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Division III  
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COURT OF APPEALS, DIVISION III,  
OF THE STATE OF WASHINGTON

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JAMES POWERS

Appellant,

and

BANNER BANK, a Washington Bank Corporation,

Plaintiff,

v.

REFLECTION LAKE COMMUNITY ASSOCIATION, a  
Washington nonprofit corporation; and RICK SMITH,

Respondents.

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BRIEF OF RESPONDENTS

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## A. INTRODUCTION

James Powers has appealed this case once and lost, and this Court has already ruled that he should pay Reflection Lake Community Association's ("RLCA's") attorney fees as a sanction for that prior, frivolous appeal. That decision was codified in a mandate, which sent the case back to the trial court for entry of the judgment against Powers. Undeterred, Powers sought to dodge that judgment, arguing that this Court's mandate was trumped by a stay-of-litigation provision in a CR 2A agreement between the parties. Not true. Powers previously represented to this Court that the prior appeal should proceed "regardless of settlement status" and declined to raise any of his arguments until long after this Court ruled against and sanctioned him.

This Court should affirm. A trial court lacks authority to deviate from a sanction order of this Court – it must enter judgment as an appellate court directs. Powers is also estopped from, or has waived, the arguments he now belatedly presents,

arguments that contradict his representation that the prior appeal should go forward “regardless of settlement status.” And reversal is bad policy where this Court imposed sanctions because Powers wasted scarce judicial resources with a frivolous case.

This Court should affirm in part but reverse the trial court’s refusal to award RLCA additional fees for having to continue to respond to Powers’s baseless arguments and oppressive litigation conduct. This Court should also award fees on appeal.

## B. ASSIGNMENTS OF ERROR ON CROSS APPEAL

### (1) Assignments of Error on Cross Appeal

1. The trial court erred in entering judgment on June 17, 2022, without an award of fees and costs to RLCA. CP 38-39.

2. The trial court erred in entering its order on June 21, 2022, denying costs and fees to RLCA. CP 40-41.



(2) Issues Pertaining to Assignments of Error on Cross Appeal

1. Did the trial court err by entering judgment without an award of fees and costs to RLCA for time spent opposing Powers’s baseless attempt to avoid paying attorney fees ordered by this Court as a sanction for his frivolous appeal? (Assignments of Error Numbers 1 and 2).

C. STATEMENT OF THE CASE

This is the second time this case is before this Court, the first being *Banner Bank v. Reflection Lake Cmty. Ass’n*, 20 Wn. App. 2d 1060, 2022 WL 214604 (2022) (Court of Appeals Cause No. 38048-3-III), hereinafter referred to as “*Banner Bank I*.”<sup>1</sup>

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<sup>1</sup> The first case was unpublished, and it is provided in this brief as background. It is not cited as legal authority, and if it was it would not be binding precedent under GR 14 and *Crosswhite v. Washington State Dep’t of Soc. & Health Servs.*, 197 Wn. App. 539, 544, 389 P.3d 731, *review denied*, 188 Wn.2d 1009 (2017).

That said, courts routinely rely on such opinions “as evidence of the facts established in earlier proceedings in the same case or in a different case involving the same parties.” *State v. Arquette*, 178 Wn. App. 273, 279, 314 P.3d 426 (2013) (quotation omitted). Courts can and do rely on unpublished decisions to decide such issues as “law of the case, collateral estoppel, and res judicata.” *Martin v. Wilbert*, 162 Wn. App. 90,

The facts of the first case will not be repeated in detail, but some background is necessary from that case to contextualize this one.

The RLCA is a nonprofit corporation and homeowner's association serving the community developed around Reflection Lake, near Elk, Washington. James Powers formerly served on RLCA's board as an appointed member, but he refused to hold a timely election as required by RLCA's bylaws. Approximately 70 percent of RLCA's members called for a special election to vote on the board's membership, but Powers refused to hold an election. A committee of RLCA's members then organized a special election, as permitted by RLCA's bylaws, and ousted Powers.

Powers continued to contest the election, and RLCA's bank eventually filed an interpleader action for a court to decide who had legal access to RLCA's funds. The trial court sided with

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93 n.1, 253 P.3d 108 (2011). Thus, the facts of that prior case are relevant here where Powers seeks to avoid paying appellate attorney fees granted as a sanction by this Court in that prior matter.

the newly and properly elected board, a decision this Court upheld in *Banner Bank I*.

But this Court did more than just uphold the trial court's decision, it imposed an award for RLCA's appellate attorney fees as a sanction for Powers's frivolous appeal, writing:

Under RAP 18.9(a), the Court of Appeals may award attorney fees as a sanction for filing a frivolous appeal...The issues raised by Mr. Powers either misconstrue the record, are easily affirmed under an abuse of discretion standard of review, or do not result in any relief...This, combined with the discretionary nature of the trial court's rulings, convince us that Mr. Powers failed to raise any debatable issue that might result in a reasonable possibility of reversal...[W]e award RLCA its reasonable attorney fees on appeal.

*Banner Bank I* at \*7. RLCA submitted a cost bill and an application for attorney fees under RAP 18.1(d) that this Court approved. See appendix ("app.") 9-80. On April 13, 2022, this Court issued a mandate that included a judgment for \$14,637.50 in appellate attorney fees and \$140.88 in appellate costs. App. 57.

After the mandate issued, a hearing was set to enter its

judgment in superior court, a purely ministerial act. Yet Powers moved to prevent entry of the judgment, claiming the parties had signed a CR 2A settlement agreement back on November 9, 2021, which included a provision to stay the appeal. Powers argued the appeal should have been stayed and this Court should not have issued its decision in *Banner Bank I*, and therefore the trial court should decline to enter this Court's mandate as a judgment. CP 12-17. RLCA opposed Powers's motion and pointed out his argument was flawed in many ways. CP 22-29.

First, Powers's current interpretation of the scope of the CR 2A agreement is inconsistent with the parties' conduct immediately after signing the agreement. The agreement was signed on November 9, 2021. Notably, this was after all briefing in *Banner Bank I* had been submitted and the parties were awaiting this court's decision. Powers moved this Court for a stay on November 15, claiming the parties agreed to withdraw the appeal. App. 1-4. But Powers withdrew that motion within 24 hours, before RLCA could even oppose it. In his withdrawal

of the motion to stay, Powers disclosed that his legal counsel had been “misinformed” about the parties’ intention to stay the Court’s decision in *Banner Bank I*. App. 5-6. In doing so, Powers represented to this Court that “*the parties do not wish to stay the above-captioned matter, regardless of settlement status.*” App. 6 (emphasis added). As discussed below, Powers is bound to that representation as a matter of judicial estoppel and by general principles of fairness.

Second, and relatedly, after withdrawing his stay motion, Powers took no other action to stay the appeal in *Banner Bank I*, despite the CR 2A that he now claims required the parties to do so. His conduct clearly showed, as he disclosed to this Court previously, that the parties wanted the appeal to proceed, “regardless of settlement status.” App. 6.

Third, the CR 2A itself is silent over staying any sanction order or otherwise restricting this Court’s authority to issue sanctions for a frivolous appeal. It merely states that the parties “agree to stay the current lawsuits between the parties until such

time as [specified conditions have been met], at which time the parties hereto agree to [dismiss the first lawsuit] and dismiss the appeal of summary judgment [in *Banner Bank I*].” CP 6. The parties immediately disputed<sup>2</sup> whether the conditions of the settlement agreement were met or whether some other breach occurred, CP 22-29; app. 81-169, and therefore they did not stay the first appeal “regardless of settlement status.” App. 6. No stay occurred before this Court issued its opinion and sanction award in *Banner Bank I*, which the trial court was bound to

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<sup>2</sup> The Reflection Water Association (“RWA”), on whose board Powers then served, was a third-party defendant in case no. 20-2-03213-32. RWA refused at the last moment to sign what RLCA had considered a multi-party agreement. RLCA believed that, as a result, the agreement had not been duly executed, and so questioned its enforceability. Powers argued that the portion of the agreement signed by RLCA and Powers was an independently enforceable bilateral agreement. RLCA responded that, even if the agreement had been executed, its purpose had been frustrated by RWA’s lack of cooperation, and that Powers, through his control of RWA, had violated the implied covenant of good faith and fair dealing by seeking to deprive RLCA of the benefit of its bargain. This dispute was unfolding in the background as Powers filed and then withdrew his “stipulated” motion to stay *Banner Bank I*.

enforce.

Fourth, even though the trial court eventually ruled that the settlement agreement was enforceable, at least in part, the court clarified that it did not intend to “bind [the] court” from enforcing the mandate and entering judgment on appellate sanctions. RP 11.<sup>3</sup> This makes sense given that the trial court entered its order ruling that the CR 2A was enforceable in May 2022. CP 10-11. That was months after this Court decided *Banner Bank I*,

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<sup>3</sup> The trial court (before Judge Clarke, whereas the interpleader is before Judge Hazel) eventually held that the agreement was bilateral and had been fully executed—and to that extent was an enforceable agreement. The court did not rule on RLCA’s claims regarding frustration of purpose and breach of good faith and fair dealing, instead ordering the parties to participate in mediation. That mediation is ongoing.

When the motion to enforce the CR 2A later came before Judge Hazel, Powers argued that Judge Clarke’s decision regarding the enforceability of the CR 2A was controlling. However, prior to the hearing Powers’s motion Judge Hazel had discussed the matter with Judge Clarke and was assured that Judge Clarke had not intended to prevent entry of judgment for appellate fees. Powers does not assign error or argue that such conferencing among the judicial officers who heard the separate motions was reversible error.

including after the final mandate issued.

The trial court denied Powers's motion to stay entry of judgment on appellate fees, but it denied RLCA's request for additional fees responding to Powers's attempts to avoid judgment. CP 38-41 (RLCA requesting \$1,745 in additional fees). Powers appealed, and RLCA timely cross appealed the trial court's decision to deny additional fees.

#### D. SUMMARY OF ARGUMENT

This Court should affirm entry of judgment on several grounds: (1) the trial court was bound to enter judgment on this Court's decision imposing sanctions made final in the mandate; (2) Powers asserted to this Court that the prior appeal should go forward "regardless of settlement status" and therefore he waived or is estopped from asserting the arguments he makes in his brief; and (3) reversal is bad policy where this Court imposed the judgment as a sanction for wasting the Court and RLCA's time with frivolous arguments.

On cross appeal, the Court should impose fees for time



RLCA spent responding to Powers's frivolous motion below. The Court should also award costs and fees as a sanction for this second frivolous appeal that is merely a waste of time. Given that an award of attorney's fees in *Banner Bank I* did not effectively deter Powers from further frivolous litigation, additional sanctions against Powers and his attorneys are called for, as well as an order restricting Powers from further suits against RLCA.

E. ARGUMENT

(1) This Court Should Affirm the Entry of Judgment for Attorney Fees as Ordered by This Court in *Banner Bank I* as a Sanction for Powers's Frivolous Appeal

The trial court did not err by entering judgment on appellate attorney fees entered as a sanction by this Court in *Banner Bank I*. This Court should affirm for at least three reasons: (1) the trial court lacked authority to deviate from this Court's decision to impose sanctions made final in the mandate; (2) Powers is estopped or waived his arguments that the sanction award is not enforceable; and (3) reversal is bad policy where this Court imposed the judgment as a sanction for wasting the

Court and RLCA's time with frivolous arguments.

(a) The Trial Court Could Not Deviate from a Sanction Order Entered by This Court

Powers attempts to turn this case into a referendum on enforcing a CR 2A agreement, but that misses the real issue. This case is about a trial court's power, or lack thereof, to modify a judgment imposed by the Court of Appeals after an appeal is finished and a mandate issues. The trial court lacked any authority to override this Court's mandate directing entry of a judgment as a sanction for a frivolous appeal. A belated attempt to enforce a conditional stay in a CR 2A agreement does not change that. Further, a stay of litigation is simply inapplicable to the purely ministerial act of entering judgment in compliance with an appellate mandate.

It has been well-settled for over a century in Washington that a trial court lacks the authority deviate from a judgment directed by this Court:

The proposition that, where a cause has been appealed and a judgment rendered by the appellate

court, no interference therewith will be tolerated on the part of the lower court by any proceeding in the cause other than such as is directed by the higher court, is well sustained by the authorities.

*State v. Superior Ct. of Spokane County*, 8 Wash. 591, 593, 36 P. 443 (1894). Put simply, “[w]here the mandate of an appellate court directs a specific judgment to be entered, the tribunal to which such mandate is directed must yield obedience thereto.” *Gudmundson v. Com. Bank & Tr. Co.*, 160 Wash. 489, 496, 295 P. 167 (1931). When “[n]othing remains to be done but to require the inferior court to perform the ministerial act of entering the judgments in that court which have been ordered... carrying the judgment of the Supreme Court... [n]othing is left to the judicial discretion of the court below.” *State v. Superior Ct. of Cowlitz County*, 71 Wash. 354, 357, 128 P. 648 (1912); *see also, e.g., Bank of Am., N.A. v. Owens*, 177 Wn. App. 181, 189, 311 P.3d 594, 598 (2013) (“While a remand for further proceedings signals this court’s expectation that the trial court will exercise its discretion to decide any issue necessary to

resolve the case, the trial court cannot ignore the appellate court's specific holdings and directions on remand.”) (cleaned up); *State v. Alpert*, 21 Wn. App. 2d 1062, 2022 WL 1210528, \*4 (2022) (accord).<sup>4</sup>

In the case *In re Ellern*, 29 Wn.2d 527, 188 P.2d 146 (1947), our Supreme Court was asked to clarify when a matter had been finally decided, which would in turn determine whether the petitioner's request for further review had been time-barred. The Supreme Court rejected a party's argument that “the order or judgment entered by the lower court pursuant to that mandate, and not the mandate of the Supreme Court, is the final judgment,” and ruled instead that the matter had concluded upon the decision of the appellate court. *Id.* at 529-30. The Court held that “[t]he judgments and decrees of [appellate courts] are final

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<sup>4</sup> *Alpert* is unpublished and is cited as persuasive authority only under GR 14. It has “no precedential authority, is not binding on any court, and is cited only for such persuasive value as the court deems appropriate.” *Crosswhite*, 197 Wn. App. at 544.

and conclusive upon all the parties properly before it,” and that the Spokane Superior Court’s subsequent entry of an order was “purely ministerial.” *Id.*; *see also, e.g., State ex rel. Schock v. Barnett*, 42 Wn.2d 929, 932, 259 P.2d 404 (1953) (“The judgment of this court is final and conclusive upon all the parties properly before it...The superior court can only enforce such a judgment.”).

Indeed, a trial court has no authority even to *delay* compliance with the mandate of an appellate court, as Powers requested with his motion for a stay. *See, e.g., Ellern*, 29 Wn.2d at 529 (“[t]he trial court could not delay or defeat the effect of the judgment of this court by failure to enter the formal order as directed.”) and *State v. Superior Ct. for King County*, 117 Wash. 376, 377, 201 P. 25, 25 (1921) (“The judgment of this court should have been followed without delay.”).

Here, too, this Court’s mandate represented the final action, terminating litigation between the parties. *See* RAP 12.5, 12.6, 12.7, 12.8, 12.9. It contained a judgment for sanctions

imposed by this Court that was “final and conclusive” on all parties before the Court. *Ellern, Schock, supra*. The trial court had no authority or discretion to deviate from that final decision based on over a century of precedent. This task was purely ministerial, and Powers lacked any authority to ask the Court to skirt or even delay its duty to enter judgment as required by the mandate. The only thing the trial court had the power to do was enforce the judgment of this Court. *E.g., Ellern; Schock, supra*.

Powers’s simplistic arguments do not change the analysis above. He argues that the CR 2A is enforceable in a vacuum because he claims it unambiguously “settled the instant matter, identifying it by cause number.” Appellant br. at 18. But it is not nearly that simple.

As discussed above, the settlement agreement only *stayed* litigation between the parties, providing that the cause number would be dismissed only if other conditions precedent were met, *i.e.*, transfer of “ownership or operation of the Reflection Lake Water Association to a third party.” CP 6. The parties

immediately disputed whether the conditions of the settlement agreement were met or whether some other breach occurred, and therefore Powers expressly and intentionally chose not to stay the first appeal “regardless of settlement status.” It was not until after the appeal concluded, the Court imposed its sanction, and a mandate issued that Powers sought an order regarding the partial enforceability of the CR 2A. The trial court never intended that ruling to apply to the already issued sanction order, and as discussed below, Powers had a duty to raise his arguments sooner or otherwise move for force a stay of the appeal if he did not want to be bound by this Court’s decision. He did not, and therefore the trial court had no authority but to enter this Court’s judgment. This Court should affirm.

(b) Powers Waived His Arguments and Is Estopped from Attempting to Avoid Judgment Because He Represented to This Court that the Prior Appeal Should Proceed Regardless of Settlement Status

Even if the trial court had the power to ignore a sanction award entered by this Court and codified in a final mandate,

Powers is judicially estopped from arguing that the CR 2A agreement controls where he represented to this Court that the parties wanted the appeal to go forward “regardless of settlement status.” This is yet another basis to affirm.

“Judicial estoppel is an equitable doctrine that precludes a party from asserting one position in a court proceeding and later seeking an advantage by taking a clearly inconsistent position.” *Arkison v. Ethan Allen, Inc.*, 160 Wn.2d 535, 538, 160 P.3d 13, 15 (2007) (quotation omitted). “The doctrine seeks to preserve respect for judicial proceedings and to avoid inconsistency, duplicity, and waste of time.” *Id.* (cleaned up).

A court looks to three nonexclusive factors to determine whether judicial estoppel applies: “(1) if the party asserts a position inconsistent with an earlier one, (2) if acceptance of the position would create the perception that a party misled a court in either proceeding, and (3) if the party asserting the inconsistent position would derive an unfair advantage or impose an unfair detriment.” *Arp v. Riley*, 192 Wn. App. 85, 92, 366 P.3d 946



(2015). “Additional considerations may inform the doctrine’s application in specific factual contexts,” and the doctrine should be applied on a “case-by-case” basis. *Id.* (quotation omitted).

Here, judicial estoppel applies because Powers’s assertion that the first appeal should have been stayed before the Court entered a sanctions judgment against him is inconsistent with his prior representation that the appeal should proceed “regardless of settlement status.” This inconsistency shows that he misled the Court in the prior appeal – allowing the matter to proceed to resolution, hopeful this Court would rule in his favor. And Powers would derive an unfair advantage of gambling on a favorable ruling in the first appeal, while lying in wait with his argument that a settlement agreement prevented the appeal from going forward.

Judicial estoppel applies in this unfair scenario and is analogous to the requirement that a party must object or otherwise assert his or her rights during trial, otherwise he or she waives such arguments on appeal. “[C]ounsel may not remain

silent, speculating upon a favorable verdict, and then, when it is adverse, use the claimed misconduct as a life preserver on a motion for new trial or on appeal.” *State v. Emery*, 174 Wn.2d 741, 762, 278 P.3d 653 (2012) (quoting *State v. Swan*, 114 Wn.2d 613, 661, 790 P.2d 610 (1990)).

That is exactly what Powers has done here. He speculated that the first appeal might be favorable. When it was not, he concocted a belated legal theory that the CR 2A agreement – which was only found to be partially enforceable *after* the mandate issued from the first appeal – required the prior appeal be stayed. Along the way, he failed to preserve his argument. He did not press for the stay, rather he removed it and told the Court the appeal should go forward. He did not move for reconsideration, arguing that the CR 2A prevented a judgment for sanctions. He did not object when RLCA submitted its bills for attorney fees before the mandate was issued, as required by RAP 18.1. Nor did he petition the Supreme Court to correct any error in the first appeal. He is judicially estopped from asserting

any argument over the sanction award.

This Court should also affirm under the related doctrine of waiver. A waiver is an “intentional relinquishment or abandonment of a known right or privilege. *State v. Frawley*, 181 Wn.2d 452, 461, 334 P.3d 1022 (2014) (quotation omitted). A party waives a defense if “the defendant’s assertion of the defense is inconsistent with the defendant’s previous behavior or the defendant’s counsel has been dilatory in asserting the defense.” *Estate of Dormaier ex rel. Dormaier v. Columbia Basin Anesthesia, P.L.L.C.*, 177 Wn. App. 828, 858, 313 P.3d 431 (2013) (cleaned up).

Here, Powers sat on his right to assert that the CR 2A prevented final resolution in the prior appeal. Powers had a duty to raise this argument much sooner after remand from a final enforceable mandate. *See, e.g., Ewing v. Glogowski*, 198 Wn. App. 515, 526 n.4, 394 P.3d 418 (2017) (court would not consider an argument in opposition to an award of attorney fees that was made after briefing concluded). Instead, Powers waited

until after this Court's decision and after the mandate issued to raise his argument. Whether couched as judicial estoppel or waiver, Powers is barred from raising the frivolous arguments he advances in his brief.

(c) This Court Should Affirm as a Matter of Policy

This Court should also affirm because reversal would be bad policy. It would undermine the entire purpose of the attorney fee award made part of the mandate, which was to sanction Powers for wasting this Court's time. *Banner Bank I* at \*7; RAP 18.9. Indeed, reversal in Powers's favor would be doubly problematic, as it would countenance both a second frivolous appeal *and* Powers's use of frivolous litigation to escape the sanctions this Court imposed for his first frivolous appeal.

This Court already found that Powers "failed to raise any debatable issue that might result in a reasonable possibility of reversal." *Banner Bank I* at \*7. It awarded fees because the first appeal never should have been pursued in the first place. The

sanction not only compensated RLCA for its time responding to frivolous arguments, but it served as a deterrent toward future conduct (which evidently Powers has not taken to heart as evidenced by this further frivolous appeal). Even if the trial court could vacate a sanction imposed by this Court, doing so would send the wrong message that the judicial process can be abused without consequence, fundamentally undermining RAP 18.9 and this Court's decision in *Banner Bank I*. This Court should affirm here for purposes of consistency and to send the right message that abusive use of litigation and endless appeals without merit will not be tolerated.

(2) On Cross Appeal, the Trial Court Abused Its Discretion by Refusing to Award Fees for Time Spent Entering Judgment

On cross appeal, the trial court erred by not entering an award for RLCA's time spent opposing Powers's baseless motion. The trial court abused its discretion when applicable law states that when a party recovers fees, time spent presenting and enforcing a fee award are recoverable. And Powers's opposition

was no more than evidence of his further intransigence that justified a fee award in the first place. RLCA should not bear the burden of spending time and fees responding to his continued intransigence.

Normally, when a court awards attorney fees, all the reasonable fees for time spent on the case are all recoverable, including the fees incurred in briefing, arguing, and presenting the fee request itself. *Bowers v. Transamerica Title Ins. Co.*, 100 Wn.2d 581, 597, 675 P.2d 193 (1983). This Court previously awarded all fees requested by RLCA in *Banner Bank I*, including time spent preparing the fee request itself as required by RAP 18.1. Appendix. It therefore follows that this Court intended RLCA to recover time spent recovering its fees. The trial court wrongfully deviated from that intent, refusing to impose fees for responding to Powers's baseless attempts to dodge this Court's order.

Relatedly, it is unfair that RLCA must bear the burden of expending legal fees in response to Powers's continued

intransigence. His “oppressive conduct” and baseless refusal to accept this Court’s sanction order warrants further fees as sanctions for the same reasons that existed in *Banner Bank I*. See *Grider v. Quinn*, 21 Wn. App. 2d 1009, 2022 WL 600234, \*22 (2022)<sup>5</sup> (citing *Snyder v. Tompkins*, 20 Wn. App. 167, 174, 579 P.2d 994 (1978)) (“oppressive behavior” or “bad faith conduct” that forces a party to litigate is a recognized ground in equity that also warrants fees). This Court should impose the fees RLCA requested totaling \$1,745, CP 39, and order that it be added to the judgment on remand.

(3) The Court Should Award Fees on Appeal a Second Time, Issue Any Further Sanctions it Deems Appropriate, and Enjoin Powers from Further Litigating This Matter Against RLCA

This Court should yet again award fees for this frivolous second appeal. Fees may be awarded on appeal when there is a

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<sup>5</sup> *Grider* is unpublished and cited as persuasive authority only under GR 14. It has “no precedential authority, is not binding on any court, and is cited only for such persuasive value as the court deems appropriate.” *Crosswhite*, 197 Wn. App. at 544.

basis in law for such fees whether under a statute, contract, or in equity. RAP 18.1(a); *Gander v. Yeager*, 167 Wn. App. 638, 647, 282 P.3d 1100 (2012). Washington appellate courts award fees on appeal to parties who have abused the appellate rules or filed frivolous appeals. *Millers Cas. Ins. Co. of Texas v. Biggs*, 100 Wn.2d 9, 665 P.2d 887 (1983); *Boyles v. Dep't of Retirement Sys.*, 105 Wn.2d 499, 716 P.2d 869 (1986). The test for frivolous appeal has been in place since 1980:

(1) A civil appellant has a right to appeal under RAP 2.2; (2) all doubts should be resolved in favor of the appellant; (3) the record should be considered as a whole; (4) an appeal that is affirmed simply because the arguments are rejected is not frivolous; (5) an appeal is frivolous if there are no debatable issues upon which reasonable minds might differ, and it is so totally devoid of merit that there was no reasonable possibility of reversal.

*Streater v. White*, 26 Wn. App. 430, 435, 613 P.2d 187, review denied, 94 Wn.2d 1014 (1980).

Additionally, as discussed above, “oppressive behavior” or “bad faith conduct” that forces a party to litigate is a recognized ground in equity that also warrants fees. *Grider*, 2022 WL



600234 at \*22 (citing *Snyder*, 20 Wn. App. at 174).

Powers's appeal presents no genuinely debatable issues and is a mere continuance of his intransigent litigation strategy that has already been sanctioned by this Court. He sought to avoid that sanction by raising, for the first time to the at the trial court, a CR 2A agreement that – as he admitted to this Court – had no bearing on the appeal in *Banner Bank I* because in his words “the parties do not wish to stay the above-captioned matter, regardless of settlement status.” He did not object to the appeal going forward until this Court sanctioned him, unfairly gambling that he would prevail in the first appeal, only crying foul when the Court ruled against him. This second appeal is merely a continuation of his attempt to escape the sanctions he justly incurred for his first frivolous appeal. Such bad faith, oppressive, frivolous abuse of the justice system warrants fees, either as a sanction under *Streater* or in equity under *Grider*.

Fees on appeal are appropriate as a sanction once again. RAP 18.9. That said, it is clear that mere attorney fees are not enough to deter Powers from his pattern of ongoing vexatious litigation. This

Court has authority under RAP 18.9(a) to award additional sanctions, including requiring a party to “pay terms or compensatory damages” for frivolous appeals or abuse of the appellate process. The Court should exercise its discretion to award additional sanctions beyond mere attorney fees for time spent on appeal. Such sanctions are necessary to deter Powers from further litigation.

Additionally, the Court should enjoin Powers from further litigation against RLCA in this matter. The Court has such authority upon a “specific and detailed showing of a pattern of abusive and frivolous litigation.” *Yurtis v. Phipps*, 143 Wn. App. 680, 693, 181 P.3d 849, *review denied*, 164 Wn.2d 1037 (2008). As this Court has stated, “the need for judicial finality and the potential for abuse of this revered system by those who would flood the courts with repetitive, frivolous claims which already have been adjudicated at least once” are important factors that can override an individual’s right to appeal.

Here, Powers has engaged in a specific and detailed pattern

of abusive and frivolous litigation. The Court already found his prior appeal to be frivolous. That appeal concerned his refusal to recognize a valid election under RLCA's bylaws. Now, he refuses to accept this Court's sanction order, concocting belated legal theories that contradict his representations to this Court in that prior case and that he waived, gambling on a favorable result in the prior appeal. The Court should exercise its authority to prevent him from any further action litigating this case.

