser,	Arian Colachis, Golbeck Roth &	9-day hearing	Respondent D.A.	Securities

(NASD Case No. 01-04009)	Ronald Lorentsen	Colachis, Seattle, WA		Davidson & Co.	misrepresentation
<i>Smith Barney v. Jeff Anderson et al.</i> (Case No. 05-04488)	Roy Mocerri, William Anderson and Michael Sanders	Shelley Hall, Stokes Lawrence, P.S.	Settled following 2-day hearing and partial rulings	Respondents	Securities misrepresentation
<i>Jerry Mote v. First Allied Securities et al.</i> (NASD Case No. 07-01168)	Richard Middaugh, James Harlan, Joseph Cheek	David Markun, Zusman Compton LLP	2-day hearing	Claimant	Securities misrepresentation
<b>Case Name and Number</b>	<b>Judge</b>	<b>Opposing counsel</b>		<b>Party Represented</b>	
<b>AAA Arbitration</b>					
<i>KEZE v. Spokane Radio, Inc.</i>	Thomas Brewer, Lawrence Mills, Philip Cutler	Al Hochstadt (Florida businessman, pro se, but assisted by several attorneys as "co-counsel" – Eugene Annis and Tom Bassett for a time; Michael Ramsden for a time; other counsel from Florida whose name I do not recall		Respondent	\$4.5 million dispute over joint operating agreements (radio)
<i>John and Margaret Naddy v. US Bancorp Piper Jaffray, contract arbitration heard in 2000</i>	C. Matt Andersen (Winston &	Mark S. Reed, Minneapolis, MN		Claimant	Securities misrepresentation

	Cashatt)				
<b>Mandatory Arbitration</b>					
<i>Rosenquist v. Contract Design Associates</i> Spokane County Case No. 98206171-0		Steven Gustafson, Hennessey, Edwards & Boswell			Lease dispute
<i>Hirsch v. Doctor's Associates (Subway Restaurants)</i>	Jim Craven, Evans, Craven & Lackie				Franchise dispute
<b>APPELLATE CASES AND REPORTED DECISIONS</b>					
<b>Federal</b>					
<i>In re Grand Jury Proceedings, 5 F.3d 397 (9<sup>th</sup> Cir. 1993)</i>					First Amendment privilege, academic author
<i>Federated Rural Elec. Ins. Corp. v. Inland Power &amp; Light Co.I, 18 F.3d 389 (7<sup>th</sup> Cir. 1994)</i>					Personal jurisdiction, minimum contacts
<i>Silver Valley Partners, LLC v. DeMotte, 400 F.Supp. 2d 1262 (2005)</i>					Forum non conveniens transfer
<i>Nuveen Quality Income Municipal Bond Fund Inc. v. Prudential Equity Group, LLC,</i>					Liability for contribution

262 Fed.Appx. 822, 2008 WL 64524 (2008)					
<b>State<sup>1</sup></b>					
<i>Kirschner v. Worden Orchard Corp.</i> , 48 Wn.App. 506, 739 P.2d 119 (1987)		Richard Eymann	Respondent		Involuntary dismissal
<i>Machen, Inc. v. Aircraft Design, Inc.</i> , 65 Wn.App. 319, 828 P.2d 73 (1992)		James A. Perkins, Bogle & Gates	Respondent and Cross-Appellant		Uniform Trade Secrets Act
<i>Naddy v. Piper Jaffray, Inc.</i> , 88 Wash.App. 1033, 1997 WL 749261 (1997) (UNPUBLISHED)		Erika Balazs, Lukins & Annis, P.S.	Appellant		
<i>Hern v. Looney</i> , 90 Wn.App. 519, 959 P.2d 1116 (1998), (REPORTED)  96 Wn.App. 1040, 1999 WL 498749 (1999) (UNPUBLISHED)		William D. Symmes, Witherspoon Kelley Davenport & Toole	Appellant		Mandamus and UCC Article 8 (investment securities)
<i>Opportunity Management v. Frost</i> , 94 Wn.App. 1001, 1999 WL 96001 (UNPUBLISHED)		Richard Kuhling, Paine Hamblen	Appellant (brought in solely for appeal)		

<sup>1</sup> A Westlaw search for cases in which I was involved identified the following additional cases, but I did not actively participate in these appeals, for the reasons indicated: *McNeil v. Powers*, 123 Wn.App. 577, 97 P.3d 760 (2004)(represented party below but not involved in appeal), *Washington Public Trust Advocates v. City of Spokane*, 117 Wash.App. 178, 69 P.3d 351 (2003)(joined brief of City Attorney's office), *Lochridge v. Sanborn*, 84 Wn.App. 1013, 1996 WL 668123 (1996) (UNPUBLISHED) (represented party below but not involved in appeal).

<i>Willhelm v. Beyersdorf</i> , 100 Wn.App. 836, 999 P.2d 54 (2000)		Joseph P. Delay, Delay, Curran, Thompson & Pontarolo			Real property; easements
<i>Tiberino v. Prosecuting Attorney</i> , 103 Wn.App. 680, 13 P.3d 1104 (2000)		Mary Schultz, Mary Schultz & Associates			Public Records Act
<i>Doe v. Gonzaga University</i> , 99 Wn.App. 338, 992 P.2d 545 (2000), review granted and reversed by 143 Wn.2d 687, 24 P.3d 390 (2001)		Charles Wiggins			Defamation, invasion of privacy, § 1983 claim
<i>Kinney v. Wagner</i> , 17 Wn.App. 1061, 2003 WL 21652731 (UNPUBLISHED)		Mark Johnson, Johnson & Flora			Dismissal of action based on issue preclusion, election of remedies by prior litigation
<i>River Park Square, LLC v. Sloane</i> , 116 Wn.App. 1020, 2003 WL 1521953 (UNPUBLISHED)		Leslie Weatherhead, Chris Varallo, Witherspoon, Kelley, Davenport & Toole, P.S.			Mandamus
<i>Eugster v. City of Spokane</i> , 118 Wn.App. 383, 76 P.3d 741 (2003)		Leslie Weatherhead, Witherspoon, Kelley, Davenport & Toole			Mandamus; validity and meaning of City ordinance

<i>Mohr v. Grant</i> , 117 Wn.App. 75, 68 P.3d 1159 (2003), <i>review granted and reversed</i> , 153 Wn.2d 812, 108 P.3d 768 (2005)		Ryan Beaudoin, Witherspoon Kelley Davenport & Toole			Defamation
<i>Spokane Research and Defense Fund v. Spokane County</i> , 139 Wn. App. 450 160 P.3d 1096 (2007)		Ronald P. Arkills, Spokane County Attorney			Real property taxation
<i>Spokane Research &amp; Defense Fund v. City of Spokane</i> , 121 Wn.App. 584, 89 P.3d 835 (2004), <i>review granted and reversed</i> , 155 Wn.2d 89, 117 P.3d 1117 (2007)		David Blair-Loy, Center for Justice			Public Records Act
<i>Bailey v. State of Washington et al.</i> , 147 Wn.. 251, 191 P.3d 1285, 235 Ed. Law Rep. 1144 (2008)	Division III	William Powell			Immunity under anti-SLAPP statute; RCW 4.24.510

<sup>1</sup> *Spokane Research & Defense Fund v. City of Spokane*, 155 Wn.2d 89, 117 P.3d 1117 (2007), *Mohr v. Grant*, 153 Wn.2d 812, 108 P.3d 768 (2005) and *Doe v. Gonzaga University*, 143 Wn.2d 687, 24 P.3d 390 (2001).