#### F. CONCLUSION

For these reasons this Court should affirm in part, upholding the judgment for attorney fees as a sanction as required by the Court's mandate. It should reverse in part, ordering that RLCA's fees for additional time spent in trial court be added to the judgment. And it should yet again award RLCA its fees on appeal and impose additional sanctions under RAP 18.9 or other applicable law for Powers's latest frivolous appeal and continued intransigence.

This document contains 5,322 words, excluding the parts of the document exempted from the word count by RAP 18.17.

DATED this 13th day of January, 2023.

Respectfully submitted,

/s/ Aaron P. Orheim

Aaron P. Orheim  
WSBA #47670  
Talmadge/Fitzpatrick  
2775 Harbor Avenue SW  
Third Floor, Suite C  
Seattle, WA 98126  
(206) 574-6661

Tyler Lloyd  
WSBA #50748  
Gravis Law  
1309 W. Dean Avenue  
Spokane, WA 99201  
(509) 252-8435

Attorneys for Respondents  
Rick Smith and Reflection Lake  
Community Association

# APPENDIX

**APPENDIX TO  
BRIEF OF RESPONDENTS**

**TABLE OF CONTENTS**

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Motion for Stay of Review Pending Implementation of Settlement Agreement (Cause No. 38048-3-III), filed November 15, 2021	1-4
Withdrawal of Motion for Stay of Review (Cause No. 38048-3-III), filed November 16, 2021	5-8
Declaration of Aaron P. Orheim on Attorney Fees (Cause No. 38048-3-III), filed February 2, 2022	9- 28
Declaration of Tyler D. Lloyd on Attorney Fees (Cause No. 38048-3-III), filed February 2, 2022	29- 56
Mandate from Court of Appeals with Commissioner’s Ruling and Opinion (Cause No. 38048-3-III), filed April 13, 2022	57- 80
RLCA’s Response to Plaintiffs’ Motion to Enforce Mediated Settlement Agreement and for Attorney’s Fees (Spokane County Cause No. 20-2-03213-32), filed May 20, 2022	81- 93
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**COURT OF APPEALS, DIVISION III  
OF THE STATE OF WASHINGTON**

BANNER BANK, a )  
Washington Bank )  
Corporation, )  
Plaintiff, )  
vs. ) **MOTION FOR STAY**  
 ) **OF REVIEW PENDING**  
REFLECTION LAKE ) **IMPLEMENTATION**  
COMMUNITY ) **OF SETTLEMENT**  
ASSOCIATION, a ) **AGREEMENT**  
Washington nonprofit )  
corporation, )  
Respondent, )  
and )  
JAMES POWERS, )  
Appellant, )  
and )  
RICK SMITH, )  
Respondent. )

**IDENTITY OF MOVING PARTY**

Appellant James Powers, after consultation with counsel for Respondents, brings this Motion for Stay of Review.



## **RELIEF REQUESTED**

The Parties have signed a settlement agreement and are in the process of implementing it. The Parties anticipate that implementation may take several months, as it involves the transfer of interests in real property between two (2) of the responsible non-profit community associations which serve the lake and its residents. Once implemented, the Parties will move to dismiss the related matter currently pending before the Spokane County Superior Court, and will move to withdraw the instant matter from review. In the meantime, the Parties request that the Court remove the instant matter from its active docket and stay Review for 90 days. This motion has 130 words or fewer.

Filed this 15<sup>th</sup> day of November, 2021,

**KSB LITIGATION, P.S.**

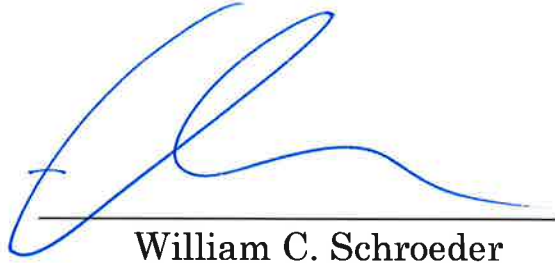
By: 

William C. Schroeder, WSBA 41986  
510 W. Riverside Ave, Ste. 300  
Spokane, WA 99201  
(509) 624-8988  
Attorneys for Appellant

**CERTIFICATE OF SERVICE**

I hereby certify that on this 15<sup>th</sup> day of November, 2021, I caused to be served a true and correct copy of the foregoing **Motion for Stay of Review** on Respondents via the Washington State Appellate Court's Secure Portal Electronic Filing System for the Court of Appeals, Division III, as well as to the following:

None



William C. Schroeder

# KSB LITIGATION

November 15, 2021 - 3:04 PM

## Transmittal Information

**Filed with Court:** Court of Appeals Division III  
**Appellate Court Case Number:** 38048-3  
**Appellate Court Case Title:** Banner Bank v. Reflection Lake Community Association, et al  
**Superior Court Case Number:** 20-2-03199-7

### The following documents have been uploaded:

- 380483\_Motion\_20211115150259D3384794\_8096.pdf  
This File Contains:  
Motion 1 - Stay  
*The Original File Name was 211115 Motion for Stay Pending Settlement.pdf*

### A copy of the uploaded files will be sent to:

- Aaron@tal-fitzlaw.com
- alunden@ksblit.legal
- bwalker@omwlaw.com
- matt@tal-fitzlaw.com
- mhernandez@ksblit.legal
- phil@tal-fitzlaw.com
- tilloyd@gravislaw.com

### Comments:

---

Sender Name: Michelle Hernandez - Email: mhernandez@ksblit.legal

**Filing on Behalf of:** William Christopher Schroeder - Email: WCS@KSBlit.legal (Alternate Email: )

Address:  
510 W. Riverside Ave., #300  
Spokane, WA, 99201  
Phone: (509) 624-8988

**Note: The Filing Id is 20211115150259D3384794**

**COURT OF APPEALS, DIVISION III  
OF THE STATE OF WASHINGTON**

BANNER BANK, a )  
Washington Bank )  
Corporation, )  
Plaintiff, )  
vs. ) **WITHDRAWAL OF**  
 ) **MOTION FOR STAY**  
REFLECTION LAKE ) **OF REVIEW**  
COMMUNITY )  
ASSOCIATION, a )  
Washington nonprofit )  
corporation, )  
Respondent, )  
and )  
JAMES POWERS, )  
Appellant, )  
and )  
RICK SMITH, )  
Respondent. )

**IDENTITY OF MOVING PARTY**

Appellant James Powers withdraws the Motion for  
Stay of Review.

## **RELIEF REQUESTED**

Appellant James Powers withdraws the Motion for Stay of Review. The undersigned counsel was misinformed, and the parties do not wish to stay the above-captioned matter, regardless of settlement status.

This Withdrawal of Motion has 55 words or fewer.

Filed this 16<sup>th</sup> day of November, 2021,

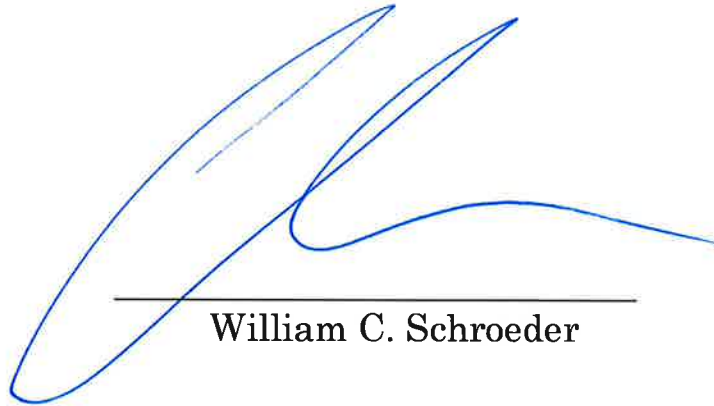
**KSB LITIGATION, P.S.**

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

William C. Schroeder, WSBA 41986  
510 W. Riverside Ave, Ste. 300  
Spokane, WA 99201  
(509) 624-8988  
Attorneys for Appellant

**CERTIFICATE OF SERVICE**

I hereby certify that on this 16<sup>th</sup> day of November, 2021, I caused to be served a true and correct copy of the foregoing **Withdrawal of Motion for Stay of Review** on Respondents via the Washington State Appellate Court's Secure Portal Electronic Filing System for the Court of Appeals, Division III, as well as to the following:  
None



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William C. Schroeder

# KSB LITIGATION

November 16, 2021 - 2:56 PM

## Transmittal Information

**Filed with Court:** Court of Appeals Division III  
**Appellate Court Case Number:** 38048-3  
**Appellate Court Case Title:** Banner Bank v. Reflection Lake Community Association, et al  
**Superior Court Case Number:** 20-2-03199-7

### The following documents have been uploaded:

- 380483\_Other\_Filings\_20211116145509D3529763\_0308.pdf  
This File Contains:  
Other Filings - Other  
*The Original File Name was 21.11.16 WITHDRAWAL OF MOTION FOR STAY.pdf*

### A copy of the uploaded files will be sent to:

- Aaron@tal-fitzlaw.com
- bwalker@omwlaw.com
- matt@tal-fitzlaw.com
- phil@tal-fitzlaw.com
- tlloyd@gravislaw.com

### Comments:

Withdrawal of Motion

---

Sender Name: Michelle Hernandez - Email: mhernandez@ksblit.legal

**Filing on Behalf of:** William Christopher Schroeder - Email: WCS@KSBlit.legal (Alternate Email: )

Address:  
510 W. Riverside Ave., #300  
Spokane, WA, 99201  
Phone: (509) 624-8988

**Note: The Filing Id is 20211116145509D3529763**

COURT OF APPEALS, DIVISION III  
OF THE STATE OF WASHINGTON

JAMES POWERS,

Appellant,

and

BANNER BANK, a Washington  
Bank Corporation,

Plaintiff,

v.

REFLECTION LAKE  
COMMUNITY ASSOCIATION,  
a Washington nonprofit  
corporation; and RICK SMITH,

Respondents.

No. 38048-3-III

DECLARATION OF  
AARON P. ORHEIM  
ON ATTORNEY FEES

I, Aaron P. Orheim, declare as follows:

1. I am over the age of 18 years, competent to testify, and familiar with the facts herein.

2. I represent the respondents in the above referenced matter. A panel of this Court issued an opinion on



January 25, 2022, awarding fees to the respondents. This timely fee declaration follows. RAP 18.1(d).

3. I have been licensed to practice law in the State of Washington since 2014. I am admitted to the bar of the Ninth Circuit of the Court of Appeals, the United States Supreme Court, and the state and federal courts of Washington State.

4. I currently work principally in the appellate field, handling state and federal court appeals. I have handled dozens of appeals in both the state and federal courts, many involving fee-shifting. Before joining my current firm, I worked as an Assistant Attorney General in both the Juvenile Litigation and Torts Divisions. Before serving as an AAG, I clerked for Justice Susan Owens at the Washington Supreme Court from 2013-14.

5. I have relevant experience to the case at hand. I have worked on attorney fee petitions as part of my regular work at Talmadge/Fitzpatrick.

6. I also have experience with the reasonable billing practices of attorneys in the area. As a member of the employment litigation team of the Olympia Torts Division at the AG's Office, I became well accustomed with the prevailing rates of plaintiffs' attorneys in Western Washington who routinely sought fees pursuant to remedial fee shifting statutes like the Washington Law Against Discrimination, 42 U.S.C.A. § 1988, and other fee-shifting statutes.

7. My regularly hourly rate during the majority of this case was \$350 per hour. It increased to \$375 per hour in 2022. A longtime appellate practitioner and partner at my firm, Phil Talmadge – also a former State Senator and Washington Supreme Court Justice – also billed time on the case at a rate of \$475. His rate increased to \$500 per hour in 2022. In my experience, these rates are reasonable for attorneys of our respective backgrounds and experiences in the geographical area where we work.

8. The hours my firm spent on this case are reasonable. We kept contemporaneous time records in connection with my work on this case. True and accurate copies are attached to this declaration, with appropriate redactions for privileged information or attorney work product, if any. The hours spent on this entire case, including preparing the brief, consulting with co-counsel, drafting the fee petition, and gathering supporting declarations were reasonable and necessary in our attempts to secure a favorable result for our clients.

9. The total requested fee for this case, as evidenced in the exhibits attached to my declaration and my co-counsel, Tyler Lloyd's declaration is as follows:

Attorney	Time	Rate	Total
Aaron Orheim	23.7	\$350	\$8,295.00
	.9	\$375	\$ 337.50
Phil Talmadge	4.5	\$475	\$2,137.50
	.2	\$500	\$ 100.00
Tyler Lloyd	13.7	\$275	\$3,767.50

Orheim Attorney Fee Declaration - 4

Talmadge/Fitzpatrick  
 2775 Harbor Avenue SW  
 Third Floor, Suite C  
 Seattle, WA 98126  
 (206) 574-6661

Total			<b>\$14,637.50</b>
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10. This total fee request is reasonable. I have experience handling fee petitions in several different courts, and the total amount I charged is typical of the cost of handling similar cases.

*I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.*

Signed this 2nd day of February, 2022, at Seattle, Washington.

/s/ Aaron P. Orheim  
Aaron P. Orheim

# AARON ORHEIM

2775 Harbor Ave. SW, Third Floor, Ste. C Seattle, WA 98126 | (206) 574-6661 | Aaron@tal-fitzlaw.com

## EDUCATION

---

**UNIVERSITY OF WASHINGTON SCHOOL OF LAW** | Seattle, Washington

Juris Doctor, *with honors*, June 2013 | GPA: 3.75/4.0 | Class Rank: Top 15%

*Activities:*

Moot Court Honor Board–VP of In-House Competitions | Washington Journal of Law, Technology, & Arts–Articles Editor | TYLA National Trial Competition Team Member

*Awards:*

CALI Excellence for the Future Awards: Torts (Fall 2010), Constitutional Law (Spring 2011), and White Collar Crime (Winter 2013) | 2010 1L Mock Trial Competition Winner | 2010 1L Mock Trial Competition Speaker Award

*Publications:*

*Get Outta My Face(Book): The Discoverability of Social Networking Data and the Passwords Needed to Access Them*, 8 WASH. J.L. TECH. & ARTS 137 (2012) – Co-Authored with Mallory Allen

*Chapter XVIII, Appeals and Discretionary Review*, WASHINGTON MEDICAL NEGLIGENCE DESKBOOK, 2nd ed. (WSA) 2021) – Co-Authored with Gary W. Manca

**SEATTLE UNIVERSITY** | Seattle, Washington

Bachelor of Arts, Political Science, *summa cum laude*, March 2009 | GPA: 3.95/4.0

*Selected Honors:* President's List, 11/11 quarters | Law Scholar

## EXPERIENCE

---

**TALMADGE/FITZPATRICK PLLC** | January 2018 – Present | Seattle, Washington

**Associate Attorney:** Work in a small firm dedicated to appellate practice and professional responsibility. Handle appeals in state and federal court on a wide variety of legal topics. Represent clients in trial court and at arbitration, including cases involving attorney fee disputes, the Public Records Act, and the Law Enforcement Officers' and Firefighters' retirement plans.

**WASHINGTON STATE OFFICE OF THE ATTORNEY GENERAL** | September 2014 – January 2018 | Olympia, Washington

**Torts Division, Assistant Attorney General | Employment Section** | March 2017 – January 2018

Defended against employment torts filed against the State and its agencies in state and federal court. Managed a demanding caseload throughout all stages of litigation. Successfully mediated cases with professional mediator. Drafted appellate briefs and motions to the Courts of Appeal and Ninth Circuit. Consulted on a variety of non-employment torts filed against the state.

**DSHS Division, Assistant Attorney General | Juvenile Litigation Section** | September 2014 – March 2017

Litigated juvenile dependency cases in Mason, Lewis, and Thurston County Superior Courts. Successfully litigated several bench trials each year and drafted, argued, and opposed many contested motions. Prevailed in two hearings before the Office of Administrative Hearings, defending the Department of Early Learning and DSHS. Successfully mediated cases. Member of Mason County Therapeutic Courts Team. Drafted bylaws for the Mason County Family Recovery Court. Received a 2015 Excellence Award, given to a small percentage of AAGs for exceptional performance.

**Juvenile Litigation Appellate Project Member** | January 2016 – March 2017

Coordinated appeals for an office of eight attorneys. Edited briefs for each attorney. Interpreted and applied Rules of Appellate Procedure. Argued before a panel of judges at Division Two of the Court of Appeals on three occasions and before the Commissioner of the Court of Appeals on several others. Opposed motions for discretionary review before the Supreme Court.

**THE HONORABLE SUSAN OWENS** | September 2013 – August 2014 | Washington Supreme Court

**Judicial Law Clerk:** Drafted bench memorandum analyzing cases for the members of the Supreme Court. Helped draft and edit judicial opinions. Supervised externs.

**THE HONORABLE KEN SCHUBERT** | April 2013 – June 2013 | King County Superior Court

**Judicial Extern:** Assisted Judge Ken Schubert. Provided legal research and wrote memos analyzing motions for summary judgment. Drafted and edited court orders. Observed jury selection, motions in limine, oral argument, and trials.

**TALMADGE/FITZPATRICK PLLC** | January 2012 – September 2012 | Tukwila, Washington

**Law Clerk:** Provided legal research for a firm specializing in professional responsibility litigation and appellate law. Supported a team of five attorneys by assisting in legal research and writing analytical memos covering a wide range of legal issues. Wrote portions of appellate briefs, motions for summary judgment, and other litigation documents.

**UNIVERSITY OF WASHINGTON UPWARD BOUND PROGRAM** | June 2011 – August 2011 | Seattle, Washington

**Mock Trial Coach & Teaching Assistant:** Taught criminal law and coached 19 students from low-income families.

## **AFFILIATIONS AND ASSOCIATIONS**

---

Washington State Bar Association | King County Bar Association – Appellate Section Member | Washington State Association of Justice | United States District Court, Western District of Washington | United States District Court, Eastern District of Washington | United States Court of Appeals, Ninth Circuit | United States Supreme Court Bar

## **PHIL TALMADGE**

### **PERSONAL**

Married to Darlene Talmadge  
Five children: Adam, Matt, Jess, Jon, and Annemarie

### **EDUCATION**

National Merit Scholar  
B.A. (magna cum laude with high honors in Political Science), Yale University, 1973  
J.D., University of Washington, 1976; Law Review, Editor

### **EMPLOYMENT**

Talmadge/Fitzpatrick, 2019 to date  
Talmadge/Fitzpatrick/Tribe, 2015 to 2019  
Talmadge/Fitzpatrick, 2008 to 2014  
Talmadge Law Group PLLC, 2003 to 2008  
Talmadge & Stockmeyer PLLC, 2001 to 2003  
Washington State Supreme Court, 1995 to 2001 (chaired Budget and Judicial Information System Oversight Committees)  
State Senator, 1979 to 1995 (chaired Senate Judiciary Committee 1981, 1983 to 1987 and Senate Health and Human Services Committee 1992 to 1995; served on Senate Ways and Means Committee 1981, 1983 to 1995)  
Attorney/Shareholder, Talmadge and Cutler, P.S., 1989 to 1995  
Attorney/Shareholder, Karr Tuttle Campbell, 1976 to 1989  
Adjunct Faculty, Univ. of Wash., Seattle Univ. Schools of Law

### **PUBLICATIONS**

Author:  
“A New Approach to Statutory Interpretation in Wash.,” 25 Seattle U. L. Rev. 179 (2001)  
“Initiative Process in Wash.,” 24 Seattle U. L. Rev. 1017 (2001)  
“The Myth of Property Absolutism and Modern Government: The Interaction of Police Power and Property Rights,” 75 Wash. L. Rev. 857 (2000)  
“New Technologies and Appellate Practice,” 2 Jrnl. of App. Prac. and Process 363 (2000)  
“Understanding the Limits of Power: Judicial Restraint in General Jurisdiction Court Systems,” 22 Seattle Univ. Law Review 695 (1999)  
“Preface: Double Jeopardy in Washington and Beyond,” 19 Seattle Univ. Law Review 209 (1996)  
“Product Liability Act of 1981: Ten Years Later,” 27 Gonz. Law Review 153 (1992)  
“Vision for Twenty-First Century Washington” (1989)  
“Toward a Reduction of Washington Appellate Court Caseloads and More Effective Use of Appellate Court Resources,” 21 Gonz. Law Review 21 (1985/86)  
“Washington’s Product Liability Law,” 5 U.P.S. Law Review 1 (1981)  
“Attorneys’ Fees in Civil Litigation in Washington,” 16 Gonz. Law Review 57 (1980)

“Due Process for Washington Public School Students,” 50 Washington Law Review 675 (1975)

Co-Author:

“Amending Codes of Judicial Conduct to Impose Campaign Contribution and Expenditure Limits on Judicial Campaigns,” 24 Va. J. Soc. Pol’y & L. 87 (2018)

“The Lodestar Method for Calculating a Reasonable Attorney Fee in Washington,” 52 Gonz. L. Rev. 1 (2017)

“When Counsel Screws Up: The Imposition and Calculation of Attorney Fees as Sanctions,” 33 Seattle U. Law Review 437 (2010)

“Attorney Fees in Washington” (2008)

“A Survey of Washington Medical Malpractice Law,” 23 Gonz. Law Review 267 (1987/88)

“In Search of a Proper Balance,” 22 Gonz. Law Review 259 (1986/87)

“Restructuring the Legislature: A Proposal for Unicameralism in Washington,” 51 Washington Law Review 901 (1976)

Editor:

“Symposium: Law and the Correctional Process in Washington,” 51 Washington Law Review 491-790 (1976s)

## **SPECIAL AWARDS**

WSTLA, 1983 Legislator of the Year

Alliance of Children, Youth and Families, Legislator of the Year 1985, 1986

Washington Council on Crime and Delinquency, Outstanding Public Official 1987

Award, Washington State Patrol Troopers Association, 1989

Washington Psychological Association, Health Care Award 1993

WSTLA, 1999 Appellate Court Judge of the Year

University of Washington School of Law, Washington Law Review Outstanding Alumnus Achievement Award 1999

## **COMMUNITY INVOLVEMENT**

Active in adult baseball

## **PROFESSIONAL INVOLVEMENT**

Fellow, American Academy of Appellate Lawyers

Member, King County, Washington State, and American Bar Associations

Member, Washington Association of Appellate Lawyers

Admitted to bar: Washington State

United States District Court, Western Washington

United States Court of Appeals, 9<sup>th</sup> and Federal Circuits

United States Supreme Court

Washington “Super Lawyer”

Martindale-Hubbell rating: AV



Law Offices of  
**Talmadge/Fitzpatrick**  
 2775 Harbor Avenue SW, 3rd Fl  
 Seattle, WA 98126  
 (206) 574-6000 (206) 575-1397 Fax

**PAID**  
 04/07/2021  
 Invoice

1824.21      Date:      4/1/2021  
 Invoice Number:      14562

Rick Smith  
 rick.smith1@q.com  
 jimboothby@live.com

91-2104980

RE:

Date	Item	Description	Hours	Rate	Amount
3/8/2021	PT Fees	Review summary judgment order, Division III letter re: appealability; review Mr. Lloyd's email re: same, summary judgment motion; emails re: [REDACTED] prepare notice of association; notice of cross-appeal.	0.8	475.00	380.00
3/9/2021	PT Fees	Begin drafting response on appealability research re: appealability of interpleader order.	1.2	475.00	570.00
3/10/2021	PT Fees	Continue preparation of memorandum re: appealability; edit text.	0.2	475.00	95.00
3/11/2021	PT Fees	Continue preparation of notice of association, notice of cross-appeal.	0.1	475.00	47.50
3/12/2021	PT Fees	Continue preparation of appealability memo, notice of cross-appeal; emails with Mr. Lloyd re: same.	0.2	475.00	95.00
3/18/2021	PT Fees	Review statement of arrangements; emails with Mr. Lloyd re: same.	0.1	475.00	47.50
3/23/2021	PT Fees	Review their memo re: appealability.	0.1	475.00	47.50
3/24/2021	PT Fees	Review Banner Bank memo re: appealability.	0.1	475.00	47.50
		Subtotal			1,330.00
		Costs:			

**Total:**

Payments/Credits

**Balance Due This Invoice:**

Law Offices of  
**Talmadge/Fitzpatrick**  
 2775 Harbor Avenue SW, 3rd Fl  
 Seattle, WA 98126  
 (206) 574-6001 (206) 575-1397 Fax

**PAID**  
**04/07/2021**  
 Invoice

1824.21                      Date:                      4/1/2021  
 Invoice Number:                      14562

Rick Smith  
 rick.smith1@q.com  
 jimboothby@live.com

91-2104980

RE:

Date	Item	Description	Hours	Rate	Amount
3/24/2021		fed ex		35.06	35.06

Payments are due upon receipt. Unpaid balances over 30 days will be assessed a 12% per annum (1% per month) finance charge.

**Total:**                                      \$1,365.06  
 Payments/Credits                                      -\$1,365.06  
**Balance Due This Invoice:**                                      **\$0.00**

Law Offices of  
**Talmadge/Fitzpatrick**  
 2775 Harbor Avenue SW, 3rd Fl  
 Seattle, WA 98126  
 (206) 574-6000 (206) 575-1397 Fax

**PAID**  
**05/14/2021**  
**Invoice**

1824.21                      Date:                      5/1/2021  
 Invoice Number:                      14601

Rick Smith  
 rick.smith1@q.com  
 jimboothby@live.com

91-2104980

RE:

Date	Item	Description	Hours	Rate	Amount
4/2/2021	PT Fees	Review Court of Appeals letter re: appealability; emails re: same.	0.1	475.00	47.50
4/13/2021	PT Fees	Review appealability ruling; emails with Mr. Lloyd re: [REDACTED]	0.2	475.00	95.00

Payments are due upon receipt. Unpaid balances over 30 days will be assessed a 12% per annum (1% per month) finance charge.

<b>Total:</b>	\$142.50
Payments/Credits	-\$142.50
<b>Balance Due This Invoice:</b>	<b>\$0.00</b>

Law Offices of  
**Talmadge/Fitzpatrick**  
 2775 Harbor Avenue SW, 3rd Fl  
 Seattle, WA 98126  
 (206) 574-6000 (206) 575-1397 Fax



1824.21                      Date:                      8/2/2021

Rick Smith  
 rick.smith1@q.com  
 jimboothby@live.com

Invoice Number:                      14787

91-2104980

RE:

Date	Item	Description	Hours	Rate	Amount
7/6/2021	PT Fees	Review brief of appellant, Mr. Lloyd's comments re: same; emails re: [REDACTED]	0.5	475.00	237.50
7/8/2021	PT Fees	Review emails re: [REDACTED]	0.1	475.00	47.50

Payments are due upon receipt. Unpaid balances over 30 days will be assessed a 12% per annum (1% per month) finance charge.

	<b>Total:</b>	\$285.00
	Payments/Credits	-\$285.00
	<b>Balance Due This Invoice:</b>	<b>\$0.00</b>

Law Offices of  
**Talmadge/Fitzpatrick**  
 2775 Harbor Avenue SW, 3rd Fl  
 Seattle, WA 98126  
 (206) 574-6001 (206) 575-1397 Fax

**PAID**  
 09/09/2021  
 J. J. Rice

1824.21                      Date:                      9/1/2021  
 Invoice Number:                      14837

Rick Smith  
 rick.smith1@q.com  
 jimboothby@live.com

91-2104980

RE:

Date	Item	Description	Hours	Rate	Amount
8/18/2021	AO Fees	Record review and research to prep for resp. br. Begin outlining same	4	350.00	1,400.00
8/19/2021	AO Fees	Continue outlining resp. br. including record review	1	350.00	350.00
8/23/2021	AO Fees	Draft opening brief, re: standard of review, CR 56(f). Research and record review re: same	3.6	350.00	1,260.00
8/24/2021	AO Fees	Continue drafting opening brief, re: standard of review, CR 56(f), discovery, statement of the case. Research and record review re: same	3.3	350.00	1,155.00
8/25/2021	AO Fees	Finish first draft of opening brief, re: discovery motions, harmless error, introduction, fees, statement of the case. Research and record review re: same	6.9	350.00	2,415.00
8/26/2021	PT Fees	Continue preparation of brief of respondents; conference with A Orheim re: same; review A Orheim, Mr. Lloyd emails re: brief	0.5	475.00	237.50
8/26/2021	AO Fees	Incorporate trial counsel feedback. Emails re: same. Edit and finalize opening brief for filing	2.3	350.00	805.00

**Total:**

Payments/Credits

**Balance Due This Invoice:**

Law Offices of  
**Talmadge/Fitzpatrick**  
 2775 Harbor Avenue SW, 3rd Fl  
 Seattle, WA 98126  
 (206) 574-6001 (206) 575-1397 Fax

**PAID**  
 09/09/2021  
 Invoice

1824.21                      Date:                      9/1/2021

Invoice Number:                      14837

Rick Smith  
 rick.smith1@q.com  
 jimboothby@live.com

91-2104980

RE:

Date	Item	Description	Hours	Rate	Amount
		Subtotal			7,622.50
8/13/2021		Costs: clerk's papers copies		55.00	55.00

Payments are due upon receipt. Unpaid balances over 30 days will be assessed a 12% per annum (1% per month) finance charge.

**Total:**                      \$7,677.50

Payments/Credits                      -\$7,677.50

**Balance Due This Invoice:**                      **\$0.00**

Law Offices of  
**Talmadge/Fitzpatrick**  
 2775 Harbor Avenue SW, 3rd Fl  
 Seattle, WA 98126  
 (206) 574-6000 (206) 575-1397 Fax

**PAID**  
 11/10/2021  
 Invoice

1824.21                      Date:                      11/1/2021

Rick Smith  
 rick.smith1@q.com  
 jimboothby@live.com

Invoice Number:                      14985

91-2104980

RE:

Date	Item	Description	Hours	Rate	Amount
10/18/2021	AO Fees	Review reply brief, email and phone call w/ trial counsel re: [REDACTED]	1	350.00	350.00
10/22/2021	PT Fees	Review Court of Appeals setting without oral argument; emails re: same	0.1	475.00	47.50
10/22/2021	PT Fees	Review COA notice of setting without OA; emails re: same.	0.1	475.00	47.50
10/25/2021	AO Fees	Review setting letter and email w/ trial counsel re: same	0.2	350.00	70.00
		Subtotal			515.00
10/4/2021		Costs: Court of Appeals reproduction invoice		11.88	11.88

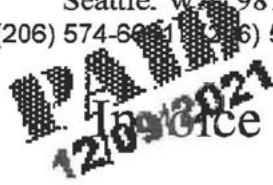
Payments are due upon receipt. Unpaid balances over 30 days will be assessed a 12% per annum (1% per month) finance charge.

**Total:**                      \$526.88

Payments/Credits                      -\$526.88

**Balance Due This Invoice:**                      **\$0.00**

Law Offices of  
**Talmadge/Fitzpatrick**  
 2775 Harbor Avenue SW, 3rd Fl  
 Seattle, WA 98126  
 (206) 574-6001 (206) 575-1397 Fax



1824.21                      Date:                      12/1/2021  
 Invoice Number:                      15047

Rick Smith  
 rick.smith1@q.com  
 jimboothby@live.com

91-2104980

RE:

Date	Item	Description	Hours	Rate	Amount
11/15/2021	PT Fees	Review notice of possible settlement; emails re: same	0.1	475.00	47.50
11/15/2021	AO Fees	Review motion for stay. Emails re: [REDACTED]	0.6	350.00	210.00
11/16/2021	AO Fees	Phone call re: [REDACTED] [REDACTED] Emails re: [REDACTED]	0.5	350.00	175.00
11/17/2021	AO Fees	Emails re: motion for stay withdrawn, [REDACTED]	0.3	350.00	105.00

Payments are due upon receipt. Unpaid balances over 30 days will be assessed a 12% per annum (1% per month) finance charge.

<b>Total:</b>	\$537.50
Payments/Credits	-\$537.50
<b>Balance Due This Invoice:</b>	<b>\$0.00</b>



Law Offices of  
**Talmadge/Fitzpatrick**  
2775 Harbor Avenue SW, 3rd Fl  
Seattle, WA 98126  
(206) 574-6661 (206) 575-1397 Fax

## Invoice

1824.21                      Date:                      1/28/2022

Rick Smith  
rick.smith1@q.com  
jimboothby@live.com

Invoice Number:                      15142

91-2104980

RE:

Date	Item	Description	Hours	Rate	Amount
1/25/2022	AO Fees	Review opinion; prepare fee declaration; emails re: same.	0.9	375.00	337.50
1/25/2022	PT Fees	Review Division III opinion; emails re same	0.2	500.00	100.00

Payments are due upon receipt. Unpaid balances over 30 days will be assessed a 12% per annum (1% per month) finance charge.

**Total:**                                      \$437.50

Payments/Credits                                      \$0.00

**Balance Due This Invoice:**                                      **\$437.50**

DECLARATION OF SERVICE

On said day below I electronically served a true and accurate copy of the *Declaration of Aaron P. Orheim on Attorney Fees* in Court of Appeals, Division III Cause No. 38048-3-III to the following:

William C. Schroeder  
KSB Litigation, PS  
510 Riverside Avenue, #300  
Spokane, WA 99201

Tyler David Lloyd  
Gravis Law  
1309 W. Dean Avenue  
Spokane, WA 99201

Brian A. Walker  
Ogden Murphy Wallace  
PO Box 1606  
Wenatchee, WA 98807

Original electronically served to:  
Court of Appeals, Division III  
Clerk's Office  
Spokane, WA 99260

I declare under penalty of perjury under the laws of the State of Washington and the United States that the foregoing is true and correct.

DATED: February 2, 2022 at Seattle, Washington.

/s/ Matt J. Albers  
\_\_\_\_\_  
Matt J. Albers, Paralegal  
Talmadge/Fitzpatrick

# TALMADGE/FITZPATRICK

February 02, 2022 - 12:09 PM

## Transmittal Information

**Filed with Court:** Court of Appeals Division III  
**Appellate Court Case Number:** 38048-3  
**Appellate Court Case Title:** Banner Bank v. Reflection Lake Community Association, et al  
**Superior Court Case Number:** 20-2-03199-7

### The following documents have been uploaded:

- 380483\_Financial\_20220202120709D3912527\_4891.pdf  
This File Contains:  
Financial - Cost Bill  
*The Original File Name was Cost Bill.pdf*
- 380483\_Other\_20220202120709D3912527\_0353.pdf  
This File Contains:  
Other - Declaration of Tyler D. Lloyd on Attorney Fees  
*The Original File Name was Lloyd Fee Declaration.pdf*
- 380483\_Other\_Filings\_20220202120709D3912527\_8536.pdf  
This File Contains:  
Other Filings - Other  
*The Original File Name was Orheim Fee Declaration.pdf*

### A copy of the uploaded files will be sent to:

- WCS@KSBlit.legal
- bwalker@omwlaw.com
- matt@tal-fitzlaw.com
- mhernandez@ksblit.legal
- phil@tal-fitzlaw.com
- tlloyd@gravislaw.com
- will@tal-fitzlaw.com

### Comments:

Cost Bill; Declaration of Aaron P. Orheim on Attorney Fees; Declaration of Tyler D. Lloyd on Attorney Fees

---

Sender Name: Matt Albers - Email: matt@tal-fitzlaw.com

**Filing on Behalf of:** Aaron Paul Orheim - Email: Aaron@tal-fitzlaw.com (Alternate Email: matt@tal-fitzlaw.com)

Address:  
2775 Harbor Avenue SW  
Third Floor Ste C  
Seattle, WA, 98126  
Phone: (206) 574-6661

**Note: The Filing Id is 20220202120709D3912527**

COURT OF APPEALS, DIVISION III  
OF THE STATE OF WASHINGTON

JAMES POWERS,

Appellant,

and

BANNER BANK, a Washington  
Bank Corporation,

Plaintiff,

v.

REFLECTION LAKE  
COMMUNITY ASSOCIATION,  
a Washington nonprofit  
corporation; and RICK SMITH,

Respondents.

No. 38048-3-III

DECLARATION OF  
TYLER D. LLOYD  
ON ATTORNEY FEES

I, Tyler D. Lloyd, declare as follows:

1. I am over the age of 18 years, competent to testify, and familiar with the facts herein.

2. I represented the respondents in the original interpleader matter in Spokane County Superior Court and assisted appellate counsel throughout the appeal. A panel of

this Court issued an opinion on January 25, 2022, awarding fees to the respondents. This timely fee declaration follows. RAP 18.1(d).

3. I have been licensed to practice law in the State of Washington since 2016. I am admitted to the bar of the state courts of Washington State.

4. I have four years of litigation experience, previously with McNeice Wheeler PLLC and now with Gravis Law PLLC. I have been in practice since graduating from Harvard Law School in 2011.

5. I have relevant experience to the case at hand. I have worked on attorney fee petitions as part of my regular work at McNeice Wheeler and Gravis. I also have experience with the reasonable billing practices of attorneys in the Spokane area.

6. My hourly rate for this case was \$275 per hour. In my experience, this rate is reasonable, and perhaps low, for


attorneys with my background and experience in the Spokane area. My current hourly rate for new cases is \$325 per hour.

8. The hours I spent on this case in support of appellate counsel were reasonable. I kept contemporaneous time records in connection with my work on this case. True and accurate copies are attached to this declaration, with appropriate redactions for privileged information, attorney work product, and billing not relating to the appeal. The hours spent on the case, including gathering records, reviewing and commenting on drafts of pleadings, advising my clients, consulting with co-counsel, and preparing this declaration and supporting documentation were reasonable and necessary to secure a favorable result for my clients.

9. My requested fee for this case, as evidenced in the exhibits attached to this declaration, is \$3,767.50.

*I declare under penalty of perjury under the laws of the  
State of Washington that the foregoing is true and correct.*

Signed this 1 day of February, 2022, at Spokane,  
Washington.

  
\_\_\_\_\_  
Tyler D. Lloyd

**McNeice Wheeler PLLC**  
 221 West Main, Ste. 100  
 Spokane, WA 99201

# INVOICE

**Reflection Lake Community Assoc.**  
 c/o Jim Boothby  
 37708 N Sheets Rd  
 Elk, WA 99009

## Invoice 18774

<b>Date</b>	Mar 10, 2021
<b>Terms</b>	
<b>Service Thru</b>	Mar 10, 2021

**In Reference To: RLCA/RLWA Dispute (Hours)**

<b>Date</b>	<b>By</b>	<b>Services</b>	<b>Hours</b>	<b>Rates</b>	<b>Amount</b>
02/23/2021	TL	<b>Pleadings:</b> [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
02/23/2021	TL	<b>Meeting:</b> [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
02/24/2021	TL	<b>Correspondence:</b> [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
02/24/2021	TL	<b>Correspondence:</b> [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
02/24/2021	TL	<b>Research:</b> [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
02/25/2021	TL	<b>Correspondence:</b> [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]



**McNeice Wheeler PLLC**  
221 West Main, Ste. 100  
Spokane, WA 99201

# INVOICE

**Reflection Lake Community Assoc.**  
c/o Jim Boothby  
37708 N Sheets Rd  
Elk, WA 99009

## Invoice 18774

<b>Date</b>	Mar 10, 2021
<b>Terms</b>	
<b>Service Thru</b>	Mar 10, 2021

02/25/2021	TL	<b>Phone Call:</b> [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
02/25/2021	TL	<b>Research:</b> [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
02/25/2021	TL	<b>Draft: Revise</b> [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
02/26/2021	TL	<b>Correspondence:</b> [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
02/26/2021	TL	<b>Draft: Revise</b> [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
03/01/2021	TL	<b>Correspondence:</b> [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
03/02/2021	TL	<b>Correspondence:</b> [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
03/03/2021	TL	<b>Correspondence:</b> [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

**McNeice Wheeler PLLC**  
 221 West Main, Ste. 100  
 Spokane, WA 99201

# INVOICE

**Reflection Lake Community Assoc.**  
 c/o Jim Boothby  
 37708 N Sheets Rd  
 Elk, WA 99009

**Invoice 18774**

<b>Date</b>	Mar 10, 2021
<b>Terms</b>	
<b>Service Thru</b>	Mar 10, 2021

03/04/2021	TL	<b>Correspondence:</b> [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
03/05/2021	TL	<b>Draft:</b> [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
03/08/2021	TL	<b>Correspondence:</b> [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
03/08/2021	TL	<b>Draft:</b> [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
03/08/2021	CC	<b>Pleadings:</b> [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
03/08/2021	TL	<b>Correspondence:</b> Review and reply to Notice of Appeal and Designation of Clerk's Papers provided by counsel for Mr. Powers. Review and reply to Setting Letter and Amended Setting Letter from Division III Court of Appeals. Email Phil Talmadge to request that he represent RLCA in the appeal of the summary judgment order. Provide case background and copies of relevant pleadings. Discuss strategy re cross-appeal of Judge Hazel's denial of request for attorney's fees. Email Mr. Smith and Mr. Toffer to provide update.	1.20	\$ 275.00/hr	\$ 330.00
03/09/2021	TL	<b>Correspondence:</b> (NO CHARGE) Forward Mr. Talmadge's representation agreement to Mr. Smith and Mr. Toffer. Reply to email from Mr. Smith re signatures.	0.10	\$ 0.00/hr	No Charge

**McNeice Wheeler PLLC**  
 221 West Main, Ste. 100  
 Spokane, WA 99201

# INVOICE

**Reflection Lake Community Assoc.**  
 c/o Jim Boothby  
 37708 N Sheets Rd  
 Elk, WA 99009

## Invoice 18774

<b>Date</b>	Mar 10, 2021
<b>Terms</b>	
<b>Service Thru</b>	Mar 10, 2021

03/09/2021 TL Correspondence: [REDACTED] [REDACTED] [REDACTED]

<b>Total Hours</b>	[REDACTED]
<b>Total Hours</b>	\$ [REDACTED]
<b>Total Invoice Amount</b>	\$ [REDACTED]
<b>Previous Balance</b>	\$ 0.00
<b>Balance (Amount Due)</b>	\$ [REDACTED]

**Payment History:**

Date	Type	Payment Description	Amount
03/10/2021	Payment - Trust Account		[REDACTED]

Total Time & Billing re Appeal: 1.30 \$330.00

**McNeice Wheeler PLLC**  
 221 West Main, Ste. 100  
 Spokane, WA 99201

# INVOICE

**Reflection Lake Community Assoc.**  
 c/o Jim Boothby  
 37708 N Sheets Rd  
 Elk, WA 99009

## Invoice 18974

<b>Date</b>	Mar 24, 2021
<b>Terms</b>	
<b>Service Thru</b>	Mar 24, 2021

**In Reference To: RLCA/RLWA Dispute (Hours)**

<b>Date</b>	<b>By</b>	<b>Services</b>	<b>Hours</b>	<b>Rates</b>	<b>Amount</b>
03/11/2021	TL	<b>Correspondence:</b> (NO CHARGE) Relay email from Mr. Smith re representation agreement and retainer to Mr. Talmadge.	0.10	\$ 0.00/hr	No Charge
03/11/2021	TL	<b>Pleadings:</b> [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
03/12/2021	TL	<b>Review:</b> Review and comment on proposed memorandum arguing that Judge Hazel's summary judgment order is a final order subject to appeal.	0.10	\$ 275.00/hr	\$ 27.50
03/12/2021	TL	<b>Pleadings:</b> [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
03/12/2021	LI	<b>Travel:</b> [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
03/15/2021	TL	<b>Correspondence:</b> [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
03/16/2021	TL	<b>Correspondence:</b> [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
03/17/2021	TL	<b>Correspondence:</b> [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
03/18/2021	TL	<b>Correspondence:</b> Review statement of arrangements filed with the Court of Appeals by Powers. Reply to email from Mr. Talmadge confirming transcription of summary judgment hearing and provide copy of Stipulation and Order for partial release of interpleaded funds.	0.10	\$ 275.00/hr	\$ 27.50

**McNeice Wheeler PLLC**  
 221 West Main, Ste. 100  
 Spokane, WA 99201

# INVOICE

**Reflection Lake Community Assoc.**  
 c/o Jim Boothby  
 37708 N Sheets Rd  
 Elk, WA 99009

## Invoice 18974

<b>Date</b>	Mar 24, 2021
<b>Terms</b>	
<b>Service Thru</b>	Mar 24, 2021

03/19/2021	TL	<b>Correspondence:</b> [REDACTED]			
03/23/2021	TL	<b>Correspondence:</b> Review Powers' memorandum re appealability. Reply to emails from Mr. Bennett and Mr. Smith and answer questions re status of appeal and service on third-party defendants. Forward copy of RLCA's and Jim Powers' memoranda to the appellate court on the issue of appealability.	0.40	\$ 275.00/hr	\$ 110.00
03/24/2021	TL	<b>Review:</b> Review Banner Bank's memorandum on appealability of the summary judgment order and forward to Mr. Smith and Mr. Toffer.	0.10	\$ 275.00/hr	\$ 27.50
			<b>0.80</b>		<b>\$192.50</b>

<b>Total Hours</b>	[REDACTED]
<b>Total Hours</b>	\$ [REDACTED]
<b>Total Invoice Amount</b>	\$ [REDACTED]
<b>Previous Balance</b>	\$ [REDACTED]
<b>Balance (Amount Due)</b>	\$ 0.00

**Payment History:**

Date	Type	Payment Description	Amount
03/24/2021	Payment - Trust Account		(\$ [REDACTED])

Total Time & Billing re Appeal: 0.80 \$192.50

**McNeice Wheeler PLLC**  
 221 West Main, Ste. 100  
 Spokane, WA 99201

# INVOICE

**Reflection Lake Community Assoc.**  
 c/o Jim Boothby  
 37708 N Sheets Rd  
 Elk, WA 99009

## Invoice 19122

<b>Date</b>	Apr 12, 2021
<b>Terms</b>	
<b>Service Thru</b>	Apr 12, 2021

**In Reference To: RLCA/RLWA Dispute (Hours)**

<b>Date</b>	<b>By</b>	<b>Services</b>	<b>Hours</b>	<b>Rates</b>	<b>Amount</b>
03/25/2021	TL	Correspondence: [REDACTED]	[REDACTED]	\$ 275.00/hr	\$ [REDACTED]
03/29/2021	TL	Correspondence: [REDACTED]	[REDACTED]	\$ 275.00/hr	\$ [REDACTED]
03/29/2021	TL	Phone Call: [REDACTED]	[REDACTED]	\$ 275.00/hr	\$ [REDACTED]
03/29/2021	TL	Correspondence: [REDACTED]	[REDACTED]	\$ 275.00/hr	\$ [REDACTED]
03/30/2021	TL	Correspondence: [REDACTED]	[REDACTED]	\$ 0.00/hr	No Charge
03/30/2021	TL	Correspondence: [REDACTED]	[REDACTED]	\$ 275.00/hr	\$ [REDACTED]
03/31/2021	TL	Correspondence: (NO CHARGE) [REDACTED]	[REDACTED]	\$ 0.00/hr	No Charge
03/31/2021	TL	Phone Call: Phone call with Mr. Smith and Mr. Toffer re appeal, [REDACTED]	0.50	\$ 275.00/hr	\$ 137.50
03/31/2021	TL	Correspondence: [REDACTED]	[REDACTED]	\$ 275.00/hr	\$ [REDACTED]

**McNeice Wheeler PLLC**  
 221 West Main, Ste. 100  
 Spokane, WA 99201

# INVOICE

**Reflection Lake Community Assoc.**  
 c/o Jim Boothby  
 37708 N Sheets Rd  
 Elk, WA 99009

## Invoice 19122

<b>Date</b>	Apr 12, 2021
<b>Terms</b>	
<b>Service Thru</b>	Apr 12, 2021

04/01/2021	TL	<b>Correspondence:</b> [REDACTED]		\$ 275.00/hr	\$ [REDACTED]
04/02/2021	TL	<b>Correspondence:</b> Review notice from appellate court striking April 7 hearing. Email RLCA Board to provide update.	0.10	\$ 275.00/hr	\$ 27.50
04/05/2021	TL	<b>Correspondence:</b> [REDACTED]	0.20	\$ 275.00/hr	\$ 55.00
		[REDACTED]. Reply to email from Mr. Bennett and provide update re status of appeal and process moving forward.	0.10		\$27.50
04/05/2021	TL	<b>Phone Call:</b> Phone call with Mr. Bennett to discuss status of appeal, merits of appeal, potential costs of litigation moving forward, potential grounds for a settlement and resolution, and other issues.	0.50	\$ 275.00/hr	\$ 137.50
04/06/2021	TL	<b>Phone Call:</b> Phone call with Mr. Toffer to discuss status of appeal, letter to the RLCA community outlining issues at stake and potential for settlement, and communication with RLCA Board.	0.40	\$ 275.00/hr	\$ 110.00
04/06/2021	TL	<b>Correspondence:</b> Reply to email from Mr. Boothby to discuss importance of appeal and path forward in Lee/Powers case. [REDACTED]	0.30	\$ 275.00/hr	\$ 82.50
		[REDACTED].	0.20		\$55.00
04/07/2021	TL	<b>Correspondence:</b> [REDACTED]		\$ 275.00/hr	\$ [REDACTED]
04/08/2021	TL	<b>Correspondence:</b> (NO CHARGE). [REDACTED]		\$ 0.00/hr	No Charge

**Total Hours** 3.40 hrs

**Total Time & Billing re Appeal:** 1.8 **\$495.00**

**McNeice Wheeler PLLC**  
 221 West Main, Ste. 100  
 Spokane, WA 99201

# INVOICE

**Reflection Lake Community Assoc.**  
 c/o Jim Boothby  
 37708 N Sheets Rd  
 Elk, WA 99009

## Invoice 19367

<b>Date</b>	Apr 26, 2021
<b>Terms</b>	
<b>Service Thru</b>	Apr 26, 2021

**In Reference To: RLCA/RLWA Dispute (Hours)**

<b>Date</b>	<b>By</b>	<b>Services</b>	<b>Hours</b>	<b>Rates</b>	<b>Amount</b>
04/11/2021	TL	Correspondence: [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
04/12/2021	TL	Discovery: [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
04/12/2021	TL	Correspondence: [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
04/12/2021	CC	Pleadings: [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
04/12/2021	TL	Phone Call: [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
04/13/2021	TL	Correspondence: Review appellate determination of appealability and time frames for filing pleadings. Reply to email from Mr. Talmadge. Forward to Mr. Toffer and Mr. Bennett to provide update.	0.20	\$ 275.00/hr	\$ 55.00
04/13/2021	TL	Phone Call: [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
04/15/2021	TL	Phone Call: [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
04/15/2021	TL	Phone Call: [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]



**McNeice Wheeler PLLC**  
 221 West Main, Ste. 100  
 Spokane, WA 99201

# INVOICE

**Reflection Lake Community Assoc.**  
 c/o Jim Boothby  
 37708 N Sheets Rd  
 Elk, WA 99009

## Invoice 19367

Date	Apr 26, 2021
Terms	
Service Thru	Apr 26, 2021

04/16/2021	TL	Correspondence: [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
04/16/2021	TL	Correspondence: [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
04/19/2021	TL	Correspondence: [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
04/21/2021	TL	Correspondence: [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
04/23/2021	TL	Review: [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Total Time & Billing re Appeal: 0.20 \$55.00

Total Hours	[REDACTED]
Total Hours	\$ [REDACTED]
Total Invoice Amount	\$ [REDACTED]
Previous Balance	\$ 0.00
Balance (Amount Due)	\$ 0.00

**Payment History:**

Date	Type	Payment Description	Amount
04/26/2021	Payment - Trust Account		(\$1,256.50)

**McNeice Wheeler PLLC**  
 221 West Main, Ste. 100  
 Spokane, WA 99201

# INVOICE

**Reflection Lake Community Assoc.**  
 c/o Jim Boothby  
 37708 N Sheets Rd  
 Elk, WA 99009

## Invoice 19898

<b>Date</b>	Jun 10, 2021
<b>Terms</b>	
<b>Service Thru</b>	Jun 10, 2021

**In Reference To: RLCA/RLWA Dispute (Hours)**

Date	By	Services	Hours	Rates	Amount
05/25/2021	TL	<b>Correspondence:</b> Review correspondence re appeal and reply to appellate counsel to offer assistance providing pleadings and other documents. [REDACTED]	0.30	\$ 275.00/hr	\$ 82.50
		[REDACTED]	0.20		\$55.00
06/01/2021	TL	<b>Correspondence:</b> [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
06/03/2021	TL	<b>Correspondence:</b> (NO CHARGE) Review Index to Clerk's Papers. Email exchange with appellate counsel re our assistance with gathering documents.	0.10	\$ 0.00/hr	No Charge
06/03/2021	TL	<b>Phone Call:</b> [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
06/04/2021	TL	<b>Correspondence:</b> [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
06/07/2021	TL	<b>Discovery:</b> [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
06/08/2021	TL	<b>Phone Call:</b> (NO CHARGE) [REDACTED]	[REDACTED]	\$ 0.00/hr	No Charge
06/08/2021	TL	<b>Discovery:</b> [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

<b>Total Hours</b>	[REDACTED]
<b>Total Hours</b>	[REDACTED]

Total Time & Billing re Appeal: 0.20 \$55.00

**McNeice Wheeler PLLC**  
 221 West Main, Ste. 100  
 Spokane, WA 99201

# INVOICE

**Reflection Lake Community Assoc.**  
 c/o Jim Boothby  
 37708 N Sheets Rd  
 Elk, WA 99009

## Invoice 20508

<b>Date</b>	Jul 09, 2021
<b>Terms</b>	
<b>Service Thru</b>	Jul 09, 2021

**In Reference To: RLCA/RLWA Dispute (Hours)**

<b>Date</b>	<b>By</b>	<b>Services</b>	<b>Hours</b>	<b>Rates</b>	<b>Amount</b>
06/28/2021	TL	Correspondence: [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
06/28/2021	TL	Discovery: [REDACTED] [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
06/30/2021	TL	Correspondence: [REDACTED] [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
07/01/2021	TL	Research: [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
07/02/2021	TL	Correspondence: [REDACTED] [REDACTED] [REDACTED] [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

**McNeice Wheeler PLLC**  
 221 West Main, Ste. 100  
 Spokane, WA 99201

# INVOICE

**Reflection Lake Community Assoc.**  
 c/o Jim Boothby  
 37708 N Sheets Rd  
 Elk, WA 99009

## Invoice 20508

<b>Date</b>	Jul 09, 2021
<b>Terms</b>	
<b>Service Thru</b>	Jul 09, 2021

07/02/2021	TL	<b>Pleadings:</b> Review motion for extension in appeal of summary judgment. [REDACTED]. Forward both to Ms. Wisner to provide update.	0.20	\$ 275.00/hr	\$ 55.00
			0.10		\$27.50
07/06/2021	TL	<b>Pleadings:</b> Review appellate brief filed by Lee/Powers. Reply to emails from Mr. Talmadge and offer suggestions re our Response. Forward to RLCA Board to provide an update.	0.90	\$ 275.00/hr	\$ 247.50
07/06/2021	TL	<b>Pleadings:</b> [REDACTED]			
07/07/2021	TL	<b>Correspondence:</b> [REDACTED]			
07/07/2021	TL	<b>Pleadings:</b> [REDACTED]			
07/08/2021	TL	<b>Correspondence:</b> [REDACTED]. Reply to email from Ms. Wisner identifying factual errors in appellants' brief and forward to Mr. Talmadge. [REDACTED]	0.30	\$ 275.00/hr	\$ 82.50
			0.10		\$27.50
07/08/2021	TL	<b>Phone Call:</b> [REDACTED]	0.50	\$ 275.00/hr	\$ 137.50

<b>Total Hours</b>	[REDACTED]
<b>Total Hours</b>	[REDACTED]
<b>Total Invoice Amount</b>	[REDACTED]
<b>Previous Balance</b>	[REDACTED]

Total Time & Billing re Appeal: 1.10 \$302.50

**McNeice Wheeler PLLC**  
221 West Main, Ste. 100  
Spokane, WA 99201

# INVOICE

**Reflection Lake Community Assoc.**  
c/o Jim Boothby  
37708 N Sheets Rd  
Elk, WA 99009

## Invoice 21249

Date	Sep 10, 2021
Terms	
Service Thru	Sep 10, 2021

**In Reference To: RLCA/RLWA Dispute (Hours)**

Date	By	Services	Hours	Rates	Amount
08/25/2021	TL	[REDACTED]	[REDACTED]		
08/26/2021	TL	[REDACTED]	[REDACTED]		
08/26/2021	TL	[REDACTED]	[REDACTED]		
08/26/2021	TL	[REDACTED]	[REDACTED]		
08/26/2021	TL	<b>Review:</b> Review proposed appellate brief and offer proposed revisions. Email exchange with Mr. Orheim to discuss revisions and evidentiary questions.	1.00	\$ 275.00/hr	\$ 275.00
08/27/2021	TL	<b>Review:</b> Review filed copy of RLCA appellate brief. Email to Mr. Bennett with update re settlement.	0.20	\$ 275.00/hr	\$ 55.00
08/27/2021	CC	[REDACTED]	[REDACTED]		
08/30/2021	TL	[REDACTED]	[REDACTED]		

09/01/2021	TL	[REDACTED]	[REDACTED]
09/02/2021	TL	[REDACTED]	[REDACTED]
09/07/2021	TL	[REDACTED]	[REDACTED]
09/08/2021	TL	[REDACTED]	[REDACTED]
<b>Total Time &amp; Billing re Appeal:</b>			1.20
			<b>\$330.00</b>

<b>Total Hours</b>	[REDACTED]
<b>Total Hours</b>	[REDACTED]
<b>Total Invoice Amount</b>	[REDACTED]
<b>Previous Balance</b>	[REDACTED]
<b>Balance (Amount Due)</b>	[REDACTED]

**Payment History:**

Date	Type	Payment Description	Amount
08/30/2021	Payment - Check	Split Payment	[REDACTED]



503 Knight St; Suite A / P.O. Box 840  
Richland, WA 99352

# Invoice

Reflection Lake Community Association  
C/O Charlie Bennett

**Invoice Date**  
Nov 1, 2021

Gravis Law, PLLC  
P.O. Box 840  
RICHLAND WA 99352  
(509) 380-9102

**Invoice Number**  
OCT-21A32187

**Reference**  
Tyler Lloyd: 21-009925 RLCA  
Matter

**Gravis Law, PLLC**  
xxx-xx-9539

Description	Quantity	Unit Price	Discount	Amount USD
[09/28/2021 - Tyler Lloyd] [REDACTED]	1	275.00		275.00
[09/29/2021 - Tyler Lloyd] [REDACTED]	1	275.00		275.00
[09/30/2021 - Tyler Lloyd] [REDACTED]	1	275.00		275.00
[10/01/2021 - Tyler Lloyd] [REDACTED]	1	275.00		275.00
[10/04/2021 - Tyler Lloyd] [REDACTED]	1	275.00		275.00
[10/05/2021 - Tyler Lloyd] [REDACTED]	1	275.00		275.00
[10/07/2021 - Tyler Lloyd] [REDACTED]	1	275.00		275.00
[10/08/2021 - Tyler Lloyd] [REDACTED]	1	275.00		275.00
[10/11/2021 - Tyler Lloyd] [REDACTED]	1	275.00		275.00
[10/12/2021 - Tyler Lloyd] [REDACTED]	1	275.00		275.00

Description	Quantity	Unit Price	Discount	Amount USD
[10/13/2021 - Tyler Lloyd]		275.00		
[10/15/2021 - Tyler Lloyd]		275.00		
[10/18/2021 - Tyler Lloyd]	2.80	275.00		770.00
Review Appellants' Reply Brief in appeal of interpleader matter. Phone conference with appellate counsel to discuss Reply Brief and potential dismissal for mootness. Email Mr. Bennett to request RLCA input re appellate strategy.	1.20			330.00
[10/19/2021 - Tyler Lloyd] Phone conference with RLCA board to discuss and appellate strategy. Email appellate counsel to report decision.	0.40	275.00		110.00
	0.30			82.50
[10/20/2021 - Tyler Lloyd]		275.00		
[10/25/2021 - Tyler Lloyd] Reply to emails from appellate counsel re court decision to proceed without oral argument and expected time frame for decision. Email Mr. Bennett to provide update.	0.20	275.00		55.00
	0.20			55.00
[10/26/2021 - Tyler Lloyd]		275.00		
[10/27/2021 - Tyler Lloyd]		275.00	100.00%	0.00
[10/28/2021 - Tyler Lloyd]		275.00		
Subtotal (includes a discount of 27.50)				
<b>TOTAL USD</b>				
Less Amount Paid				
<b>AMOUNT DUE USD</b>				<b>0.00</b>

Total Time & Billing re Appeal: 1.70 467.50

**Due Date: Nov 15, 2021**

Please pay your invoice in full before the due date. If you are unable to pay in full, call our office to make payment arrangements.





503 Knight St; Suite A / P.O. Box 840  
Richland, WA 99352

# Invoice

Reflection Lake Community Association  
C/O Charlie Bennett

**Invoice Date**  
Dec 1, 2021

Gravis Law, PLLC  
P.O. Box 840  
RICHLAND WA 99352  
(509) 380-9102

**Invoice Number**  
NOV-21A37261

**Reference**  
Tyler Lloyd: 21-009925 RLCA  
Matter

**Gravis Law, PLLC**  
xxx-xx-9539

Description	Quantity	Unit Price	Discount	Amount USD
[11/02/2021 - Tyler Lloyd] [REDACTED]	1	275.00		[REDACTED]
[11/03/2021 - Tyler Lloyd] [REDACTED]	1	275.00		[REDACTED]
[11/04/2021 - Tyler Lloyd] [REDACTED]	1	275.00		[REDACTED]
[11/05/2021 - Tyler Lloyd] [REDACTED]	1	275.00		[REDACTED]
[11/09/2021 - Tyler Lloyd] [REDACTED]	1	275.00		[REDACTED]
[11/10/2021 - Tyler Lloyd] [REDACTED]	1	275.00		[REDACTED]

Description	Quantity	Unit Price	Discount	Amount USD
[11/10/2021 - Tyler Lloyd] [REDACTED]	[REDACTED]	275.00		[REDACTED]
[11/11/2021 - Tyler Lloyd] [REDACTED]	[REDACTED]	275.00		[REDACTED]
[11/12/2021 - Tyler Lloyd] [REDACTED]	[REDACTED]	275.00		[REDACTED]
[11/14/2021 - Tyler Lloyd] [REDACTED]	[REDACTED]	275.00		[REDACTED]
[11/15/2021 - Tyler Lloyd] [REDACTED]	4.20	275.00		1,155.00
[REDACTED]	0.20			55.00
[REDACTED] Email exchange with appellate counsel to discuss opposition to motion to stay. [REDACTED]				
[11/16/2021 - Tyler Lloyd] Phone conference with appellate counsel and Mr. and Ms. Bennett to discuss potential opposition to motion to stay appeal. [REDACTED]	1.70	275.00		467.50
[REDACTED]	0.50			137.50
[REDACTED] Email exchange with appellate counsel and Mr. Bennett re withdrawal of motion for stay. [REDACTED]				
[11/17/2021 - Tyler Lloyd] [REDACTED]	0.30	275.00		82.50
[REDACTED] Email exchange with Mr. Bennett and appellate counsel re motion to stay, settlement, and mediation. [REDACTED]	0.10			27.50
[11/19/2021 - Tyler Lloyd] [REDACTED]	3.20	275.00		880.00
[REDACTED]	0.40			110.00
[REDACTED] Phone conference with Mr. and Ms. Bennett to discuss status of the appeal, [REDACTED]				
[11/23/2021 - Tyler Lloyd] [REDACTED]	0.20	275.00		55.00
[11/24/2021 - Tyler Lloyd] [REDACTED]	0.10	275.00		27.50

Description	Quantity	Unit Price	Discount	Amount USD
[11/29/2021 - Tyler Lloyd] [REDACTED]	1	275.00		[REDACTED]
[11/30/2021 - Tyler Lloyd] [REDACTED]	1	275.00	100.00%	0.00
[12/01/2021 - Tyler Lloyd] [REDACTED]	1	275.00		[REDACTED]
[12/01/2021 - Tyler Lloyd] [REDACTED]	1	275.00	100.00%	0.00
[12/02/2021 - Tyler Lloyd] [REDACTED]	1	275.00		[REDACTED]
[12/03/2021 - Tyler Lloyd] [REDACTED]	1	275.00		[REDACTED]
[12/06/2021 - Tyler Lloyd] Reply to emails from Mr. and Ms. Bennett and advise re [REDACTED] status of appeal, [REDACTED]	0.50 0.10	275.00		137.50 27.50
[12/07/2021 - Tyler Lloyd] [REDACTED]	1	275.00		[REDACTED]
[12/08/2021 - Tyler Lloyd] [REDACTED]	1	275.00		[REDACTED]
Subtotal (includes a discount of 55.00)				[REDACTED]
<b>TOTAL USD</b>				[REDACTED]
Less Amount Paid				[REDACTED]
<b>AMOUNT DUE USD</b>				<b>0.00</b>

Total Time & Billing re Appeal: 1.30 357.5

**Due Date: Dec 15, 2021**

Please pay your invoice in full before the due date. If you are unable to pay in full, call our office to make payment arrangements.



503 Knight St; Suite A / P.O. Box 840  
 Richland, WA 99352

# Invoice

Reflection Lake Community Association  
 C/O Charlie Bennett

**Invoice Date**  
 Jan 31, 2022

Gravis Law, PLLC  
 P.O. Box 840  
 RICHLAND WA 99352  
 (509) 380-9102

**Invoice Number**  
 JAN-22OC41624

**Reference**  
 Tyler Lloyd: 21-009925 RLCA  
 Matter

**Gravis Law, PLLC**  
 xxx-xx-9539

Description	Quantity	Unit Price	Discount	Amount USD
[01/03/2022 - Tyler Lloyd] [REDACTED]				
[01/07/2022 - Tyler Lloyd] [REDACTED] Email appellate counsel to inquire re decision on interpleader appeal.	0.10	275.00		27.50
[01/17/2022 - Tyler Lloyd] [REDACTED]				
[01/18/2022 - Tyler Lloyd] [REDACTED]				
[01/19/2022 - Tyler Lloyd] [REDACTED]				
[01/20/2022 - Tyler Lloyd] [REDACTED]				
[01/21/2022 - Tyler Lloyd] [REDACTED]				
[01/22/2022 - Tyler Lloyd] [REDACTED]				
[01/24/2022 - Tyler Lloyd] [REDACTED]				
[01/25/2022 - Tyler Lloyd] Review decision from court of appeals. Confer with appellate counsel re decision and recovering attorney's fees. Email Mr. and Ms. Bennett to provide update and instructions for seeking invoices from McNeice Wheeler. [REDACTED]	0.50 0.40	275.00		137.50 110.00

Description	Quantity	Unit Price	Discount	Amount USD
[01/26/2022 - Tyler Lloyd] Review past invoices and prepare declaration of attorney's fees relating to appeal of summary judgment. Email exchange with Mr. Boothby and Mr. Bennett re invoices from McNeice Wheeler. [REDACTED]	1.30	275.00		357.50
	1.20			330.00
[01/27/2022 - Debbie Smith] [REDACTED]				
[01/27/2022 - Tyler Lloyd] Reply to emails and texts from Mr. Boothby, Mr. Bennett, and Mr. Long re billing for appeal.	0.20	275.00		55.00
[01/28/2022 - Tyler Lloyd] Reply to emails from Mr. Boothby and Mr. and Ms. Bennett re MW invoices. [REDACTED]	2.40	275.00		660.00
[REDACTED] Review and redact MW invoices and prepare declaration of fees. Email opposing counsel to confer re declarations of fees.	2.20			605.00
[01/31/2022 - Tyler Lloyd] [REDACTED]				
Subtotal ([REDACTED])				[REDACTED]
<b>TOTAL USD</b>				[REDACTED]

Total time & billing re Appeal: 4.10 \$1,127.50

**Due Date: Feb 15, 2022**

Please pay your invoice in full before the due date. If you are unable to pay in full, call our office to make payment arrangements.



[View and pay online now](#)

---

## PAYMENT ADVICE

To: Gravis Law, PLLC  
P.O. Box 840  
RICHLAND WA 99352  
(509) 380-9102

**Customer** Reflection Lake Community Association

**Invoice Number** JAN-22OC41624

---

**Amount Due** [REDACTED]

**Due Date** Feb 15, 2022

---

**Amount Enclosed** \_\_\_\_\_

Enter the amount you are paying above

DECLARATION OF SERVICE

On said day below I electronically served a true and accurate copy of the *Declaration of Tyler D. Lloyd on Attorney Fees* in Court of Appeals, Division III Cause No. 38048-3-III to the following:

William C. Schroeder  
KSB Litigation, PS  
510 Riverside Avenue, #300  
Spokane, WA 99201

Tyler David Lloyd  
Gravis Law  
1309 W. Dean Avenue  
Spokane, WA 99201

Brian A. Walker  
Ogden Murphy Wallace  
PO Box 1606  
Wenatchee, WA 98807

Original electronically served to:  
Court of Appeals, Division III  
Clerk's Office  
Spokane, WA 99260

I declare under penalty of perjury under the laws of the State of Washington and the United States that the foregoing is true and correct.

DATED: February 2, 2022 at Seattle, Washington.

/s/ Matt J. Albers  
\_\_\_\_\_  
Matt J. Albers, Paralegal  
Talmadge/Fitzpatrick

# TALMADGE/FITZPATRICK

February 02, 2022 - 12:09 PM

## Transmittal Information

**Filed with Court:** Court of Appeals Division III  
**Appellate Court Case Number:** 38048-3  
**Appellate Court Case Title:** Banner Bank v. Reflection Lake Community Association, et al  
**Superior Court Case Number:** 20-2-03199-7

### The following documents have been uploaded:

- 380483\_Financial\_20220202120709D3912527\_4891.pdf  
This File Contains:  
Financial - Cost Bill  
*The Original File Name was Cost Bill.pdf*
- 380483\_Other\_20220202120709D3912527\_0353.pdf  
This File Contains:  
Other - Declaration of Tyler D. Lloyd on Attorney Fees  
*The Original File Name was Lloyd Fee Declaration.pdf*
- 380483\_Other\_Filings\_20220202120709D3912527\_8536.pdf  
This File Contains:  
Other Filings - Other  
*The Original File Name was Orheim Fee Declaration.pdf*

### A copy of the uploaded files will be sent to:

- WCS@KSBlit.legal
- bwalker@omwlaw.com
- matt@tal-fitzlaw.com
- mhernandez@ksblit.legal
- phil@tal-fitzlaw.com
- tlloyd@gravislaw.com
- will@tal-fitzlaw.com

### Comments:

Cost Bill; Declaration of Aaron P. Orheim on Attorney Fees; Declaration of Tyler D. Lloyd on Attorney Fees

---

Sender Name: Matt Albers - Email: matt@tal-fitzlaw.com

**Filing on Behalf of:** Aaron Paul Orheim - Email: Aaron@tal-fitzlaw.com (Alternate Email: matt@tal-fitzlaw.com)

Address:  
2775 Harbor Avenue SW  
Third Floor Ste C  
Seattle, WA, 98126  
Phone: (206) 574-6661

**Note: The Filing Id is 20220202120709D3912527**

FILED  
Apr 13, 2022  
Court of Appeals  
Division III  
State of Washington

**COURT OF APPEALS, DIVISION III, STATE OF WASHINGTON**

BANNER BANK, a Washington corporation, )  
Plaintiff, )  
v. )  
REFLECTION LAKE COMMUNITY )  
ASSOCIATION, a nonprofit corporation; and )  
RICK SMITH, )  
Respondents, )  
JAMES POWERS, )  
Appellant. )

**MANDATE**

No. 38048-3-III

Spokane County No. 20-2-03199-32

The State of Washington to: The Superior Court of the State of Washington,  
in and for **Spokane** County

This is to certify that the Opinion of the Court of Appeals of the State of Washington, Division III, filed on **January 25, 2022** became the decision terminating review of this court in the above-entitled case on **April 13, 2022**. The cause is mandated to the Superior Court from which the appeal was taken for further proceedings in accordance with the attached true copy of the Opinion.

**IT IS ORDERED, Mr. Powers is ordered to pay RCLA costs of \$140.88 and reasonable attorney fees of \$14,637.50**

**Summary**

**Judgment Creditor: Reflection Lake Community Association, \$14,777.50**

**Judgment Debtor: James Powers, \$14,777.50**

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court at **Spokane**.



Clerk of the Court of Appeals, Division III  
State of Washington



cc: William C. Schroeder  
Brian A. Walker  
Tyler D. Lloyd  
Philip A. Talmadge  
Aaron P. Orheim  
Hon. Tony D. Hazel



Tristen L. Worthen  
Clerk/Administrator

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

*The Court of Appeals  
of the  
State of Washington  
Division III*



500 N Cedar ST  
Spokane, WA 99201-1905

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

April 13, 2022

Philip Albert Talmadge  
Aaron Paul Orheim  
Talmadge/Fitzpatrick  
2775 Harbor Ave SW Unit C  
Seattle, WA 98126-2168 E-MAIL

Brian A Walker  
Attorney at Law  
PO Box 1606  
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William Christopher Schroeder  
KSB Litigation, P.S.  
510 W Riverside Ave Ste 300  
Spokane, WA 99201-0515 E-MAIL

Tyler David Lloyd  
Attorney at Law  
1309 W Dean Ave Ste 100  
Spokane, WA 99201-2018 E-MAIL

CASE # 380483  
Banner Bank v. Reflection Lake Community Association, et al  
SPOKANE COUNTY SUPERIOR COURT No. 2020319932

Dear Counsel:

Enclosed is your copy of the Commissioner's Ruling, which was filed by this Court today.

If objections to the ruling are to be considered (RAP 17.7), they must be made by way of a Motion to Modify filed in this Court within 30 days from the date of this ruling **May 13, 2022**. The answer, if any, to a Motion to Modify will be due **10 days** after the motion is served on the answering party. The moving party may submit a written reply to the answer to the motion to modify no later than **3 days** (excludes Saturdays, Sundays, and legal holidays) after the answer is served on the moving party. RAP 17.4(e).

Your copy of the Mandate is enclosed. This case is now closed in this Court. RAP 12.7(c).

Sincerely,

Tristen L. Worthen  
Clerk/Administrator

TLW:bls  
Encl.

The Court of Appeals  
of the  
State of Washington  
Division 111

FILED  
Apr 13, 2022  
Court of Appeals  
Division III  
State of Washington

BANNER BANK, a Washington Bank )  
corporation, )  
 )  
Plaintiff, )  
v. )  
 )  
REFLECTION LAKE COMMUNITY )  
ASSOCIATION, a Washington )  
Nonprofit corporation; and )  
RICK SMITH, )  
 )  
Respondents, )  
 )  
and )  
 )  
JAMES POWERS, )  
 )  
Appellant. )  
\_\_\_\_\_ )

No. 38048-3-III

COMMISSIONER'S RULING

On January 25, 2022, this court affirmed the trial court's grant of summary judgment in favor of Reflection Lake Community Association and Rick Smith. *Banner Bank v. Reflection Lake Community Association, et al.*, unpub. opn'n no. 38048-3-III (Wa Ct. App. 2022). The court awarded Respondent Reflection Lake Community Association

(RLCA) its reasonable attorney fees on appeal pursuant to RAP 18.9(a), finding that Mr. Powers failed to raise any debatable issues that might result in a reasonable possibility of reversal.

RLCA's counsel submitted a cost bill and a declaration in support of its fees request. Mr. Powers did not file an objection or otherwise respond.

RLCA's counsel submitted a cost bill, seeking \$140.88 in costs: \$74 for preparing 37 page of original court documents, \$55 for preparing the clerk's papers, and \$11.88 for court of appeals reproduction costs. These claimed costs are properly awarded pursuant to RAP 14.3(a), and Mr. Powers fails to rebut the presumption that the charges relating to the production of the record are reasonable. The court therefore awards RCLA's requested costs of \$140.88.

RCLA also seeks \$14,637.50 in attorney fees, based on its attorneys' hourly rates of \$350/\$375, \$475/\$500, and \$275,<sup>1</sup> and 43 hours of work on this matter. Again, Mr. Powers did not object to the requested fees. This court has reviewed the declarations of RCLA's counsel and the attached billing invoices identifying the hours expended, the tasks involved, and the expenses incurred. The court has determined that the hourly rates are reasonable, and that the hours expended on this matter are reasonable. The court therefore awards RCLA its requested fees of \$14,637.50.

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<sup>1</sup> Two of RCLA's attorneys' hourly rates increased during the pendency of the appeal.

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Accordingly, Mr. Powers is ordered to pay RCLA costs of \$140.88 and reasonable attorney fees of \$14,637.50.



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Erin Geske  
Commissioner



I certify that the foregoing document is a full, true and correct copy of the original, as the same appears of record and on file in my office.

Dated: April 13, 2022  
TRISTEN L. WORTHEN  
Clerk of the Court of Appeals, Division III, State of Washington

By: *Barbara Spence*  
CASE MANAGER

**FILED**  
**JANUARY 25, 2022**  
**In the Office of the Clerk of Court**  
**WA State Court of Appeals, Division III**

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION THREE

BANNER BANK, a Washington corporation, )

Plaintiff, )

v. )

REFLECTION LAKE COMMUNITY ASSOCIATION, a nonprofit corporation; and RICK SMITH, )

Respondents, )

JAMES POWERS, )

Appellant. )

No. 38048-3-III

UNPUBLISHED OPINION

LAWRENCE-BERREY, J. — James Powers appeals after the trial court granted summary judgment in favor of Reflection Lake Community Association and Rick Smith. He argues the trial court erred by not striking a declaration, and it abused its discretion by not continuing the summary judgment hearing. We disagree and affirm.

FACTS

This case stems from an interpleader action filed by Banner Bank to determine the rights to accounts it holds as between two competing boards of directors for a homeowners’ association.

*Reflection Lake Community Association election*

Reflection Lake is a manmade lake in northeast Spokane County. The Reflection Lake Community Association (RLCA), a nonprofit corporation and homeowners' association, serves the community around the lake. In the spring of 2020, an ongoing dispute about management led to the resignation of eight of the nine directors on the board of directors. The remaining director appointed eight replacements. The newly appointed board failed to hold the customary annual election in July, and a small number of community members decided to form an election committee in an effort to persuade the appointed board to schedule an election.

In August, members of the election committee went door to door to gather support for a petition demanding the appointed board hold an election. If the appointed board did not comply, the signers of the petition also indicated support for removing the appointed members of the board and holding an election for those positions. The RLCA bylaws provide that a special meeting to remove and elect directors may be called by 40 percent of the voting power of the association. The election committee collected signatures from approximately 70 percent of RLCA members.

The appointed board refused to hold the election, and the election committee proceeded with the special meeting and election. To comply with COVID-19 restrictions

No. 38048-3-III

*Banner Bank v. Reflection Lake Cmty. Ass'n*

on large gatherings, the election committee mailed a combination ballot and proxy designation form, allowing RLCA members to simultaneously indicate their vote and designate the election committee as their directed proxy to cast such votes in the election.

In late September, the election committee held a special meeting to remove the appointed board members and elect their replacements. By virtue of their proxy designations, the election committee represented sufficient voting power to constitute a quorum for business. As a result of the election, seven of the eight appointed directors were removed.

*Access to RLCA bank accounts*

Shortly after the election, James Boothby, the newly elected treasurer of the board, contacted the Washington Secretary of State and began the process of becoming RLCA's registered agent. He received confirmation this process was complete on October 8, 2020. Meanwhile, the ousted members of the appointed board retained counsel, who contacted Banner Bank on October 6 to inform it there were competing boards of directors. When Mr. Boothby attempted to sign on as the authorized owner of RLCA's accounts on October 8, Banner Bank refused and directed his inquiries to its legal department.

On October 13, Banner Bank notified members of both the elected and appointed boards that RLCA's accounts were frozen. In November, Banner Bank filed a complaint for interpleader, naming as defendants James Powers, president of the appointed board, Rick Smith, president of the elected board, and RLCA itself.<sup>1</sup>

On November 19, 2020, Mr. Powers and other members of the appointed board filed a separate lawsuit against RLCA, Mr. Boothby, Mr. Smith, and other members of the elected board, requesting a declaratory judgment that the election was not valid under the RLCA bylaws or state statutes, a declaratory judgment that the RLCA board had no control over the water association serving Reflection Lake homes, and a reorganization of RLCA into two separate community associations.<sup>2</sup> Mr. Powers's counsel in the interpleader case, William C. Schroeder, also represented the plaintiffs in this second case.

*RLCA's motion for summary judgment*

On December 14, 2020, RLCA and Mr. Smith<sup>3</sup> filed a motion for summary judgment in the interpleader action, arguing there was no genuine issue of material fact in

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<sup>1</sup> Spokane County Case No. 20-2-03199-32.

<sup>2</sup> Spokane County Case No. 20-2-03213-32.

<sup>3</sup> For succinctness, we will refer to RLCA and Mr. Smith collectively as "RLCA."



dispute about whether the election was held in compliance with RLCA's bylaws and applicable statutes. The motion was supported by several exhibits, a declaration from a member of the election committee, a declaration from an RLCA member who voted in the election and had previously served on the board, and a declaration from Mr. Boothby. A hearing on the motion was scheduled for January 12, 2021.

Mr. Schroeder promptly reached out via e-mail to RLCA's attorney, Tyler Lloyd, about his intent to schedule depositions of the declarants over December 21-23. On December 14 and 15, Mr. Lloyd e-mailed about the possibility of pushing back the summary judgment hearing so the depositions would not conflict with December holidays. Mr. Schroeder agreed to hold the depositions in the first two weeks of January; the hearing was ultimately rescheduled for January 29, 2021. On December 21, Mr. Lloyd provided availability for depositions of all three declarants, but Mr. Schroeder noted only Mr. Boothby for deposition on January 6. On January 4, Mr. Lloyd confirmed Mr. Boothby's deposition and inquired about depositions for the other two declarants. In response, Mr. Schroeder indicated they would decide after Mr. Boothby's deposition whether further depositions were needed.

Mr. Boothby's deposition

Mr. Boothby was deposed on January 6, 2021. After asking some biographical questions, Mr. Schroeder began asking Mr. Boothby about the formation of the water association, which was the subject of a separate lawsuit between Mr. Powers and Mr. Boothby. While Mr. Boothby stated in his declaration that a dispute led to the previous board's resignation and while that dispute in fact involved the water association, Mr. Boothby's declaration did not anywhere reference the water association. Mr. Lloyd objected to the relevance of the question in relation to the interpleader action, and Mr. Schroeder informed him, "I am going to ask the questions I planned on asking." Clerk's Papers (CP) at 148. After another question to Mr. Boothby about the water association, Mr. Lloyd again objected, leading to a dispute with Mr. Schroeder:

MR. LLOYD: I will object to the relevance of this whole line of inquiry.

MR. SCHROEDER: Did you just instruct him to not answer?

MR. LLOYD: I am objecting to the relevance of the question.

MR. SCHROEDER: I understand your objection. Are you telling him to not answer? That's the important thing.

MR. LLOYD: Yes.

[MR. SCHROEDER]: Okay. I'll put on the record that you've just been directed to not answer. It's not a matter of privilege or any other thing asserted.

MR. SCHROEDER: I am going to call an end to the deposition and seek a ruling from the Court.

CP at 148. Mr. Schroeder terminated the deposition after 13 minutes.

Because the deposition was via videoconference software, Mr. Lloyd called Mr. Schroeder to attempt to continue the deposition after Mr. Schroeder ended the session. Mr. Lloyd and Mr. Schroeder were unable to agree to continue the deposition, although both later indicated their willingness to do so. Mr. Lloyd sent Mr. Schroeder a letter on January 6, indicating Mr. Schroeder's stated intent to seek a court order was unnecessary and that Mr. Boothby and the two other declarants remained available for depositions on the subject of the interpleader action.

*Mr. Powers's motions to strike and continue*

Despite what Mr. Powers's counsel said when ending the deposition, he did not seek a ruling from the court on the deposition issue. Nor did he request depositions from the remaining two declarants. Nor did he file a response to RLCA's motion for summary judgment. Instead, Mr. Powers filed a motion to strike Mr. Boothby's declaration because of the discovery dispute and a motion to continue the summary judgment hearing.

In his motion to strike Mr. Powers argued that because instructing a deponent not to answer is improper, the court should strike the Boothby declaration, order the costs of the deposition be paid by RLCA, and order that Mr. Powers be permitted to redepose Mr. Boothby without counsel interfering.

In his motion to continue, Mr. Powers contended that RLCA scheduled their summary judgment so that all discovery and the written response would have to be completed the week of Christmas. He contended that RLCA “balked” when depositions were requested and that counsel’s interference at Mr. Boothby’s deposition rendered it pointless. CP at 101. Mr. Powers argued he was refused discovery material and was entitled to a continuance under CR 56(f).

Mr. Powers’s motions were noted to be heard on January 29, 2021, at the same time as RLCA’s summary judgment motion. Due to an error in Mr. Schroeder’s office, however, Mr. Powers’s motions were not confirmed as required by local rule.<sup>4</sup>

SCLR 40(b)(9)(C) required RLCA to serve and file its responsive documents seven days before the January 29 hearing. RLCA served and filed its response on January 25, 2021, three days late. Mr. Powers moved to strike the untimely response. There is no indication the trial court considered RLCA’s responsive documents.

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<sup>4</sup> Spokane County Superior Court local civil rule (SLCR) 40(b)(9)(E) provides in relevant part: “In the event a motion . . . is to be argued, counsel for the moving party shall confirm with all opposing counsel that they are available to argue the motion and then notify the judicial assistant for the assigned judge by 12:00 p.m. three (3) days prior to the hearing that the parties are ready for the hearing.”

January 29 hearing

On January 29, the superior court had before it the motion to strike the declaration, the motion to continue the summary judgment, and the motion for summary judgment. Mr. Powers, through counsel, admitted that he failed to confirm his motions. Pursuant to local rule,<sup>5</sup> the court struck Mr. Powers's motions.

The court then turned to the summary judgment motion. It assured the parties it had fully reviewed the record and said the only issue was whether 70 percent of the association members who signed the petition constituted 40 percent of RLCA's voting power, as required by the bylaws to call a special meeting.

Mr. Powers argued that there were unresolved issues with proxies and confidentiality due to the unfinished deposition. He stated there were witnesses who had asked to see records of who held the proxies and the results of the election, and who were told the information was confidential.

RLCA argued there was no reasonable debate that the 70 percent of the association members who signed the petition constituted at least 40 percent of the voting power of RLCA. While there were some owners who owned multiple lots, it was not a

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<sup>5</sup> SLCR 40(b)(9)(H) provides in relevant part: "Failure to timely comply with these requirements may result in . . . the motion being stricken from the calendar . . . ."

community where a single property owner or developer held a majority of the property. RLCA argued that the question of the proxies was a different issue than the petition calling the election, instead having to do with the confidential information of which resident voted for which candidate in the election.

When invited by the court to argue further against the motion for summary judgment, Mr. Powers made an oral motion to strike Mr. Boothby's declaration because of the dispute during the deposition. RLCA responded that there had been no good faith effort to resolve the dispute.

The court noted the issue with Mr. Boothby's deposition, but found that "the evidence and record are overwhelming in that there really are no disputed material facts between the parties and summary judgment is appropriate as a matter of law." Report of Proceedings (RP) at 16. It found that the evidence in the record "undisputedly indicates that the special meeting requirement of 40 percent was triggered" by the election committee's petition. RP at 17. The court noted that if Mr. Powers could show that the 70 percent of members who signed the petition did not collectively hold 40 percent of the voting power, it would be inclined to change its ruling, but that Mr. Powers had failed to demonstrate there was a genuine dispute on that fact.

Mr. Powers appeals.

## ANALYSIS

### A. THE LOCAL RULE IS NOT INCONSISTENT WITH CR 56(f)

Mr. Powers seems to argue that SLCR 40(b)(9)(E)'s requirement that motions be confirmed is inconsistent with CR 56(f) and is therefore invalid. We disagree.

CR 83(a) authorizes local superior courts to adopt rules that are not inconsistent with the general civil rules. Local rules are inconsistent under CR 83(a) when they are “so antithetical that it is impossible as a matter of law that they can both be effective.” *Sorenson v. Dahlen*, 136 Wn. App. 844, 853, 149 P.3d 394 (2006) (quoting *Heaney v. Seattle Mun. Court*, 35 Wn. App. 150, 155, 665 P.2d 918 (1983)).

CR 56(f) neither requires nor prohibits timely confirmation of a motion to continue a summary judgment hearing. For this reason, SLCR 40(b)(9)(E)—which requires all motions to be timely confirmed—is not antithetical to CR 56(f).

Mr. Powers also asserts that the trial court treated his noncompliance with the local rule as dispositive of the summary judgment motion. We disagree.

The trial court treated the motions as separate. After ruling that it would not consider Mr. Powers's motions, the trial court heard arguments on RLCA's summary judgment motion. Because there were no genuine issues of material fact and the record

confirmed that the elected board was duly elected in accordance with its by-laws, the trial court granted RLCA's summary judgment motion.

Mr. Powers also argues that SLCR 40(b)(9)(H) does not provide that default or summary dismissal are among the consequences for failing to properly confirm a responsive motion. There are two reasons why this argument fails.

First, Mr. Powers's motions were not responsive motions, if there is such a thing. He was asking the trial court for affirmative relief and SLCR 40(b)(9)(E) required him to confirm his motions. He admitted that his office failed to do so. SLCR 40(b)(9)(H) authorized the trial court to strike the unconfirmed motions.

Second, Mr. Powers's assertion that his noncompliance with the local rule resulted in a default or summary judgment is disingenuous. Failure to confirm his motions did not cause a default or summary judgment to be entered; failure to create a genuine issue of material fact did.

**B. MR. POWERS'S MOTIONS TO STRIKE DECLARATION AND TO CONTINUE**

Mr. Powers contends that the trial court erred by declining to strike Mr. Boothby's declaration and denying his motion to continue. We disagree.

We review a trial court's ruling on a motion to strike a declaration for an abuse of discretion. *Hanson Indus., Inc. v. Kutschkau*, 158 Wn. App. 278, 287, 239 P.3d 367



(2010). We also review its ruling on a request to continue a summary judgment under CR 56(f) for abuse of discretion. *Winston v. Dep't of Corr.*, 130 Wn. App. 61, 65, 121 P.3d 1201 (2005). Accordingly, we look to whether the trial court's decisions were manifestly unreasonable or based on untenable grounds or reasons. *See State v. McCormick*, 166 Wn.2d 689, 706, 213 P.3d 32 (2009).

Mr. Powers's motion to continue and motion to strike were not filed in accordance with local rules. As discussed above, the court was within its discretion to decline to hear the motions on that basis. Even had the court reached the merits, for the reasons explained below, it would have been well within its discretion to decline to grant relief to Mr. Powers.

*1. Motion to strike*

Mr. Lloyd's instruction to Mr. Boothby not to answer a nonprivileged question was improper. *See* CR 30(h)(3). Mr. Powers argues this impropriety renders Mr. Boothby's declaration inadmissible and the trial court erred by failing to strike the declaration. He provides no support for the contention that impropriety in a deposition renders the deponent's declaration inadmissible. Nor does he provide support for the contention that striking Mr. Boothby's declaration is the appropriate remedy for the improper instruction

not to answer. His cited authority merely establishes that the instruction not to answer was improper—but that proposition is apparent on the face of the rule.

We note that Mr. Boothby's declaration was unimportant to the trial court's determination to grant summary judgment. Mr. Boothby's declaration, which contained very little detail about the election, was redundant to the other declarations. The declaration that attached several exhibits and the declaration of the election committee member were sufficient in themselves to establish that the election was valid. Even had the trial court struck Mr. Boothby's declaration, summary judgment still would have been appropriate.

2. *Motion to continue*

A trial court may continue a motion for summary judgment under CR 56(f) if the nonmoving party presents affidavits stating reasons why “the party cannot present by affidavit facts essential to justify the party's opposition.” Conversely, it

may deny a motion for a continuance when (1) the requesting party does not have a good reason for the delay in obtaining the evidence, (2) the requesting party does not indicate what evidence would be established by further discovery, or (3) the new evidence would not raise a genuine issue of fact.

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*Butler v. Joy*, 116 Wn. App. 291, 299, 65 P.3d 671 (2003) (citing *Tellevik v. Real Prop. Known as 31641 W. Rutherford St.*, 120 Wn.2d 68, 90, 838 P.2d 111, 845 P.2d 1325 (1992)).

Here, the first basis for denying a continuance is met. After opposing counsel objected, Mr. Powers did not attempt to question Mr. Boothby about the election. The record shows that such questions would have been permitted, which would have allowed Mr. Powers to respond to the summary judgment motion. Nor did Mr. Powers, through counsel, follow through with deposing the two other declarants about the election. The most important declarant to depose about the election was the election committee member. Had the election committee member been deposed and opposing counsel objected to questions about the election, a CR 56(f) continuance certainly would have been justified.

We conclude that the trial court did not abuse its discretion in denying Mr. Powers's motion to strike Mr. Boothby's declaration and in denying his motion to continue the summary judgment hearing.

C. OTHER ASSIGNMENTS OF ERROR

Mr. Powers contends the trial court erred by (1) requesting he file a motion for reconsideration while simultaneously denying him discovery, (2) by failing to list the documents it considered in its order, and (3) by entering findings of fact.

1. *Direction to file reconsideration*

Mr. Powers assigns error to the trial court's invitation for him to file a reconsideration motion while simultaneously dismissing the case and ending discovery. The record reflects that, notwithstanding his failure to respond to RLCA's motion for summary judgment or orally demonstrate a genuine issue of material fact, the trial court invited Mr. Powers to "come back on a motion to reconsider or otherwise show me that that 70 percent demonstrated in the record did not equate to 40 percent of the voting power requirement." RP at 18. It is unclear why Mr. Powers challenges the trial court's invitation to present additional evidence, evidence that as the outgoing president he might have. Mr. Powers devotes no argument in his brief to this assignment of error, and we do not consider it further. *See Yakima County v. E. Wash. Growth Mgmt. Hrg's Bd.*, 146 Wn. App. 679, 698, 192 P.3d 12 (2008).

2. *Failure to list documents in the summary judgment order*

Mr. Powers also assigns error to the trial court's failure to list the documents it considered in its summary judgment order.

Under CR 56(h), the order granting summary judgment must "designate the documents and other evidence called to the attention of the trial court." Similarly, under RAP 9.12, the appellate court considers only "evidence and issues called to the attention of the trial court" when reviewing a summary judgment. These rules exist so that the appellate court can engage in the same inquiry as the trial court in its de novo review of the summary judgment. *See McLaughlin v. Travelers Commercial Ins. Co.*, 196 Wn.2d 631, 637, 476 P.3d 1032 (2020).

On appeal, Mr. Powers does not argue that the declarations were insufficient to warrant summary judgment. Rather, he argues the trial court erred in denying his motion to strike and his motion to continue the summary judgment hearing. These arguments do not require us to conduct a de novo review. The error raised here by Mr. Powers does not require remand for correction or any other relief.

3. *Findings of fact in the summary judgment order*

Mr. Powers also argues the trial court's findings of fact in its summary judgment order are superfluous. He is correct. *Chelan County Deputy Sheriffs' Ass'n v. Chelan*

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*Banner Bank v. Reflection Lake Cmty. Ass'n*

*County*, 109 Wn.2d 282, 294 n.6, 745 P.2d 1 (1987). But once again, this error does not require remand for correction or any other relief.

#### ATTORNEY FEES

RLCA argues Mr. Powers's appeal is frivolous and attorney fees should be awarded to it. We agree.

Under RAP 18.9(a), the Court of Appeals may award attorney fees as a sanction for filing a frivolous appeal. An appeal is frivolous ““if there are no debatable issues upon which reasonable minds might differ and it is so totally devoid of merit that there [is] no reasonable possibility of reversal.”” *State v. Chapman*, 140 Wn.2d 436, 454, 998 P.2d 282 (2000) (alteration in original) (quoting *State ex rel. Quick-Ruben v. Verharen*, 136 Wn.2d 888, 905, 969 P.2d 64 (1998)).

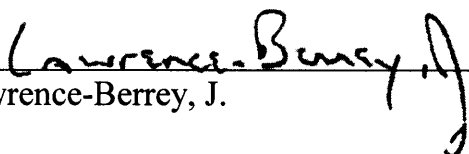
The issues raised by Mr. Powers either misconstrue the record, are easily affirmed under an abuse of discretion standard of review, or do not result in any relief. Through counsel, Mr. Powers could have questioned Mr. Boothby and the other declarants about the election, but when given the opportunity, chose not to. This, combined with the discretionary nature of the trial court's rulings, convince us that Mr. Powers failed to raise any debatable issue that might result in a reasonable possibility of reversal. Subject to its compliance with RAP 18.1(d), we award RLCA its reasonable attorney fees on appeal.

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*Banner Bank v. Reflection Lake Cmty. Ass'n*

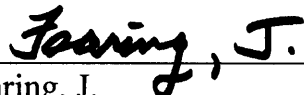
Affirmed.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

  
\_\_\_\_\_  
Lawrence-Berrey, J.

WE CONCUR:

  
\_\_\_\_\_  
Pennell, C.J.

  
\_\_\_\_\_  
Fearing, J.

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

ROBERT LEE, *et al.*,  
Plaintiffs,

v.

REFLECTION LAKE COMMUNITY ASS'N,  
Defendant.

No. 20-2-03213-32

RLCA'S RESPONSE TO PLAINTIFFS'  
MOTION TO ENFORCE MEDIATED  
SETTLEMENT AGREEMENT AND FOR  
ATTORNEY'S FEES

REFLECTION LAKE COMMUNITY ASS'N,  
Third Party Plaintiff,

v.

REFLECTION WATER ASS'N,  
Third Party Defendant.

Defendant/Third-Party Plaintiff Reflection Lake Community Association ("RLCA") hereby responds to Plaintiffs' ("Mr. Powers"<sup>1</sup>) Motion to Compel Mediation and for Attorney's Fees.

**I. BACKGROUND**

Before turning to the merits of Mr. Powers' motion ("Motion"), RLCA provides the following background concerning the various disputes and lawsuits instigated by Mr. Powers in

<sup>1</sup> Mr. Powers is an apt representative of Plaintiffs, as he was the former president of the RLCA board who filed this suit, he prompted the interpleader action in Spokane Superior Court Case No. 20-2-3199-32 by disputing the RLCA 2020 election, he recorded the transfer of the water system which escalated the dispute between RLCA and RWA, and he sits on the RWA board where he is contesting yet another election.



1 the last two years, to the detriment of the Reflection Lake community. This background supports  
2 RLCA's claim for sanctions and fees pursuant to CR 11.

3  
4 Contested RLCA Elections and Other Disputes Leading up to Litigation

5 Mr. Powers has served on the board of the Reflection Water Association ("RWA") since  
6 2008. In March 2020, he was also appointed to the RLCA Board. He and the other appointed  
7 board members were removed from the RLCA Board in September 2020 by an election called by  
8 the members after Mr. Powers cancelled and refused to reschedule the annual RLCA election.

9 Mr. Powers disputed the validity of the 2020 RLCA election and contested the outcome  
10 to Banner Bank, resulting in RLCA's bank accounts being frozen. Banner Bank then named  
11 RLCA and Mr. Powers as defendants in an interpleader action<sup>2</sup> to resolve the dispute over which  
12 board was authorized to access RLCA's accounts. Mr. Powers' separately filed this action  
13 against RLCA over the same issues<sup>3</sup> and sought to consolidate the matters. After RLCA  
14 prevailed in the interpleader matter at summary judgment, Mr. Powers amended his Complaint  
15 herein, withdrew his motion to consolidate the two matters, and filed an appeal<sup>4</sup> of the summary  
16 judgment in the interpleader matter.  
17  
18

19 A primary point of disagreement between Mr. Powers and RLCA is the Reflection Lake  
20 water system, which is owned by RLCA but has been managed by RWA for decades.<sup>5</sup> During  
21 his few months in control of the RLCA Board, Mr. Powers worked to transfer the water system  
22

23  
24 <sup>2</sup> Spokane Superior Court Case No. 20-2-03199-32.

25 <sup>3</sup> Mr. Powers' original Complaint in this matter also sought to invalidate the 2020 RLCA election. These claims were dropped in the Amended Complaint.

<sup>4</sup> Court of Appeals Division III Case No.38048-3.

<sup>5</sup> The ownership of the water system, including water rights and tangible assets, is disputed among the parties. The merits of that dispute are irrelevant for purposes of Mr. Powers' motion.

1 from RLCA to RWA. This transfer served only RWA’s interests, and the individual interests of  
2 Mr. Powers—not RLCA’s interests. Mr. Powers recorded the deed effecting<sup>6</sup> this transfer *after*  
3 he had been removed from the Board in the 2020 RLCA election. This transfer is the primary  
4 basis for RLCA’s counterclaims against Mr. Powers and its third-party complaint against RWA.  
5

6 Mediation and the Purported Settlement Agreement

7 While the appeal of RLCA’s summary judgment in the interpleader matter was pending,  
8 the three parties participated in mediation and subsequent settlement negotiations to resolve this  
9 matter. Although the parties appeared on the verge of settlement, and RLCA and Mr. Powers  
10 signed, RWA ultimately refused to sign and no agreement among the three parties was reached.  
11 (2<sup>nd</sup> Declaration of Tyler Lloyd at ¶¶ 2-9, 11). Whether the portion of the proposed agreement  
12 signed by RLCA and Mr. Powers on November 9, 2021, constitutes an independently  
13 enforceable settlement agreement is the core question raised by Mr. Powers’ Motion, and is  
14 addressed below. While not conceding that the purported settlement is in force, RLCA has  
15 sought to comply with its terms so as to avoid escalation of the dispute with Mr. Powers while  
16 working to resolve the fate of the water system with RWA. (*Id.* at ¶ 13).  
17  
18

19 On November 15, 2021, Mr. Powers filed a motion to stay consideration of his appeal of  
20 the interpleader summary judgment, citing the parties’ purported settlement. The next day,  
21 counsel for Mr. Powers withdrew his motion, explaining to the Court that he had been  
22 “misinformed,” and that “the parties do not wish to stay the ... matter regardless of settlement  
23 status.” (*Id.* at ¶ 10, Exhibit A).  
24

25 On January 25, 2022, the Appellate Court Division III issued its decision upholding the

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<sup>6</sup> The question whether the transfer had legal effect is still disputed.

1 summary judgment in favor of RLCA. The court also deemed Mr. Powers' appeal frivolous and  
2 awarded RLCA its attorney's fees for the appeal. (*Id.* at ¶ 14, Exhibit B).

3  
4 On January 31, 2022, Mr. Powers served RLCA with requests for production and notices  
5 of video-recorded depositions for nine current and former RLCA board members. Mr. Powers'  
6 discovery appeared to focus exclusively on the question whether the purported settlement with  
7 RLCA was in force, and wholly failed to address Mr. Powers' claims or RLCA's counterclaims.  
8 In a subsequent discovery conference, counsel for RLCA requested that discovery be narrowed  
9 to the claims at issue in the lawsuit. Counsel for Mr. Powers refused and threatened to seek an  
10 order to compel. (*Id.* at ¶¶ 15, 17-18).

### 11 Contested RWA Elections

12  
13 Following mediation, and while settlement negotiations among the parties appeared to be  
14 at an impasse, RLCA and other RWA members<sup>7</sup> determined to seek new RWA leadership in the  
15 hopes of clearing the impasse. At the RWA annual election in September of 2021, several RWA  
16 members (none of which serve on the RLCA Board) ran for the RWA Board and received the  
17 plurality vote. Yet Mr. Powers and the other RWA board members refused to recognize the  
18 newly elected board members. (*Id.* at ¶¶ 12, 16).

19  
20 In a close parallel to the 2020 RLCA election, RWA members called a special members'  
21 meeting in March 2022 and voted to remove and replace their current board—including Mr.  
22 Powers. Mr. Powers has yet again refused to accept the results of an election, threatening  
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<sup>7</sup> RWA encompasses all property owners on the east side of Reflection Lake. RLCA encompasses all property owners on both sides, including all RWA members. RLCA itself owns east side property that is hooked up to the water system and is thus a voting member of RWA.

1 community members with the prospect of another lawsuit. (*Id.* at ¶ 16). Mr. Powers’ grounds for  
2 contesting the recent RWA elections are the same he raised to contest the 2020 RLCA election—  
3 grounds so devoid of merit they had already been rejected on summary judgment by the Spokane  
4 Superior Court and deemed frivolous by the Court of Appeals.

5  
6 Demand for Mediation of Alleged Breach of the Settlement by RLCA

7 At various times since November 9, 2021, Mr. Powers has requested that RLCA  
8 participate in mediation over alleged breaches of the purported settlement. RLCA agreed in  
9 principle to mediation, without conceding that it was obligated to do so under any binding  
10 settlement and requested a specific statement of the claims and issues to be mediated. Mr.  
11 Powers at first refused any such clarification, and subsequently provided only a general  
12 allegation that RLCA (and perhaps individual RLCA board members) had violated the non-  
13 disparagement clause of the purported settlement. Mr. Powers claimed \$100,000 in damages,  
14 plus attorney’s fees. (*Id.* at ¶ 13, 20).

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16  
17 RLCA views Mr. Powers’ demand for mediation over claims he refuses to specify as an  
18 attempt to intimidate and harass RLCA with the prospect of never-ending litigation. (*Id.* at ¶ 20).  
19 When RLCA refused to participate in mediation on these terms, Mr. Powers’ filed a Motion to  
20 Compel Mediation (demanding that RLCA mediate the question whether RLCA was obligated to  
21 mediate while refusing to discuss his substantive claims). In the interest of saving time for all  
22 involved, RLCA suggested that the parties bring the question of the settlement’s enforceability  
23 squarely before the Court. (*Id.* at ¶ 19).

24  
25 With Mr. Powers’ motion to enforce now before it, this Court should deny the motion

1 and find that the purported settlement agreement is not enforceable. Because this motion is yet  
2 another link in a long chain of frivolous and abusive litigation tactics, this Court should impose  
3 sanctions and fees against Mr. Powers.  
4

## 5 II. ARGUMENT

### 6 A. The purported settlement was part of a larger, unexecuted agreement.

7 Mr. Powers presents the court with a document that has all the appearance of a complete  
8 and executed two-party settlement agreement and argues that its enforceability is a simple  
9 question. Mr. Powers' argument misleads the Court. In fact, the document which Mr. Powers  
10 presents as an independently enforceable settlement agreement was merely one portion of a  
11 larger single agreement among three parties: Mr. Powers, RLCA, and RWA. *See* Restatement  
12 (Second) of Contracts § 1 (1981) (“[To constitute an enforceable contract,] it is enough that  
13 several promises are regarded by the parties as constituting a single contract or are so related in  
14 subject matter and performance that they may be considered and enforced together by a court.”).  
15 Although counsel for the three parties had agreed to split the terms into three portions *for*  
16 *purposes of presentation*, it was always understood and agreed among the parties that the three  
17 portions together constituted a single agreement. (*See* Lloyd Decl. at ¶¶ 6-9).  
18

19 This is not a case, as Mr. Powers implies, of RLCA disputing the enforceability of an  
20 agreement due to “remorse or second thoughts” following execution of a contract. This is a  
21 simple case of a settlement agreement that was not fully executed because it failed to secure the  
22 manifested assent of all parties to the contract. RWA ultimately refused to sign the three-part  
23 agreement. Without the mutual assent of all parties, the proposed settlement never attained the  
24  
25

1 status of an executed contract—even between the two parties who had signed it.<sup>8</sup>

2 RLCA acknowledges that the portion of the settlement which Mr. Powers seeks to  
3 enforce does not explicitly identify itself as a portion of a larger agreement, nor does it call for a  
4 signature by RWA’s representatives. It does, however, make sufficient reference to RWA to  
5 confirm RLCA’s understanding that the three portions of the agreement were linked, and that the  
6 assent of all three parties to their respective portions of the linked agreement was necessary  
7 before any one portion could attain the status of a contract. Though the third portion of the  
8 contract in isolation may not adequately reveal it, the *intention* of the three parties – certainly the  
9 intention of RLCA – was to enter into a single contract among all parties. “[T]he primary  
10 objective in contract interpretation is determining the drafter’s intent.” *Wilkinson v. Chiwawa*  
11 *Communities Ass’n*, 180 Wash. 2d 241, 250, 327 P.3d 614, 619 (2014) (citing *Hollis v. Garwall,*  
12 *Inc.*, 137 Wash.2d 683, 696, 974 P.2d 836 (1999)). This inquiry is made “from a fair and  
13 reasonable construction of the language used, taking into account all the surrounding  
14 circumstances.” *Tacoma Northpark, LLC v. NW, LLC*, 123 Wn. App. 73, 80, 96 P.3d 454 (2004).

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18 B. The purpose of the purported settlement has been frustrated.

19 Even if the portion of the settlement signed by Mr. Powers and RLCA constituted an  
20 independently enforceable agreement, the purpose of that agreement has been frustrated. Mr.  
21 Powers repeatedly describes a “final settlement” between the parties, but even by its own terms it  
22 is no such thing. The settlement merely provides that litigation among the parties will be *stayed*  
23 pending further negotiations between RLCA and RWA concerning the fate of the water system.  
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<sup>8</sup> The Court should keep in mind that Mr. Powers is the key decision-maker both for the plaintiffs, who signed the settlement, and for RWA, which indicated its agreement but at the last moment refused to sign.

1 Only upon successful transfer of the water system to a third party does the settlement provide  
2 that the parties will dismiss the lawsuits and their individual claims.

3  
4 Negotiations between RLCA and RWA broke down from the moment RWA refused to  
5 sign the settlement. RWA (with Mr. Powers at the helm) has rejected the intended plan to  
6 transfer the water system to a third party. In fact, the current RWA Board's refusal to sign the  
7 settlement was a primary motivator for RWA members to organize an election and replace their  
8 board—an effort which Mr. Powers is seeking to thwart by contesting the election. Mr. Powers  
9 seems to believe that by stalling any resolution of the water system he can convert a temporary  
10 stay of litigation into an indefinite stalemate. That outcome is not consistent with the settlement  
11 or with sound principles of contract law.

12  
13 Given the fact that negotiations have come to a standstill, there is no longer any purpose  
14 or reason in the settlement's provision to stay litigation. As that stay (and intended future  
15 dismissal) was the primary purpose of the settlement, the settlement is unenforceable. *See*  
16 *Restatement (Second) of Contracts § 265 (1981)* (“Where, after a contract is made, a party's  
17 principal purpose is substantially frustrated without his fault by the occurrence of an event the  
18 non-occurrence of which was a basic assumption on which the contract was made, his remaining  
19 duties to render performance are discharged, unless the language or the circumstances indicate  
20 the contrary.”); *see also Wash. State Hop Prod. v. Goschie Farms*, 112 Wash.2d 694, 773 P.2d  
21 70, 71, 73-78. The Court should hold that the purpose of the settlement has been frustrated, deny  
22 Mr. Powers' claims for mandatory mediation and for damages, lift the stay, and allow this  
23 litigation to proceed to a resolution.  
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25

1 C. Mr. Powers should be estopped from enforcing the purported settlement.

2 Even were the settlement found to be enforceable in the abstract, equitable principles  
3 would deny Mr. Powers the right to enforce it against RLCA. As described above, Mr. Powers  
4 has – by action and inaction – sought to deprive RLCA of the benefit of the settlement and  
5 thereby breached the implied covenant of good faith and fair dealing which inheres in every  
6 contract. *See Edmonson v. Popchoi*, 172 Wash. 2d 272, 280, 256 P.3d 1223, 1227 (2011) (citing  
7 Restatement (Second) of Contracts § 205) (“The duty of good faith requires faithfulness to an  
8 agreed common purpose and consistency with the justified expectations of the other party. . . .  
9 Bad faith may be overt or may consist of inaction.”).

10  
11  
12 Mr. Powers has also arguably breached the settlement by disregarding the agreed stay on  
13 litigation, and therefore is estopped from seeking to enforce the settlement against RLCA. *See,*  
14 *e.g., Parsons Supply, Inc. v. Smith*, 2 Wash.App. 520, 523, 591 P.2d 821 (1979) (“A party is  
15 barred from enforcing a contract that it has materially breached.”), *Colorado Structures, Inc. v.*  
16 *Ins. Co. of the W.*, 125 Wash. App. 907, 916-17, 106 P.3d 815, 820-21 (2005) *aff’d*, 161 Wash.  
17 2d 577, 167 P.3d 1125 (2007) (“[A] breaching party cannot demand performance from the  
18 nonbreaching party.”).

19  
20 D. RLCA has not violated the purported settlement.

21 Even assuming, for the sake of argument, that Mr. Powers were able to enforce the  
22 settlement against RLCA, Mr. Powers still has no legitimate claim that RLCA has breached the  
23 settlement in any material respect. Despite its position that the settlement is unenforceable,  
24 RLCA done everything within reason to comply with its terms precisely to avoid further  
25



1 pointless disputes with Mr. Powers. By contrast, Mr. Powers has responded to RLCA’s gesture  
2 of good faith with an absurd demand for over \$100,000 in damages for unspecified breaches of  
3 the settlement’s “non-disparagement” clause. (Lloyd Decl. at ¶¶ 13, 20).  
4

5         Though Mr. Powers refuses to identify them, the communications at issue are presumably  
6 emails from the RLCA Board to its members explaining the status of the litigation and  
7 summarizing the differing positions taken by each side. How, one may ask, is RLCA to move  
8 forward with adversarial litigation – as Mr. Powers insists the parties do – while avoiding any  
9 potentially “disparaging” statement of fact or opinion concerning the opposing party? Mr.  
10 Powers has refused to offer any evidence – or even detailed allegations – that RLCA in any  
11 material way breached the purported settlement. Even under the terms of the settlement, Mr.  
12 Powers has no right to compel RLCA to participate in mediation without first providing a  
13 statement of claims.  
14

15         E. Mr. Powers’ demand for mediation is part of a pattern of frivolous and malicious litigation.  
16

17         CR 11 requires litigants and their attorneys to certify that pleadings they file are well “not  
18 interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless  
19 increase in the cost of litigation,” and provides that, “[i]f a pleading is signed in violation of this  
20 rule, the court ... may impose upon the person who signed it, a represented party, or both, an  
21 appropriate sanction, which may include an order to pay to the other party ... the amount of the  
22 reasonable expenses incurred because of the filing of the pleading ... including a reasonable  
23 attorney fee.” CR 11(a).  
24

25         Mr. Powers’ unspecified claims that RLCA breached the purported settlement are very

1 evidently made in bad faith. This is a well-established pattern for Mr. Powers. At every stage of  
2 this litigation—across two separate lawsuits and even up to the Court of Appeals, Mr. Powers  
3 has demonstrated a willingness to abuse the legal system for improper and harassing purposes.  
4

5 He has almost single-handedly brought two separate volunteer associations to a state of  
6 paralysis and unending conflict. He has disputed valid elections repeatedly and shown no  
7 remorse or improved behavior even after being assessed \$15,000 in RLCA’s fees by the Court of  
8 Appeals. He has used the threat of litigation to intimidate and bully his neighbors, while at the  
9 same time demonstrating that nothing short of litigation will compel his compliance with  
10 association bylaws and procedures. He asks this court to appoint a receiver for RLCA after  
11 causing RLCA’s accounts to be frozen. By his control over two of the three parties to this case  
12 he has managed to tie the mediation and settlement process into knots. He has sought to use tools  
13 of discovery as a cudgel to increase RLCA’s litigation costs, while simultaneously seeking to  
14 enforce a settlement which calls for a stay of litigation. His appeal of RLCA’s summary  
15 judgment was deemed frivolous by the Court of Appeals.  
16  
17

18 And now Mr. Powers wastes the Court’s and RLCA’s time and resources with a hearing  
19 and further motion practice over frivolous claims that RLCA has breached the purported  
20 settlement agreement. RLCA has offered to mediate these claims. Mr. Powers instead asks for  
21 absurd damages and refuses to offer any details because the purpose is simply to intimidate and  
22 harass RLCA. The Court should put a stop to this pattern of bad faith abuse of process by issuing  
23 sanctions against Mr. Powers and awarding RLCA its fees.  
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**III. PRAYER FOR RELIEF**

RLCA hereby moves the court for the following relief:

1. Denial of Mr. Powers’ motion to enforce the purported settlement agreement, and denial of all relief requested therein, including an award of fees to Mr. Powers;
2. A declaratory judgment that the purported settlement is not in force between the parties;
3. A CR 26(c) protective order against wasteful and abusive discovery;
4. Upon such further briefing and argument as the court deems necessary, dismissal of Mr. Powers’ claims in his Amended Complaint for failure to state a claim upon which relief can be granted, or a grant of partial summary judgment for RLCA on those claims;
5. Upon such further briefing and argument as the court deems necessary, a declaratory judgment confirming the validity of the March 12, 2022, RWA election removing and replacing Mr. Powers and the other current RWA board members, thus facilitating a transition of RWA leadership and clearing the way for prompt settlement of all claims between RLCA and RWA;
6. An imposition of sanctions against Mr. Powers and his attorney under CR 11, with an award of fees to RLCA;
7. All other relief the Court deems just and equitable.

DATED this 20<sup>th</sup> day of May, 2022.

GRAVIS LAW, PLLC



By: \_\_\_\_\_  
Tyler D. Lloyd, WSBA #50748  
Attorney for RLCA

1 **CERTIFICATE OF SERVICE**

2 Pursuant to RCW 9A.72.085, I hereby certify under penalty of perjury under the laws of  
3 the State of Washington, that on the 20th day of May, 2022, I caused a true and accurate copy of  
4 the foregoing document to be served upon the following individuals, by the method indicated  
5 below:  
6

7 8 9 10 <b>William C. Schroeder</b> KSB Litigation Attorney for Plaintiffs 510 W. Riverside Ave. #300 Spokane, WA 99201 <a href="mailto:wcs@ksblit.legal">wcs@ksblit.legal</a>	<input type="checkbox"/> By Hand Delivery <input type="checkbox"/> By U.S. Mail <input type="checkbox"/> By Overnight Mail <input type="checkbox"/> By Facsimile Transmission <input checked="" type="checkbox"/> By Electronic Mail
11 12 13 14 <b>Steven R. Stocker &amp; Pierce J. Jordan</b> Bohrnsen Stocker Smith Luciani Adamson PLLC Attorneys for Reflection Water Association 312 W. Sprague Ave. Spokane, WA 99201 <a href="mailto:sstocker@bssslawfirm.com">sstocker@bssslawfirm.com</a>	<input type="checkbox"/> By Hand Delivery <input type="checkbox"/> By U.S. Mail <input type="checkbox"/> By Overnight Mail <input type="checkbox"/> By Facsimile Transmission <input checked="" type="checkbox"/> By Electronic Mail

15  
16 Dated this 20<sup>th</sup> day of May, 2022, at Kennewick, Washington.

17  
18 *Debbie Smith*  
19 \_\_\_\_\_  
Debbie Smith  
20 Paralegal

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

ROBERT LEE, *et al.*,  
Plaintiffs,

v.

REFLECTION LAKE COMMUNITY ASS'N,  
Defendant.

No. 20-2-03213-32

SECOND DECLARATION OF RLCA  
COUNSEL TYLER LLOYD

REFLECTION LAKE COMMUNITY ASS'N,  
Third Party Plaintiff,

v.

REFLECTION WATER ASS'N,  
Third Party Defendant.

I, TYLER LLOYD, declare under penalty of perjury under the laws of the State of Washington that the following is true and correct.

1. I am over the age of 18, make this Declaration based on personal knowledge, and am competent to testify herein. I am counsel for Defendants/Third-Party Plaintiffs in this matter.

2. The three parties hereto (“Mr. Powers,”<sup>1</sup> “RLCA,” and “RWA”) engaged in two

<sup>1</sup> Mr. Powers is an apt representative of Plaintiffs, as he was the former president of the RLCA board who filed this suit, he prompted the interpleader action in Spokane Superior Court Case No. 20-2-3199-32 by disputing the RLCA 2020 election, he recorded the transfer of the water system which escalated the dispute between RLCA and RWA, and he sits on the RWA board where he is contesting yet another election.

1 days of mediation in August, 2021, followed by several weeks of continuing negotiations, but  
2 had not reached an agreement through October, 2021.

3  
4 3. Upon information and belief, the substance of Mr. Powers' claims as presented in  
5 their Complaint were not once discussed at mediation or thereafter. Instead, RLCA was  
6 presented with allegations by Mr. Powers that the RLCA Board of Directors was not complying  
7 with RLCA bylaws (presumably *before* and *after*, but not *during* Mr. Powers' time as President  
8 of the RLCA Board).

9  
10 4. Although RLCA disputes Mr. Powers' allegations (those set out in the Complaint  
11 and those raised at mediation) and has advanced substantial counterclaims against Mr. Powers,  
12 RLCA's highest priority at mediation was to resolve questions related to the future ownership  
13 and operation of the Reflection Lake water system which Mr. Powers had transferred<sup>2</sup> to the  
14 Reflection Water Association ("RWA"). RLCA was willing to accommodate, to a degree,  
15 demands by Mr. Powers with which RLCA disagreed, and to forgo pursuing its claims against  
16 Mr. Powers, if the future of the water system could be satisfactorily and permanently secured.

17  
18 5. By early November, the negotiations between the parties were focused on a  
19 seemingly agreeable solution for the water system: to transfer the system to the Stevens Public  
20 Utility District ("Stevens PUD") or another reliable third-party owner/operator. However,  
21 Stevens PUD signaled that it was not interested in assuming ownership of the water system, at  
22 least in part due to the lack of clarity regarding "ownership of water rights and other water  
23 system assets."<sup>3</sup>  
24

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<sup>2</sup> Whether the transfer was legally effective is still in dispute.

<sup>3</sup> RLCA is not in possession of a copy of the letter from Stevens PUD. However, RWA is in possession of the original letter and published a copy in its January 2022 newsletter to RWA members which may be viewed at <https://reflectionlakewater.org/january-2022/>.

1           6.       In a last effort to avoid a breakdown in negotiations, the parties sought to present  
2 a unified front in petitioning Stevens PUD to take ownership of the water system. To that end,  
3 counsel for the parties determined that we should present Stevens PUD with a copy of our signed  
4 settlement agreement as an indication that litigation had been resolved. We further determined  
5 that the settlement agreement presented to Stevens PUD should be as simple and clean as  
6 possible: specifically, that it should address only the issues relating to the water system, not the  
7 claims between Mr. Powers and RLCA relating to the conduct of past and present RLCA boards.  
8

9           7.       By the agreement of counsel for all three parties, I divided our draft Settlement  
10 Agreement, which had previously been a single document to be signed by all parties, into three  
11 documents: (1) the first discussed the terms by which RWA and RLCA would transfer all  
12 ownership of the water system to Stevens PUD, and would be presented to Stevens PUD in the  
13 hope of securing its acceptance of that transfer; (2) the second discussed the process by which  
14 RWA and RLCA would select an alternate third party to take on ownership (or at least  
15 management) of the water system in the event Stevens PUD declined; and (3) the third contained  
16 the settlement provisions relating to the disputes between RLCA and Mr. Powers.  
17

18           8.       It was never discussed among counsel, let alone agreed, that the division of the  
19 Settlement Agreement into three documents would change its character as a single agreement  
20 among all three parties. The parties continued to treat the three portions as a single agreement.  
21 Negotiations over changes to all three documents continued to involve counsel for all three  
22 parties. When RLCA and Mr. Powers finalized the third portion of the agreement, they did not  
23 proceed to sign—instead they waited weeks for RWA to confirm its agreement. When RLCA  
24 grew tired of delays and issued a deadline by which the agreement must be signed or RLCA  
25

1 would consider mediation to have concluded unsuccessfully, the deadline applied to all three  
2 parties and all three sections of the agreement.

3  
4 9. On November 9, 2021, as RLCA and Mr. Powers were signing counterparts of the  
5 third portion of the agreement, RLCA did so with the understanding that RWA would also be  
6 signing. Only after RLCA and Mr. Powers had exchanged copies of their signatures did I hear  
7 through counsel that RWA was refusing to sign unless further revisions were made. From the  
8 moment I was notified that RWA would not sign the agreement, I have consistently maintained  
9 to opposing counsel that RLCA did not consider the settlement to be in force or effective.  
10

11 10. On November 15, 2021, I was notified by RLCA's appellate counsel that a  
12 motion to stay the appeal of Spokane County Superior Court Case No. 20-2-03199-32 (Court of  
13 Appeals Division III Case No. 38048-3) had been filed by Mr. Powers (representing substantially  
14 the same group as Plaintiffs herein), citing the parties' purported settlement. The next day, Mr.  
15 Powers withdrew his motion, with the explanation of Mr. Schroeder that he had been  
16 "misinformed" regarding his clients' intentions, and that "the parties do not wish to stay the ...  
17 matter regardless of settlement status." A true and correct copy of these pleadings is attached  
18 hereto as **Exhibit A**.  
19

20 11. RLCA spent weeks more negotiating with RWA in an attempt to secure their  
21 signature on the three-part agreement. Counsel for all three parties met again with the mediator  
22 on November 19, 2021 to discuss RWA's concerns, but no agreement was reached. To this day,  
23 RWA has refused to commit itself to the proposed transfer of the water system to a third party.  
24

25 12. Following the breakdown in negotiations among the parties, RLCA concluded



1 that its best path forward was to exercise its rights as an RWA member<sup>4</sup> to seek new RWA  
2 leadership in the hopes of clearing the impasse. Members of the RWA called for a special  
3 members' meeting to remove and replace their current board.  
4

5 13. Since November 9, 2021, Mr. Powers – sometimes through counsel, sometimes  
6 communicating directly to members of the RLCA board – has repeatedly threatened RLCA with  
7 legal action to enforce the purported settlement. While not conceding that the purported  
8 settlement is in force, RLCA has sought to comply with its terms so as to avoid escalation of the  
9 dispute with Mr. Powers while working toward a settlement with new RWA leadership.  
10

11 14. On January 25, 2022, the Appellate Court Division III issued its decision  
12 upholding the summary judgment in favor of RLCA, deeming Mr. Powers' appeal frivolous, and  
13 awarding RLCA its attorney's fees for the appeal. A true and correct copy of this decision is  
14 attached hereto as **Exhibit B**.  
15

16 15. On or around January 31, 2022, Mr. Powers served RLCA with requests for  
17 production and notices of video-recorded depositions for Charlie Bennett, Sandi Bennett, Jeff  
18 Toffer, James Boothby, Rick Smith, Joe Dickinson, Angela Ward, Gary Long, and Bill Pease. I  
19 requested that the discovery deadlines be extended, and the depositions rescheduled until after  
20 the pending RWA election. I pointed out to Mr. Schroeder that his discovery requests were an  
21 apparent violation of the terms of the purported settlement which he was threatening to enforce.  
22

23 16. On March 12, 2021, following requisite notice, RWA held its special members'  
24 meeting and voted to remove and replace the current RWA board—including Mr. Powers. Mr.  
25 Powers is contesting the election and refusing to step down or turn over RWA keys, books, etc.

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<sup>4</sup> RLCA itself owns property connected to the water system and has a vote in all RWA elections.

1           17. On March 30, 2022, Mr. Schroeder emailed me to request a discovery conference  
2 pursuant to CR 26(i) on April 1, to which I agreed. On April 1, Mr. Schroeder (through an  
3 assistant) informed me that the conference would need to be rescheduled for the following week.  
4 I confirmed the rescheduled conference and suggested to Mr. Schroeder that we “prepare to  
5 discuss (1) what issues are still in dispute between our respective clients, (2) which claims and/or  
6 defendants can be dismissed, and (3) what evidence relevant to the remaining claims you expect  
7 to obtain through each of your interrogatories, requests for production, and scheduled  
8 depositions,” with the goal of “narrow[ing] our discovery efforts as much as possible to avoid  
9 further unnecessary costs on both sides.” Later in the day of March 30, Mr. Powers served  
10 RLCA with a Motion to Compel Mediation and a note for hearing.  
11  
12

13           18. Mr. Schroeder and I held a brief discovery conference on April 5, 2022, in which  
14 Mr. Schroeder flatly refused to narrow the scope of his discovery to issues and anticipated  
15 evidence reasonably related to Mr. Powers’ claims against RLCA. Once again, Mr. Schroeder’s  
16 focus was exclusively on the disputed settlement. Once again, I noted the seeming inconsistency  
17 between Mr. Powers position that the settlement is enforceable with his apparent violation of the  
18 settlement’s provision staying all litigation between the parties. I warned Mr. Schroeder that if he  
19 did not withdraw his motion, RLCA would seek fees and sanctions pursuant to CR 11.  
20  
21

22           19. On April 11, 2022, Mr. Schroeder and I exchanged emails in which we agreed  
23 that, rather than ask this Court to order the parties to mediate the question whether the disputed  
24 settlement is enforceable (but, according to Mr. Powers’ questionable plan, *not* mediate the  
25 underlying substantive claims), we should simply bring the question whether the settlement is  
enforceable squarely before this Court.

1           20. Without conceding that it is required to do so, RLCA has offered to mediate Mr.  
2 Powers' claims that RLCA has breached the disputed settlement. However, Mr. Powers has  
3 refused to provide any specificity regarding his claims other than a general reference to the  
4 settlement's non-disparagement provision. Mr. Powers has refused to identify which RLCA  
5 communications are alleged to have constituted disparaging statements. After repeated requests  
6 for clarification, Mr. Powers responded instead with a claim for more than \$100,000 in damages.  
7 I do not view Mr. Powers' demand as a good faith effort to mediate legitimate claims, but as a  
8 further effort to intimidate my client with the prospect of never-ending litigation.  
9  
10

11           I declare under the penalty of perjury under the laws of the State of Washington that the  
12 foregoing statement is true and correct, as are any attachments or exhibits.

13           DATED this 20<sup>th</sup> day of May, 2022, at Spokane, WA.

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Tyler D. Lloyd, WSBA #50748

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**CERTIFICATE OF SERVICE**

Pursuant to RCW 9A.72.085, I hereby certify under penalty of perjury under the laws of the State of Washington, that on the 20th day of May, 2022, I caused a true and accurate copy of the foregoing document to be served upon the following individuals, by the method indicated below:

<b>William C. Schroeder</b> KSB Litigation Attorney for Plaintiffs 510 W. Riverside Ave. #300 Spokane, WA 99201 <a href="mailto:wcs@ksblit.legal">wcs@ksblit.legal</a>	<input type="checkbox"/> By Hand Delivery <input type="checkbox"/> By U.S. Mail <input type="checkbox"/> By Overnight Mail <input type="checkbox"/> By Facsimile Transmission <input checked="" type="checkbox"/> By Electronic Mail
<b>Steven R. Stocker &amp; Pierce J. Jordan</b> Bohrnsen Stocker Smith Luciani Adamson PLLC Attorneys for Reflection Water Association 312 W. Sprague Ave. Spokane, WA 99201 <a href="mailto:sstocker@bssslawfirm.com">sstocker@bssslawfirm.com</a>	<input type="checkbox"/> By Hand Delivery <input type="checkbox"/> By U.S. Mail <input type="checkbox"/> By Overnight Mail <input type="checkbox"/> By Facsimile Transmission <input checked="" type="checkbox"/> By Electronic Mail

Dated this 20<sup>th</sup> day of May, 2022, at Kennewick, WA.

*Debbie Smith*

Debbie Smith  
Paralegal

# EXHIBIT A

**COURT OF APPEALS, DIVISION III  
OF THE STATE OF WASHINGTON**

BANNER BANK, a )  
Washington Bank )  
Corporation, )  
Plaintiff, )  
vs. ) **MOTION FOR STAY**  
 ) **OF REVIEW PENDING**  
REFLECTION LAKE ) **IMPLEMENTATION**  
COMMUNITY ) **OF SETTLEMENT**  
ASSOCIATION, a ) **AGREEMENT**  
Washington nonprofit )  
corporation, )  
Respondent, )  
and )  
JAMES POWERS, )  
Appellant, )  
and )  
RICK SMITH, )  
Respondent. )

**IDENTITY OF MOVING PARTY**

Appellant James Powers, after consultation with  
counsel for Respondents, brings this Motion for Stay of  
Review.

## RELIEF REQUESTED

The Parties have signed a settlement agreement and are in the process of implementing it. The Parties anticipate that implementation may take several months, as it involves the transfer of interests in real property between two (2) of the responsible non-profit community associations which serve the lake and its residents. Once implemented, the Parties will move to dismiss the related matter currently pending before the Spokane County Superior Court, and will move to withdraw the instant matter from review. In the meantime, the Parties request that the Court remove the instant matter from its active docket and stay Review for 90 days. This motion has 130 words or fewer.

Filed this 15<sup>th</sup> day of November, 2021,

**KSB LITIGATION, P.S.**

By 

William C. Schroeder, WSBA 41986  
510 W. Riverside Ave, Ste. 300  
Spokane, WA 99201  
(509) 624-8988  
Attorneys for Appellant

**COURT OF APPEALS, DIVISION III  
OF THE STATE OF WASHINGTON**

BANNER BANK, a )  
Washington Bank )  
Corporation, )  
Plaintiff, )  
vs. ) **WITHDRAWAL OF**  
 ) **MOTION FOR STAY**  
REFLECTION LAKE ) **OF REVIEW**  
COMMUNITY )  
ASSOCIATION, a )  
Washington nonprofit )  
corporation, )  
Respondent, )  
and )  
JAMES POWERS, )  
Appellant, )  
and )  
RICK SMITH, )  
Respondent. )

**IDENTITY OF MOVING PARTY**

Appellant James Powers withdraws the Motion for  
Stay of Review.



## RELIEF REQUESTED

Appellant James Powers withdraws the Motion for Stay of Review. The undersigned counsel was misinformed, and the parties do not wish to stay the above-captioned matter, regardless of settlement status.

This Withdrawal of Motion has 55 words or fewer.

Filed this 16<sup>th</sup> day of November, 2021,

**KSB LITIGATION, P.S.**

By: 

William C. Schroeder, WSBA 41986  
510 W. Riverside Ave, Ste. 300  
Spokane, WA 99201  
(509) 624-8988  
Attorneys for Appellant

# EXHIBIT B

CN: 2020319932

SN: 44

PC: 24

FILED

APR 13 2022

TIMOTHY W. FITZGERALD  
SPOKANE COUNTY CLERK

FILED

Apr 13, 2022

Court of Appeals

Division III

State of Washington

**COURT OF APPEALS, DIVISION III, STATE OF WASHINGTON**

BANNER BANK, a Washington corporation, )  
 Plaintiff, )  
 v. )  
 REFLECTION LAKE COMMUNITY )  
 ASSOCIATION, a nonprofit corporation; and )  
 RICK SMITH, )  
 Respondents, )  
 JAMES POWERS, )  
 Appellant. )

**MANDATE**

No. 38048-3-III

Spokane County No. 20-2-03199-32

*Affirmed*

*mnd*

The State of Washington to: The Superior Court of the State of Washington,  
in and for Spokane County

This is to certify that the Opinion of the Court of Appeals of the State of Washington, Division III, filed on January 25, 2022 became the decision terminating review of this court in the above-entitled case on April 13, 2022. The cause is mandated to the Superior Court from which the appeal was taken for further proceedings in accordance with the attached true copy of the Opinion.

**IT IS ORDERED, Mr. Powers is ordered to pay RCLA costs of \$140.88 and reasonable attorney fees of \$14,637.50**

**Summary**

**Judgment Creditor: Reflection Lake Community Association, \$14,777.50**

**Judgment Debtor: James Powers, \$14,777.50**

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court at Spokane.

*Dustin Worth*

Clerk of the Court of Appeals, Division III  
State of Washington



cc: William C. Schroeder  
Brian A. Walker  
Tyler D. Lloyd  
Philip A. Talmadge  
Aaron P. Orheim  
Hon. Tony D. Hazel

Tristen L. Worthen  
Clerk/Administrator

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

*The Court of Appeals  
of the  
State of Washington  
Division III*



500 N Cedar ST  
Spokane, WA 99201-1905

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April 13, 2022

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CASE # 380483  
Banner Bank v. Reflection Lake Community Association, et al  
SPOKANE COUNTY SUPERIOR COURT No. 2020319932

Dear Counsel:

Enclosed is your copy of the Commissioner's Ruling, which was filed by this Court today.

If objections to the ruling are to be considered (RAP 17.7), they must be made by way of a Motion to Modify filed in this Court within 30 days from the date of this ruling **May 13, 2022**. The answer, if any, to a Motion to Modify will be due **10 days** after the motion is served on the answering party. The moving party may submit a written reply to the answer to the motion to modify no later than **3 days** (excludes Saturdays, Sundays, and legal holidays) after the answer is served on the moving party. RAP 17.4(e).

Your copy of the Mandate is enclosed. This case is now closed in this Court. RAP 12.7(c).

Sincerely,

Tristen L. Worthen  
Clerk/Administrator

TLW:bls  
Encl.

The Court of Appeals  
of the  
State of Washington  
Division III

FILED  
Apr 13, 2022  
Court of Appeals  
Division III  
State of Washington

BANNER BANK, a Washington Bank corporation,	)	No. 38048-3-III
	)	
Plaintiff,	)	
v.	)	COMMISSIONER’S RULING
	)	
REFLECTION LAKE COMMUNITY ASSOCIATION, a Washington Nonprofit corporation; and RICK SMITH,	)	
	)	
Respondents,	)	
	)	
and	)	
	)	
JAMES POWERS,	)	
	)	
Appellant.	)	
_____	)	

On January 25, 2022, this court affirmed the trial court’s grant of summary judgment in favor of Reflection Lake Community Association and Rick Smith. *Banner Bank v. Reflection Lake Community Association, et al.*, unpub. opn’n no. 38048-3-III (Wa Ct. App. 2022). The court awarded Respondent Reflection Lake Community Association

No. 38048-3-III

(RLCA) its reasonable attorney fees on appeal pursuant to RAP 18.9(a), finding that Mr. Powers failed to raise any debatable issues that might result in a reasonable possibility of reversal.

RLCA's counsel submitted a cost bill and a declaration in support of its fees request. Mr. Powers did not file an objection or otherwise respond.

RLCA's counsel submitted a cost bill, seeking \$140.88 in costs: \$74 for preparing 37 page of original court documents, \$55 for preparing the clerk's papers, and \$11.88 for court of appeals reproduction costs. These claimed costs are properly awarded pursuant to RAP 14.3(a), and Mr. Powers fails to rebut the presumption that the charges relating to the production of the record are reasonable. The court therefore awards RCLA's requested costs of \$140.88.

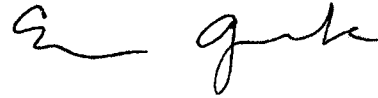
RCLA also seeks \$14,637.50 in attorney fees, based on its attorneys' hourly rates of \$350/\$375, \$475/\$500, and \$275,<sup>1</sup> and 43 hours of work on this matter. Again, Mr. Powers did not object to the requested fees. This court has reviewed the declarations of RCLA's counsel and the attached billing invoices identifying the hours expended, the tasks involved, and the expenses incurred. The court has determined that the hourly rates are reasonable, and that the hours expended on this matter are reasonable. The court therefore awards RCLA its requested fees of \$14,637.50.

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<sup>1</sup> Two of RCLA's attorneys' hourly rates increased during the pendency of the appeal.

No. 38048-3-III

Accordingly, Mr. Powers is ordered to pay RCLA costs of \$140.88 and reasonable attorney fees of \$14,637.50.



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Erin Geske  
Commissioner



I certify that the foregoing document is a full, true and correct copy of the original, as the same appears of record and on file in my office.

Dated: April 13, 2022  
TRISTEN L. WORTHEN  
Clerk of the Court of Appeals, Division III, State of Washington

**FILED**  
**JANUARY 25, 2022**  
In the Office of the Clerk of Court  
WA State Court of Appeals, Division III

By: *Babara Spence*  
**CASE MANAGER**

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION THREE

BANNER BANK, a Washington corporation,	)	No. 38048-3-III
	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
REFLECTION LAKE COMMUNITY ASSOCIATION, a nonprofit corporation; and RICK SMITH,	)	UNPUBLISHED OPINION
	)	
Respondents,	)	
	)	
JAMES POWERS,	)	
	)	
Appellant.	)	

LAWRENCE-BERREY, J. — James Powers appeals after the trial court granted summary judgment in favor of Reflection Lake Community Association and Rick Smith. He argues the trial court erred by not striking a declaration, and it abused its discretion by not continuing the summary judgment hearing. We disagree and affirm.

FACTS

This case stems from an interpleader action filed by Banner Bank to determine the rights to accounts it holds as between two competing boards of directors for a homeowners' association.



No. 38048-3-III

*Banner Bank v. Reflection Lake Cmty. Ass'n*

*Reflection Lake Community Association election*

Reflection Lake is a manmade lake in northeast Spokane County. The Reflection Lake Community Association (RLCA), a nonprofit corporation and homeowners' association, serves the community around the lake. In the spring of 2020, an ongoing dispute about management led to the resignation of eight of the nine directors on the board of directors. The remaining director appointed eight replacements. The newly appointed board failed to hold the customary annual election in July, and a small number of community members decided to form an election committee in an effort to persuade the appointed board to schedule an election.

In August, members of the election committee went door to door to gather support for a petition demanding the appointed board hold an election. If the appointed board did not comply, the signers of the petition also indicated support for removing the appointed members of the board and holding an election for those positions. The RLCA bylaws provide that a special meeting to remove and elect directors may be called by 40 percent of the voting power of the association. The election committee collected signatures from approximately 70 percent of RLCA members.

The appointed board refused to hold the election, and the election committee proceeded with the special meeting and election. To comply with COVID-19 restrictions

No. 38048-3-III

*Banner Bank v. Reflection Lake Cmty. Ass'n*

on large gatherings, the election committee mailed a combination ballot and proxy designation form, allowing RLCA members to simultaneously indicate their vote and designate the election committee as their directed proxy to cast such votes in the election.

In late September, the election committee held a special meeting to remove the appointed board members and elect their replacements. By virtue of their proxy designations, the election committee represented sufficient voting power to constitute a quorum for business. As a result of the election, seven of the eight appointed directors were removed.

*Access to RLCA bank accounts*

Shortly after the election, James Boothby, the newly elected treasurer of the board, contacted the Washington Secretary of State and began the process of becoming RLCA's registered agent. He received confirmation this process was complete on October 8, 2020. Meanwhile, the ousted members of the appointed board retained counsel, who contacted Banner Bank on October 6 to inform it there were competing boards of directors. When Mr. Boothby attempted to sign on as the authorized owner of RLCA's accounts on October 8, Banner Bank refused and directed his inquiries to its legal department.

On October 13, Banner Bank notified members of both the elected and appointed boards that RLCA's accounts were frozen. In November, Banner Bank filed a complaint for interpleader, naming as defendants James Powers, president of the appointed board, Rick Smith, president of the elected board, and RLCA itself.<sup>1</sup>

On November 19, 2020, Mr. Powers and other members of the appointed board filed a separate lawsuit against RLCA, Mr. Boothby, Mr. Smith, and other members of the elected board, requesting a declaratory judgment that the election was not valid under the RLCA bylaws or state statutes, a declaratory judgment that the RLCA board had no control over the water association serving Reflection Lake homes, and a reorganization of RLCA into two separate community associations.<sup>2</sup> Mr. Powers's counsel in the interpleader case, William C. Schroeder, also represented the plaintiffs in this second case.

*RLCA's motion for summary judgment*

On December 14, 2020, RLCA and Mr. Smith<sup>3</sup> filed a motion for summary judgment in the interpleader action, arguing there was no genuine issue of material fact in

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<sup>1</sup> Spokane County Case No. 20-2-03199-32.

<sup>2</sup> Spokane County Case No. 20-2-03213-32.

<sup>3</sup> For succinctness, we will refer to RLCA and Mr. Smith collectively as "RLCA."

dispute about whether the election was held in compliance with RLCA's bylaws and applicable statutes. The motion was supported by several exhibits, a declaration from a member of the election committee, a declaration from an RLCA member who voted in the election and had previously served on the board, and a declaration from Mr. Boothby. A hearing on the motion was scheduled for January 12, 2021.

Mr. Schroeder promptly reached out via e-mail to RLCA's attorney, Tyler Lloyd, about his intent to schedule depositions of the declarants over December 21-23. On December 14 and 15, Mr. Lloyd e-mailed about the possibility of pushing back the summary judgment hearing so the depositions would not conflict with December holidays. Mr. Schroeder agreed to hold the depositions in the first two weeks of January; the hearing was ultimately rescheduled for January 29, 2021. On December 21, Mr. Lloyd provided availability for depositions of all three declarants, but Mr. Schroeder noted only Mr. Boothby for deposition on January 6. On January 4, Mr. Lloyd confirmed Mr. Boothby's deposition and inquired about depositions for the other two declarants. In response, Mr. Schroeder indicated they would decide after Mr. Boothby's deposition whether further depositions were needed.

Mr. Boothby's deposition

Mr. Boothby was deposed on January 6, 2021. After asking some biographical questions, Mr. Schroeder began asking Mr. Boothby about the formation of the water association, which was the subject of a separate lawsuit between Mr. Powers and Mr. Boothby. While Mr. Boothby stated in his declaration that a dispute led to the previous board's resignation and while that dispute in fact involved the water association, Mr. Boothby's declaration did not anywhere reference the water association. Mr. Lloyd objected to the relevance of the question in relation to the interpleader action, and Mr. Schroeder informed him, "I am going to ask the questions I planned on asking." Clerk's Papers (CP) at 148. After another question to Mr. Boothby about the water association, Mr. Lloyd again objected, leading to a dispute with Mr. Schroeder:

MR. LLOYD: I will object to the relevance of this whole line of inquiry.

MR. SCHROEDER: Did you just instruct him to not answer?

MR. LLOYD: I am objecting to the relevance of the question.

MR. SCHROEDER: I understand your objection. Are you telling him to not answer? That's the important thing.

MR. LLOYD: Yes.

[MR. SCHROEDER]: Okay. I'll put on the record that you've just been directed to not answer. It's not a matter of privilege or any other thing asserted.

MR. SCHROEDER: I am going to call an end to the deposition and seek a ruling from the Court.

CP at 148. Mr. Schroeder terminated the deposition after 13 minutes.

Because the deposition was via videoconference software, Mr. Lloyd called Mr. Schroeder to attempt to continue the deposition after Mr. Schroeder ended the session. Mr. Lloyd and Mr. Schroeder were unable to agree to continue the deposition, although both later indicated their willingness to do so. Mr. Lloyd sent Mr. Schroeder a letter on January 6, indicating Mr. Schroeder's stated intent to seek a court order was unnecessary and that Mr. Boothby and the two other declarants remained available for depositions on the subject of the interpleader action.

*Mr. Powers's motions to strike and continue*

Despite what Mr. Powers's counsel said when ending the deposition, he did not seek a ruling from the court on the deposition issue. Nor did he request depositions from the remaining two declarants. Nor did he file a response to RLCA's motion for summary judgment. Instead, Mr. Powers filed a motion to strike Mr. Boothby's declaration because of the discovery dispute and a motion to continue the summary judgment hearing.

In his motion to strike Mr. Powers argued that because instructing a deponent not to answer is improper, the court should strike the Boothby declaration, order the costs of the deposition be paid by RLCA, and order that Mr. Powers be permitted to redepose Mr. Boothby without counsel interfering.

In his motion to continue, Mr. Powers contended that RLCA scheduled their summary judgment so that all discovery and the written response would have to be completed the week of Christmas. He contended that RLCA “balked” when depositions were requested and that counsel’s interference at Mr. Boothby’s deposition rendered it pointless. CP at 101. Mr. Powers argued he was refused discovery material and was entitled to a continuance under CR 56(f).

Mr. Powers’s motions were noted to be heard on January 29, 2021, at the same time as RLCA’s summary judgment motion. Due to an error in Mr. Schroeder’s office, however, Mr. Powers’s motions were not confirmed as required by local rule.<sup>4</sup>

SCLR 40(b)(9)(C) required RLCA to serve and file its responsive documents seven days before the January 29 hearing. RLCA served and filed its response on January 25, 2021, three days late. Mr. Powers moved to strike the untimely response. There is no indication the trial court considered RLCA’s responsive documents.

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<sup>4</sup> Spokane County Superior Court local civil rule (SLCR) 40(b)(9)(E) provides in relevant part: “In the event a motion . . . is to be argued, counsel for the moving party shall confirm with all opposing counsel that they are available to argue the motion and then notify the judicial assistant for the assigned judge by 12:00 p.m. three (3) days prior to the hearing that the parties are ready for the hearing.”

January 29 hearing

On January 29, the superior court had before it the motion to strike the declaration, the motion to continue the summary judgment, and the motion for summary judgment.

Mr. Powers, through counsel, admitted that he failed to confirm his motions. Pursuant to local rule,<sup>5</sup> the court struck Mr. Powers's motions.

The court then turned to the summary judgment motion. It assured the parties it had fully reviewed the record and said the only issue was whether 70 percent of the association members who signed the petition constituted 40 percent of RLCA's voting power, as required by the bylaws to call a special meeting.

Mr. Powers argued that there were unresolved issues with proxies and confidentiality due to the unfinished deposition. He stated there were witnesses who had asked to see records of who held the proxies and the results of the election, and who were told the information was confidential.

RLCA argued there was no reasonable debate that the 70 percent of the association members who signed the petition constituted at least 40 percent of the voting power of RLCA. While there were some owners who owned multiple lots, it was not a

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<sup>5</sup> SLCR 40(b)(9)(H) provides in relevant part: "Failure to timely comply with these requirements may result in . . . the motion being stricken from the calendar . . . ."



No. 38048-3-III

*Banner Bank v. Reflection Lake Cmty. Ass'n*

community where a single property owner or developer held a majority of the property. RLCA argued that the question of the proxies was a different issue than the petition calling the election, instead having to do with the confidential information of which resident voted for which candidate in the election.

When invited by the court to argue further against the motion for summary judgment, Mr. Powers made an oral motion to strike Mr. Boothby's declaration because of the dispute during the deposition. RLCA responded that there had been no good faith effort to resolve the dispute.

The court noted the issue with Mr. Boothby's deposition, but found that "the evidence and record are overwhelming in that there really are no disputed material facts between the parties and summary judgment is appropriate as a matter of law." Report of Proceedings (RP) at 16. It found that the evidence in the record "undisputedly indicates that the special meeting requirement of 40 percent was triggered" by the election committee's petition. RP at 17. The court noted that if Mr. Powers could show that the 70 percent of members who signed the petition did not collectively hold 40 percent of the voting power, it would be inclined to change its ruling, but that Mr. Powers had failed to demonstrate there was a genuine dispute on that fact.

Mr. Powers appeals.

ANALYSIS

A. THE LOCAL RULE IS NOT INCONSISTENT WITH CR 56(f)

Mr. Powers seems to argue that SLCR 40(b)(9)(E)'s requirement that motions be confirmed is inconsistent with CR 56(f) and is therefore invalid. We disagree.

CR 83(a) authorizes local superior courts to adopt rules that are not inconsistent with the general civil rules. Local rules are inconsistent under CR 83(a) when they are “so antithetical that it is impossible as a matter of law that they can both be effective.” *Sorenson v. Dahlen*, 136 Wn. App. 844, 853, 149 P.3d 394 (2006) (quoting *Heaney v. Seattle Mun. Court*, 35 Wn. App. 150, 155, 665 P.2d 918 (1983)).

CR 56(f) neither requires nor prohibits timely confirmation of a motion to continue a summary judgment hearing. For this reason, SLCR 40(b)(9)(E)—which requires all motions to be timely confirmed—is not antithetical to CR 56(f).

Mr. Powers also asserts that the trial court treated his noncompliance with the local rule as dispositive of the summary judgment motion. We disagree.

The trial court treated the motions as separate. After ruling that it would not consider Mr. Powers's motions, the trial court heard arguments on RLCA's summary judgment motion. Because there were no genuine issues of material fact and the record

confirmed that the elected board was duly elected in accordance with its by-laws, the trial court granted RLCA's summary judgment motion.

Mr. Powers also argues that SLCR 40(b)(9)(H) does not provide that default or summary dismissal are among the consequences for failing to properly confirm a responsive motion. There are two reasons why this argument fails.

First, Mr. Powers's motions were not responsive motions, if there is such a thing. He was asking the trial court for affirmative relief and SLCR 40(b)(9)(E) required him to confirm his motions. He admitted that his office failed to do so. SLCR 40(b)(9)(H) authorized the trial court to strike the unconfirmed motions.

Second, Mr. Powers's assertion that his noncompliance with the local rule resulted in a default or summary judgment is disingenuous. Failure to confirm his motions did not cause a default or summary judgment to be entered; failure to create a genuine issue of material fact did.

B. MR. POWERS'S MOTIONS TO STRIKE DECLARATION AND TO CONTINUE

Mr. Powers contends that the trial court erred by declining to strike Mr. Boothby's declaration and denying his motion to continue. We disagree.

We review a trial court's ruling on a motion to strike a declaration for an abuse of discretion. *Hanson Indus., Inc. v. Kutschkau*, 158 Wn. App. 278, 287, 239 P.3d 367

(2010). We also review its ruling on a request to continue a summary judgment under CR 56(f) for abuse of discretion. *Winston v. Dep't of Corr.*, 130 Wn. App. 61, 65, 121 P.3d 1201 (2005). Accordingly, we look to whether the trial court's decisions were manifestly unreasonable or based on untenable grounds or reasons. *See State v. McCormick*, 166 Wn.2d 689, 706, 213 P.3d 32 (2009).

Mr. Powers's motion to continue and motion to strike were not filed in accordance with local rules. As discussed above, the court was within its discretion to decline to hear the motions on that basis. Even had the court reached the merits, for the reasons explained below, it would have been well within its discretion to decline to grant relief to Mr. Powers.

1. *Motion to strike*

Mr. Lloyd's instruction to Mr. Boothby not to answer a nonprivileged question was improper. *See* CR 30(h)(3). Mr. Powers argues this impropriety renders Mr. Boothby's declaration inadmissible and the trial court erred by failing to strike the declaration. He provides no support for the contention that impropriety in a deposition renders the deponent's declaration inadmissible. Nor does he provide support for the contention that striking Mr. Boothby's declaration is the appropriate remedy for the improper instruction

not to answer. His cited authority merely establishes that the instruction not to answer was improper—but that proposition is apparent on the face of the rule.

We note that Mr. Boothby's declaration was unimportant to the trial court's determination to grant summary judgment. Mr. Boothby's declaration, which contained very little detail about the election, was redundant to the other declarations. The declaration that attached several exhibits and the declaration of the election committee member were sufficient in themselves to establish that the election was valid. Even had the trial court struck Mr. Boothby's declaration, summary judgment still would have been appropriate.

2. *Motion to continue*

A trial court may continue a motion for summary judgment under CR 56(f) if the nonmoving party presents affidavits stating reasons why “the party cannot present by affidavit facts essential to justify the party's opposition.” Conversely, it

may deny a motion for a continuance when (1) the requesting party does not have a good reason for the delay in obtaining the evidence, (2) the requesting party does not indicate what evidence would be established by further discovery, or (3) the new evidence would not raise a genuine issue of fact.

No. 38048-3-III

*Banner Bank v. Reflection Lake Cmty. Ass'n*

*Butler v. Joy*, 116 Wn. App. 291, 299, 65 P.3d 671 (2003) (citing *Tellevik v. Real Prop. Known as 31641 W. Rutherford St.*, 120 Wn.2d 68, 90, 838 P.2d 111, 845 P.2d 1325 (1992)).

Here, the first basis for denying a continuance is met. After opposing counsel objected, Mr. Powers did not attempt to question Mr. Boothby about the election. The record shows that such questions would have been permitted, which would have allowed Mr. Powers to respond to the summary judgment motion. Nor did Mr. Powers, through counsel, follow through with deposing the two other declarants about the election. The most important declarant to depose about the election was the election committee member. Had the election committee member been deposed and opposing counsel objected to questions about the election, a CR 56(f) continuance certainly would have been justified.

We conclude that the trial court did not abuse its discretion in denying Mr. Powers's motion to strike Mr. Boothby's declaration and in denying his motion to continue the summary judgment hearing.

C. OTHER ASSIGNMENTS OF ERROR

Mr. Powers contends the trial court erred by (1) requesting he file a motion for reconsideration while simultaneously denying him discovery, (2) by failing to list the documents it considered in its order, and (3) by entering findings of fact.

1. *Direction to file reconsideration*

Mr. Powers assigns error to the trial court's invitation for him to file a reconsideration motion while simultaneously dismissing the case and ending discovery. The record reflects that, notwithstanding his failure to respond to RLCA's motion for summary judgment or orally demonstrate a genuine issue of material fact, the trial court invited Mr. Powers to "come back on a motion to reconsider or otherwise show me that that 70 percent demonstrated in the record did not equate to 40 percent of the voting power requirement." RP at 18. It is unclear why Mr. Powers challenges the trial court's invitation to present additional evidence, evidence that as the outgoing president he might have. Mr. Powers devotes no argument in his brief to this assignment of error, and we do not consider it further. *See Yakima County v. E. Wash. Growth Mgmt. Hrg's Bd.*, 146 Wn. App. 679, 698, 192 P.3d 12 (2008).

2. *Failure to list documents in the summary judgment order*

Mr. Powers also assigns error to the trial court's failure to list the documents it considered in its summary judgment order.

Under CR 56(h), the order granting summary judgment must "designate the documents and other evidence called to the attention of the trial court." Similarly, under RAP 9.12, the appellate court considers only "evidence and issues called to the attention of the trial court" when reviewing a summary judgment. These rules exist so that the appellate court can engage in the same inquiry as the trial court in its de novo review of the summary judgment. *See McLaughlin v. Travelers Commercial Ins. Co.*, 196 Wn.2d 631, 637, 476 P.3d 1032 (2020).

On appeal, Mr. Powers does not argue that the declarations were insufficient to warrant summary judgment. Rather, he argues the trial court erred in denying his motion to strike and his motion to continue the summary judgment hearing. These arguments do not require us to conduct a de novo review. The error raised here by Mr. Powers does not require remand for correction or any other relief.

3. *Findings of fact in the summary judgment order*

Mr. Powers also argues the trial court's findings of fact in its summary judgment order are superfluous. He is correct. *Chelan County Deputy Sheriffs' Ass'n v. Chelan*



No. 38048-3-III

*Banner Bank v. Reflection Lake Cmty. Ass'n*

*County*, 109 Wn.2d 282, 294 n.6, 745 P.2d 1 (1987). But once again, this error does not require remand for correction or any other relief.

#### ATTORNEY FEES

RLCA argues Mr. Powers's appeal is frivolous and attorney fees should be awarded to it. We agree.

Under RAP 18.9(a), the Court of Appeals may award attorney fees as a sanction for filing a frivolous appeal. An appeal is frivolous “‘if there are no debatable issues upon which reasonable minds might differ and it is so totally devoid of merit that there [is] no reasonable possibility of reversal.’” *State v. Chapman*, 140 Wn.2d 436, 454, 998 P.2d 282 (2000) (alteration in original) (quoting *State ex rel. Quick-Ruben v. Verharen*, 136 Wn.2d 888, 905, 969 P.2d 64 (1998)).

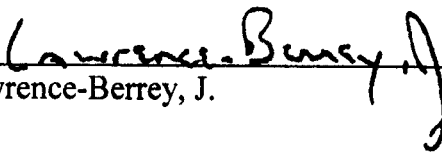
The issues raised by Mr. Powers either misconstrue the record, are easily affirmed under an abuse of discretion standard of review, or do not result in any relief. Through counsel, Mr. Powers could have questioned Mr. Boothby and the other declarants about the election, but when given the opportunity, chose not to. This, combined with the discretionary nature of the trial court's rulings, convince us that Mr. Powers failed to raise any debatable issue that might result in a reasonable possibility of reversal. Subject to its compliance with RAP 18.1(d), we award RLCA its reasonable attorney fees on appeal.

No. 38048-3-III


*Banner Bank v. Reflection Lake Cmty. Ass'n*

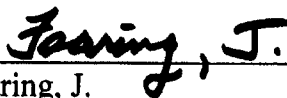
Affirmed.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

  
\_\_\_\_\_  
Lawrence-Berrey, J.

WE CONCUR:

  
\_\_\_\_\_  
Pennell, C.J.

  
\_\_\_\_\_  
Fearing, J.

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

ROBERT LEE, *et al.*,  
Plaintiffs,

v.

REFLECTION LAKE COMMUNITY ASS'N,  
Defendant.

REFLECTION LAKE COMMUNITY ASS'N,  
Third Party Plaintiff,

v.

REFLECTION WATER ASS'N,  
Third Party Defendant.

No. 20-2-03213-32

RLCA'S SUR-RESPONSE AND OFFER  
OF PROOF RE PLAINTIFFS' MOTION  
TO ENFORCE MEDIATED  
SETTLEMENT AGREEMENT

Defendant/Third-Party Plaintiff Reflection Lake Community Association ("RLCA") hereby supplements its prior Response for the specific purpose of rebutting false factual statements in Plaintiffs' Reply and the supporting Declaration of Mr. Schroeder ("Reply Decl.>").

**1. Plaintiffs' claim that RLCA refused to mediate is demonstrably false.**

Plaintiffs claim in their Motion and Reply that RLCA refused to participate in mediation. (See, e.g., Reply at p. 4 ("If RLCA had agreed to mediate shortly after November 16, 2021, it is possible this matter would have been resolved without the parties incurring additional

1 expenses.”). Mr. Schroeder makes similar assertions throughout his declarations. (*See, e.g.,*  
2 Reply Decl. at ¶¶ 5-6, 15).

3  
4 Contrary to these allegations, RLCA agreed on many occasions to participate in  
5 mediation, although maintaining its position that the settlement agreement was not enforceable.  
6 (*See, e.g.,* 3<sup>rd</sup> Declaration of Tyler Lloyd at ¶¶ 13-15). Plaintiffs argue that RLCA put an  
7 illegitimate precondition on its participation merely by requesting a statement of the claims that  
8 were to be mediated. On the contrary, it is standard practice and plain common sense that the  
9 parties to a mediation provide each other with some indication of what claims or disputes will be  
10 the subject of negotiations.

11  
12 RLCA not only agreed to mediation—RLCA *actually participated* in mediation  
13 concerning the disputed settlement agreement with Mr. Miller and Plaintiffs on more than one  
14 occasion. On November 16, 2021, the parties discussed their differing views re the settlement’s  
15 enforceability, then contacted mediator Ken Miller to request his assistance. (3<sup>rd</sup> Lloyd Decl. at ¶  
16 8, Exh. G.) A video conference was held with Mr. Miller on November 19 to discuss the issue,  
17 but Mr. Schroeder exited the conference without any discussion. (3<sup>rd</sup> Lloyd Decl. at ¶ 10). On  
18 February 2-4, 2022, Mr. Schroeder and I had a lengthy email exchange with Mr. Miller regarding  
19 the settlement, culminating in phone conferences with Mr. Miller. (3<sup>rd</sup> Lloyd Decl. at ¶ 14, Exh.  
20 I). There is simply no merit to Plaintiffs’ claim that RLCA has refused to mediate and breached  
21 the settlement by doing so.  
22  
23

24 **2. Plaintiffs’ mislead the Court concerning the scope of their mediation demands.**

25 Plaintiffs, perhaps recognizing the weakness of their position in demanding mediation

1 while withholding any details concerning their claims, have hedged their position by assuring the  
2 Court that they sought only to resolve the question of the settlement's enforceability. (Reply at  
3 p. 5 ("Plaintiffs request for mediation was on the enforceability of the Agreement. However,  
4 since RLCA appeared to also want to mediate Plaintiffs' claimed damages for breach of the  
5 Agreement, Plaintiffs sent an ER 408 Statement of Damages to RLCA.")). This is, again, false.  
6

7 Plaintiffs have repeatedly threatened RLCA with claims for damages arising out of an  
8 alleged breach of the non-disparagement provision of the settlement and have repeatedly  
9 included these claims within the scope of their demands for mediation. In his letter of January  
10 31, 2022, formally demanding mediation, Mr. Schroeder concluded "As some of your clients  
11 have (sic) appeared to have breached the non-disparagement clause of the Agreement, I suggest  
12 they put their insurance carriers on notice of a fairly substantial monetary claim." (3<sup>rd</sup> Lloyd  
13 Decl. at ¶ 11, Exh. H).  
14

15 In an email exchange with myself and mediator Ken Miller on February 4, 2022, Mr.  
16 Schroeder described the scope of the issues to be mediated as follows:  
17

18 We have a fairly significant claim against the individuals for disparaging my  
19 clients. The settlement agreement contains a non-disparagement clause, ironically  
20 drafted by Mr. Lloyd. We have the emails that the Board members sent out to  
21 members of the community disparaging our clients as evidence. For a productive  
22 mediation, we may need the insurers for each of those individuals to be present.  
(3<sup>rd</sup> Lloyd Decl. at ¶ 14, Exh. I).

23 Plaintiffs were threatening RLCA with "substantial monetary claims" and demanding that  
24 RLCA involve its insurance carriers in mediation over claims re disparagement while refusing to  
25 offer any information to clarify the basis for the claims or the alleged damages. In a complete

1 reversal, they now assure this Court that their mediation demand was limited to the  
2 enforceability of the settlement. Clearly RLCA was not the party acting in bad faith.

3  
4 **3. Mr. Schroeder's account of the withdrawn motion to stay is demonstrably false.**

5 Mr. Schroeder claims that he withdrew his motion to stay the appeal of the interpleader  
6 matter one day after filing it because counsel for RLCA had threatened to file an opposition, and  
7 thus "the filing was no longer a joint filing" and "had to be withdrawn" for jurisdictional reasons.  
8 (Reply at pp 4-5; Reply Decl. at ¶ 16). Plaintiffs also claim that RLCA breached the settlement  
9 agreement by threatening to oppose the motion. (Id.)

10  
11 Mr. Schroeder's account is contradicted by the text of his own filings. First, the motion  
12 for the stay was itself not a joint filing, and it certainly was not made with notice to or approval  
13 by RLCA. (3<sup>rd</sup> Lloyd Decl. at ¶ 9). Second, the text of the withdrawal directly refutes Plaintiffs'  
14 post hoc narrative: "Appellant James Powers withdraws the Motion for Stay of Review. The  
15 undersigned counsel was misinformed, and *the parties do not wish to stay the above-captioned*  
16 *matter, regardless of settlement status.*" (2<sup>nd</sup> Lloyd Decl. at Exh. A, emphasis added). Finally,  
17 Mr. Schroeder's account proves false because he filed his withdrawal *before* he received any  
18 indication that RLCA would oppose the motion to stay the appeal. (See 3<sup>rd</sup> Lloyd Decl. at ¶ 9).

19  
20 **Conclusion**

21 By demanding mediation and a claim for more than \$100,000 in damages while refusing  
22 to provide any details as to the basis for his claims or damages, Plaintiffs demonstrate that the  
23 demand for mediation was not made in good faith. This motion and resulting hearing are simply  
24 another tactic in a demonstrable history of frivolous, abusive, and bad faith litigation. Plaintiffs  
25

1 and their counsel have also made numerous objectively false and misleading statements,  
2 including in sworn declarations. This blatant dishonesty with the Court is indicative of Plaintiffs'  
3 pattern of bad faith litigation, and merits sanctions against Plaintiffs and Mr. Schroeder.  
4

5  
6 DATED this 26<sup>th</sup> day of May, 2022.

7 GRAVIS LAW, PLLC

8  
9 By: 

10 Tyler D. Lloyd, WSBA #50748  
11 Attorney for RLCA  
12  
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**CERTIFICATE OF SERVICE**

Pursuant to RCW 9A.72.085, I hereby certify under penalty of perjury under the laws of the State of Washington, that on the 26th day of May, 2022, I caused a true and accurate copy of the foregoing document to be served upon the following individuals, by the method indicated below:

<b>William C. Schroeder</b> KSB Litigation Attorney for Plaintiffs 510 W. Riverside Ave. #300 Spokane, WA 99201 <a href="mailto:wcs@ksblit.legal">wcs@ksblit.legal</a>	<input type="checkbox"/> By Hand Delivery <input type="checkbox"/> By U.S. Mail <input type="checkbox"/> By Overnight Mail <input type="checkbox"/> By Facsimile Transmission <input checked="" type="checkbox"/> By Electronic Mail
<b>Steven R. Stocker &amp; Pierce J. Jordan</b> Bohrnsen Stocker Smith Luciani Adamson PLLC Attorneys for Reflection Water Association 312 W. Sprague Ave. Spokane, WA 99201 <a href="mailto:ssstocker@bssslawfirm.com">ssstocker@bssslawfirm.com</a>	<input type="checkbox"/> By Hand Delivery <input type="checkbox"/> By U.S. Mail <input type="checkbox"/> By Overnight Mail <input type="checkbox"/> By Facsimile Transmission <input checked="" type="checkbox"/> By Electronic Mail

Dated this 26<sup>th</sup> day of May, 2022, at Kennewick, Washington.

*Debbie Smith*

\_\_\_\_\_  
Debbie Smith  
Paralegal



FILED  
5/26/2022  
Timothy W Fitzgerald  
Spokane County Clerk

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

ROBERT LEE, *et al.*,  
Plaintiffs,

v.

REFLECTION LAKE COMMUNITY ASS'N,  
Defendant.

---

REFLECTION LAKE COMMUNITY ASS'N,  
Third Party Plaintiff,

v.

REFLECTION WATER ASS'N,  
Third Party Defendant.

No. 20-2-03213-32

THIRD DECLARATION OF RLCA  
COUNSEL TYLER LLOYD

---

I, TYLER LLOYD, declare under penalty of perjury under the laws of the State of Washington that the following is true and correct.

1. I am over the age of 18, make this Declaration based on personal knowledge, and am competent to testify herein. I am counsel for Defendants/Third-Party Plaintiffs in this matter.

2. On October 12, 2021, counsel for the three parties held a telephone conference and agreed that the parties “intend[ed] to sign one or more settlement agreements” which would *stay* the litigation among all three parties while RLCA and RWA resolved the dispute over the water system, then *dismiss* the litigation. For purposes of presentation, the original three-party

1 settlement agreement we had been negotiating would be replaced with “a series of related  
2 settlement agreements.” I emailed Mr. Schroeder and Mr. Stocker to confirm we agreed to this  
3 general course. A true and correct copy of my email is attached hereto as Exhibit C.  
4

5 3. On October 19, 2021, I emailed Mr. Schroeder and Mr. Stocker jointly to offer  
6 three draft agreements for their review. Although none of the agreements was to be executed by  
7 all three parties, the three documents were interrelated and therefore concerned all three parties.  
8 A true and correct copy of my email is attached hereto as Exhibit D.  
9

10 4. By October 20, 2021, RLCA and Mr. Powers had reached an agreement on their  
11 portion of the settlement but did not proceed to sign. Because the settlements were interrelated,  
12 the parties were waiting for RWA to confirm its agreement. True and correct copies of these  
13 emails are attached hereto as Exhibit E.  
14

15 5. RLCA and Mr. Powers would wait three weeks before signing. During this time,  
16 counsel for all three parties continued to jointly review revisions to all three settlement  
17 agreements. A true and correct copy of one such email is attached hereto as Exhibit F.  
18

19 6. As described in my previous declaration, RLCA and Mr. Powers signed their  
20 portion of the settlement on November 9, 2021. RLCA did so with the understanding that RWA  
21 was also in agreement and signing its portions of the settlement, which proved to be incorrect.  
22

23 7. As described in my previous declaration, on November 15, 2021, Mr. Schroeder  
24 filed a motion to stay Mr. Powers’ appeal of the interpleader matter. (2<sup>nd</sup> Lloyd Decl. at Exh. A).  
25

8. On November 16, 2021, RWA requested further revisions to the settlement before  
it would sign. RLCA maintained that the existing settlement adequately addressed RWA’s  
concerns, drew the line at any further revisions, and offered RWA 48 hours in which to sign the

1 existing settlement or RLCA would consider settlement negotiations to have ended  
2 unsuccessfully. I clarified to Mr. Schroeder that I did not view any portion of the related  
3 settlements to be separately enforceable without the assent of all three parties to the three  
4 interrelated settlements. Mr. Schroeder disagreed, and the parties immediately scheduled a  
5 conference call with our mediator Ken Miller later that week. A true and correct copy of these  
6 emails between counsel and Mr. Miller is attached hereto as Exhibit G.  
7

8 9. Also on November 16, 2021, at **4:30 PM**, during the email exchange referenced  
9 previously, I indicated to Mr. Schroeder that his motion to stay the appeal had taken myself and  
10 RLCA’s appellate counsel by surprise, and that we would file an opposition to the motion in the  
11 event RWA refused to sign the settlement by COB November 18, 2021. Mr. Schroeder  
12 responded that the settlement was in force and required a stay of the appeal. (Exhibit G). I did  
13 not realize at this time, though Mr. Schroeder certainly must have, that Mr. Schroeder had  
14 already withdrawn his motion to stay earlier that day at **2:56 PM**. (2<sup>nd</sup> Lloyd Decl. at Exh. A).  
15  
16

17 10. On November 19, 2021, counsel for the parties held a video conference with  
18 mediator Ken Miller to address the disputes raised in our November 16 email exchange. Mr.  
19 Schroeder participated in this mediation for less than five minutes—long enough only to restate  
20 his position that the settlement between RLCA and Mr. Powers was in force.  
21

22 11. On January 31, 2022, Mr. Schroeder sent me a letter on behalf of Mr. Powers  
23 formally demanding mediation pursuant to the disputed settlement. The letter concluded: “As  
24 some of your clients have (sic) appeared to have breached the non-disparagement clause of the  
25 Agreement, I suggest they put their insurance carriers on notice of a fairly substantial monetary  
claim.” A true and correct copy of this letter is attached hereto as Exhibit H.

1           12. As explained in my previous declaration, Mr. Schroeder also served RLCA with  
2 discovery requests and notices of several depositions at this time.

3  
4           13. On February 2, 2022, Mr. Schroeder and I discussed Mr. Powers' demand for  
5 mediation with mediator Ken Miller. I maintained that the settlement was never in force without  
6 RWA's agreement, or at minimum that RWA's refusal had frustrated the purpose of the  
7 settlement, but that RLCA was nevertheless seeking to comply with the settlement to avoid  
8 useless contention. I told Mr. Schroeder if he would "specify [his] client's claims regarding the  
9 alleged breach by RLCA, we can try to resolve this without both sides gearing back up for  
10 litigation." I indicated that RLCA agreed to allow Mr. Miller to mediate the issue, either formally  
11 or informally. I requested that Mr. Schroeder hold off on discovery while we engaged in  
12 mediation. A true and correct copy of these emails is attached hereto as Exhibit I.

13  
14           14. Mr. Schroeder and I continued our email discussion with Mr. Miller on February  
15 4, 2022. When our discussion became counter-productive, I requested a phone call or video  
16 conference with Mr. Schroeder and Mr. Miller. Mr. Schroeder clarified the issues to be mediated  
17 as follows: "We have a fairly significant claim against the individuals for disparaging my clients.  
18 The settlement agreement contains a non-disparagement clause, ironically drafted by Mr. Lloyd.  
19 We have the emails that the Board members sent out to members of the community disparaging  
20 our clients as evidence. For a productive mediation, we may need the insurers for each of those  
21 individuals to be present." (Exh. I). Nevertheless, Mr. Miller made himself available that very  
22 afternoon, and held separate phone calls with Mr. Schroeder and myself.


23  
24           15. On February 24, 2022, Mr. Schroeder again emailed me to discuss the terms of  
25 mediation, and to inquire whether RLCA would accept Mr. Miller continuing to serve as

1 mediator. I responded that RLCA was willing to participate in mediation, that we were happy to  
2 continue with Mr. Miller, but that we required “a detailed written statement of [his] clients’  
3 claims, including specification re defendants, their allegedly breaching conduct, and [his] clients’  
4 damages.” Mr. Schroeder viewed this request an illegitimate precondition on our willingness to  
5 participate in mediation. I repeated that we were willing to participate in mediation but would not  
6 confirm further details until we know what we were supposed to be mediating *about*. A true and  
7 correct copy of these emails is attached hereto as Exhibit J.  
8

9  
10 16. As discussed in my previous declaration, Mr. Schroeder provided me with a  
11 statement of damages on March 10, 2022. I do not view the claim as being made in good faith,  
12 but rather as an attempt to intimidate my clients.  
13

14 I declare under the penalty of perjury under the laws of the State of Washington that the  
15 foregoing statement is true and correct, as are any attachments or exhibits.

16 Signed at Spokane, WA on 26 May, 2022.  
17

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Tyler D. Lloyd, WSBA #50748  
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**CERTIFICATE OF SERVICE**

Pursuant to RCW 9A.72.085, I hereby certify under penalty of perjury under the laws of the State of Washington, that on the 26th day of May, 2022, I caused a true and accurate copy of the foregoing document to be served upon the following individuals, by the method indicated below:

<b>William C. Schroeder</b> KSB Litigation Attorney for Plaintiffs 510 W. Riverside Ave. #300 Spokane, WA 99201 <i>wcs@ksblit.legal</i>	<input type="checkbox"/> By Hand Delivery <input type="checkbox"/> By U.S. Mail <input type="checkbox"/> By Overnight Mail <input type="checkbox"/> By Facsimile Transmission <input checked="" type="checkbox"/> By Electronic Mail
<b>Steven R. Stocker &amp; Pierce J. Jordan</b> Bohrnsen Stocker Smith Luciani Adamson PLLC Attorneys for Reflection Water Association 312 W. Sprague Ave. Spokane, WA 99201 <i>sstocker@bssslawfirm.com</i>	<input type="checkbox"/> By Hand Delivery <input type="checkbox"/> By U.S. Mail <input type="checkbox"/> By Overnight Mail <input type="checkbox"/> By Facsimile Transmission <input checked="" type="checkbox"/> By Electronic Mail

*Debbie Smith*  
\_\_\_\_\_  
DEBBIE SMITH

# EXHIBIT C

## Tyler Lloyd

---

**From:** Tyler Lloyd  
**Sent:** Tuesday, October 12, 2021 3:46 PM  
**To:** Steve Stocker; William J. Schroeder  
**Cc:** kmiller@mmcllegal.net  
**Subject:** Proposed Settlement for Stevens PUD  
**Attachments:** RLCA-RWA Agreement [21-009925-1268723244-14].docx

Gentlemen,

As we discussed on our call earlier today, the parties intend to sign one or more settlement agreements committing them to the following process:

1. Solicit Stevens PUD to take ownership/operation of the water system.
2. In the event Stevens refuses or their proposal is not accepted by both RWA and RLCA, work together to identify and solicit other potential owner/operators. As needed during this process, the parties will mediate the issue of which entity will own the water system or be responsible for its administration.
3. All claims/lawsuits stayed pending successful transfer to owner or contract with operator. All claims/lawsuits dismissed with prejudice upon successful transfer/contract.

RLCA has no concerns with Ken's formatting changes to the original settlement agreement. However, we agree that a series of related settlement agreements might be helpful. I've attached a proposed settlement (subject to my clients' review and approval) between RLCA/RWA which could be presented to Stevens PUD. I'd propose that the remainder of the existing settlement agreement be a separate agreement among all the parties. Please let me know if you have any concerns about this approach or suggestions to improve the attached agreement.

Regards,

**Gravis** Law

**Tyler Lloyd**

Attorney

Civil Litigation

1309 W. Dean Avenue, Suite 100

Spokane, WA 99201

509-608-3083

GravisLaw.com

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# **EXHIBIT D**

## Tyler Lloyd

---

**From:** Tyler Lloyd  
**Sent:** Tuesday, October 19, 2021 5:06 PM  
**To:** Steve Stocker; William J. Schroeder  
**Cc:** Ken Miller  
**Subject:** Proposed Settlement Agreements [GL-21-009925]  
**Attachments:** RLCA-RWA Agreement - Stevens PUD draft 10-14-21 [21-009925-1268723244-909].docx; RLCA-RWA Supplemental Agreement - 10-18-21 [21-009925-1268723244-910].docx; RLCA-Member Agreement - 10-18-21 [21-009925-1268723244-913].docx

All,

I've attached three proposed agreements for your review: the first is for RLCA-RWA, to be presented to Stevens PUD (this incorporates Steve's revisions). The second is for RLCA-RWA and details what process the entities will follow in the event Stevens PUD declines or is not accepted. The third is for RLCA and Mr. Schroeder's clients, and addresses the governance issues, etc. This seemed the cleanest way to proceed.

My clients have approved these drafts, and are ready to sign. Please let me know if you have suggested changes.

Regards,  
Tyler

**Gravis** Law

**Tyler Lloyd**

Attorney  
Civil Litigation  
1309 W. Dean Avenue, Suite 100  
Spokane, WA 99201  
509-608-3083  
GravisLaw.com

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# EXHIBIT E

## Tyler Lloyd

---

**From:** William J. Schroeder <william.schroeder@ksblit.legal>  
**Sent:** Wednesday, October 20, 2021 2:46 PM  
**To:** Tyler Lloyd  
**Subject:** RE: Revised RLCA-Member Settlement Agreement [GL-21-009925]

Looks good—Thank you

**From:** Tyler Lloyd <TLloyd@gravislaw.com>  
**Sent:** Wednesday, October 20, 2021 2:27 PM  
**To:** William J. Schroeder <william.schroeder@ksblit.legal>  
**Subject:** Revised RLCA-Member Settlement Agreement [GL-21-009925]

Bill,

Thank you for your call. I've made some revisions to the RLCA-Member agreement based on our conversation—please let me know if you have any suggested changes.

Tyler

**Gravis** Law

**Tyler Lloyd**  
Attorney  
Civil Litigation  
1309 W. Dean Avenue, Suite 100  
Spokane, WA 99201  
509-608-3083  
GravisLaw.com

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## Tyler Lloyd

---

**From:** Tyler Lloyd  
**Sent:** Wednesday, October 20, 2021 2:57 PM  
**To:** Steve Stocker  
**Subject:** RE: Proposed Settlement Agreements [GL-21-009925]

Steve,

Bill and I have confirmed our clients are in agreement with the RLCA-Member agreement. Does RWA have any further proposed revisions to the RLCA-RWA Agreement and Addendum, or are we ready to sign?

Tyler

**From:** Steve Stocker <Sstocker@bssslawfirm.com>  
**Sent:** Wednesday, October 20, 2021 9:32 AM  
**To:** Tyler Lloyd <TLloyd@gravislaw.com>  
**Cc:** William J. Schroeder <william.schroeder@ksblit.legal>; kmiller@mmlegal.net  
**Subject:** RE: Proposed Settlement Agreements [GL-21-009925]

Tyler, Ken Miller's e-mail is: [kmiller@mmlegal.net](mailto:kmiller@mmlegal.net) I think this got messed up on an e-mail by my paralegal in an earlier chain. S

Steven R. Stocker, Esq.  
Bohrnsen Stocker Smith PLLC  
312 W. Sprague Avenue  
Spokane, WA 99201  
Tel: (509) 327-2500  
Fax: (509) 327-3504  
Email: [sstocker@bssslawfirm.com](mailto:sstocker@bssslawfirm.com)  
*Admitted in WA & ID*

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**From:** Tyler Lloyd <TLloyd@gravislaw.com>  
**Sent:** Tuesday, October 19, 2021 5:06 PM  
**To:** Steve Stocker <Sstocker@bssslawfirm.com>; William J. Schroeder <william.schroeder@ksblit.legal>  
**Cc:** Ken Miller <ken@millerchaselaw.com>  
**Subject:** Proposed Settlement Agreements [GL-21-009925]

All,

I've attached three proposed agreements for your review: the first is for RLCA-RWA, to be presented to Stevens PUD (this incorporates Steve's revisions). The second is for RLCA-RWA and details what process the entities will follow in the

# **EXHIBIT F**

## Tyler Lloyd

---

**From:** William J. Schroeder <william.schroeder@ksblit.legal>  
**Sent:** Thursday, November 4, 2021 11:07 AM  
**To:** Tyler Lloyd; Steve Stocker  
**Subject:** RE: Revised Settlement Agreements [GL-21-009925]

Thank you--Bill

**From:** Tyler Lloyd <TLloyd@gravislaw.com>  
**Sent:** Thursday, November 4, 2021 10:13 AM  
**To:** Steve Stocker <Sstocker@bsslslawfirm.com>; William J. Schroeder <william.schroeder@ksblit.legal>  
**Subject:** Revised Settlement Agreements [GL-21-009925]

Steve and Bill – please review the attached agreements, each of which has been revised per our recent conversations. I’m still waiting for approval from my clients. The RLCA board is meeting tomorrow to (hopefully) pass a resolution authorizing execution of each agreement. It would be great to have these all signed this weekend.

Regards,

**Gravis** Law

**Tyler Lloyd**  
Attorney  
Civil Litigation  
1309 W. Dean Avenue, Suite 100  
Spokane, WA 99201  
509-608-3083  
GravisLaw.com

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# **EXHIBIT G**



## Tyler Lloyd

---

**From:** Ken Miller <kmiller@mmclegal.net>  
**Sent:** Wednesday, November 17, 2021 10:56 AM  
**To:** Tyler Lloyd; William J. Schroeder; Steve Stocker  
**Cc:** Chelsea Anderson  
**Subject:** RE: Reflection Lake Community Association and Reflection Lake Water Assn - Mediation Negotiations [GL-21-009925]

As Friday at 11 works for everyone I will have Chelsea schedule this for Zoom. Thanks.

Kenneth A. Miller  
Miller, Mertens & Comfort, PLLC  
1020 N. Center Parkway, Suite B  
Kennewick, WA 99336  
(509)-374-4200

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**From:** Tyler Lloyd <TLloyd@gravislaw.com>  
**Sent:** Tuesday, November 16, 2021 5:53 PM  
**To:** William J. Schroeder <william.schroeder@ksblit.legal>; Steve Stocker <Sstocker@bssslawfirm.com>; Ken Miller <kmiller@mmclegal.net>  
**Subject:** Re: Reflection Lake Community Association and Reflection Lake Water Assn - Mediation Negotiations [GL-21-009925]

11:00 on Friday works for me.

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---

**From:** William J. Schroeder <william.schroeder@ksblit.legal>  
**Sent:** Tuesday, November 16, 2021 4:32:26 PM  
**To:** Steve Stocker <Sstocker@bssslawfirm.com>; Ken Miller <kmiller@mmclegal.net>; Tyler Lloyd <TLloyd@gravislaw.com>  
**Subject:** RE: Reflection Lake Community Association and Reflection Lake Water Assn - Mediation Negotiations [GL-21-009925]

That works for me--Bill

**From:** Steve Stocker <Sstocker@bssslawfirm.com>  
**Sent:** Tuesday, November 16, 2021 4:09 PM  
**To:** Ken Miller <kmiller@mmclegal.net>; William J. Schroeder <william.schroeder@ksblit.legal>; Tyler Lloyd <TLloyd@gravislaw.com>  
**Subject:** RE: Reflection Lake Community Association and Reflection Lake Water Assn - Mediation Negotiations [GL-21-009925]

Ken, as Tyler indicated that he is in depositions the next couple of days, I am available most any time on Friday to discuss this. Thank you. Steve

Steven R. Stocker, Esq.  
Bohrnsen Stocker Smith PLLC  
312 W. Sprague Avenue  
Spokane, WA 99201  
Tel: (509) 327-2500  
Fax: (509) 327-3504  
Email: [sstocker@bssslawfirm.com](mailto:sstocker@bssslawfirm.com)  
*Admitted in WA & ID*

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**From:** Ken Miller <[kmiller@mmclegal.net](mailto:kmiller@mmclegal.net)>  
**Sent:** Tuesday, November 16, 2021 3:55 PM  
**To:** William J. Schroeder <[william.schroeder@ksblit.legal](mailto:william.schroeder@ksblit.legal)>; Tyler Lloyd <[TLloyd@gravislaw.com](mailto:TLloyd@gravislaw.com)>; Steve Stocker <[Sstocker@bssslawfirm.com](mailto:Sstocker@bssslawfirm.com)>  
**Subject:** RE: Reflection Lake Community Association and Reflection Lake Water Assn - Mediation Negotiations [GL-21-009925]

Gentlemen

It appears we need to have a conference call. I am available any day after 11 for the rest of the week. Let me know what times do not work for you. Thanks.

Kenneth A. Miller  
Miller, Mertens & Comfort, PLLC  
1020 N. Center Parkway, Suite B  
Kennewick, WA 99336  
(509)-374-4200

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**From:** William J. Schroeder <[william.schroeder@ksblit.legal](mailto:william.schroeder@ksblit.legal)>  
**Sent:** Tuesday, November 16, 2021 3:49 PM  
**To:** Tyler Lloyd <[TLloyd@gravislaw.com](mailto:TLloyd@gravislaw.com)>; Steve Stocker <[Sstocker@bssslawfirm.com](mailto:Sstocker@bssslawfirm.com)>  
**Cc:** Ken Miller <[kmiller@mmclegal.net](mailto:kmiller@mmclegal.net)>  
**Subject:** RE: Reflection Lake Community Association and Reflection Lake Water Assn - Mediation Negotiations [GL-21-009925]

Tyler,

I hope that you and Steve are able to work out your differences with respect to an agreement between RLCA and RWA. With respect to your statement that your clients have a proposed agreement with my clients, you are incorrect. The

Agreement your clients' signed with my clients provides that "the Agreement shall become effective upon signing by the parties below, without the need for an approving vote by the RCLA general membership." A copy of the Agreement attached for Mr. Miller's review.

I am confused by your statement that you will file an opposition to our motion to stay the appeal. As you know the mediated settlement agreement that was effective November 9, 2021, required us to stay the appeal. We complied with that provision of the Agreement. Did you not tell your appellate counsel of that provision in the Agreement?

It is our position that Paragraph C. 1 of the Agreement has now been implicated and mediation is required. Mr. Miller, can you please advise when we can have a conference call?

Regards,

Bill

**From:** Tyler Lloyd <TLloyd@gravislaw.com>

**Sent:** Tuesday, November 16, 2021 4:30 PM

**To:** Steve Stocker <Sstocker@bssslawfirm.com>; William J. Schroeder <william.schroeder@ksblit.legal>

**Cc:** Ken Miller <kmiller@mmcllegal.net>

**Subject:** RE: Reflection Lake Community Association and Reflection Lake Water Assn - Mediation Negotiations [GL-21-009925]

Steve and Bill,

First, I don't think it's worth our time to referee the back-and-forth between these individuals, though I will say that I view Charlie's email as substantially accurate. The settlement agreements which we have negotiated already provide that communications to and from Stevens PUD and other potential third-party operators will be handled through the attorneys. If we want to limit the misinformation flying around, we should have signed these agreements a week ago. The cumulative delay and goalpost-shifting over the last several weeks – all while the RWA has continued to advance its contested vision for the water system – are really inexcusable.

Steve, the RLCA rejects the latest changes RWA has proposed. I have attached the proposed RLCA-RWA Agreement and Addendum as of Nov. 9, when RLCA and the plaintiffs signed their portion of the settlement. We will not consider further changes to the agreements, having already granted numerous prior concessions. RLCA will give RWA 48 hours to sign the attached documents. Otherwise, at COB Thursday we will consider the settlement offer to have been rejected by RWA, and we will advance our claims in court.

Bill, if RWA fails to sign the proposed settlement by COB Thursday, RLCA will consider itself free from any obligation under the proposed settlement with the plaintiffs, and will file an opposition to your motion to stay the appeal (a motion which ought to have been discussed with RLCA's appellate counsel before you filed it).

I am in depositions much of the next two days on another matter, but I will try to respond to emails as often as time permits. Hopefully we can move forward with our joint settlement as we had intended.

Regards,  
Tyler

**From:** Steve Stocker <Sstocker@bssslawfirm.com>

**Sent:** Tuesday, November 16, 2021 9:37 AM

**To:** Tyler Lloyd <TLloyd@gravislaw.com>

# **EXHIBIT H**

**PARTNERS**

JANE E. BROWN  
GERALD KOBLUK  
YVONNE LEVEQUE KOBLUK  
ANNE K. SCHROEDER  
WILLIAM C. SCHROEDER  
WILLIAM J. SCHROEDER



**COUNSEL**

DAVID L. BROOM  
C. LANIER S. FELTEN  
JEFFREY K. FINER  
BRIAN P. KNOPF  
HON. JEROME J. LEVEQUE (RET.)  
PATRICK E. MILLER

William J. Schroeder  
[william.schroeder@ksblit.legal](mailto:william.schroeder@ksblit.legal)

January 31, 2022

*Via Email and US Mail*

Tyler Lloyd  
Gravis Law  
1309 W. Dean Ave., Ste 100  
Spokane, WA 99201  
[ttlloyd@garvislaw.com](mailto:ttlloyd@garvislaw.com)

Re: Enforcement of Settlement Agreement

Dear Tyler,

As we discussed before the holiday season, I am moving to enforce the Settlement Agreement (“Agreement”) the parties signed November 9, 2021. (See Attachment A) Your clients’ position that the Agreement they signed is not legally binding on them, is inconsistent with paragraph C.4. of the Agreement which states: “the RLCA Board has authorized this Agreement by a formal resolution attached hereto. The Agreement shall become effective upon signing by the parties below, without the need for an approving vote by the RLCA general membership.”

Paragraph C.1. requires mediation before a motion can be brought to enforce the Agreement. Accordingly, mediation is hereby demanded. Please provide me with your available dates for a mediation session. If mediation is unsuccessful, I will seek enforcement of the Agreement against your clients collectively and individually, together with attorney’s fees and damages for your clients’ breach of the Agreement. As some of your clients have appeared to have breached the non-disparagement clause of the Agreement, I suggest they put their insurance carriers on notice of a fairly substantial monetary claim.

Sincerely,

A handwritten signature in black ink that appears to read 'W. Schroeder'.

William J. Schroeder

CC: Clients

# **EXHIBIT I**

## Tyler Lloyd

---

**From:** William J. Schroeder <william.schroeder@ksblit.legal>  
**Sent:** Friday, February 4, 2022 3:34 PM  
**To:** Tyler Lloyd; Ken Miller  
**Cc:** Steve Stocker; mfc@ettermcmahon.com  
**Subject:** Re: Mediation-Reflection Lake [GL-21-009925]

Tyler - Your clients backed up on a signed settlement agreement with an effective date and have since individually and collectively disparaged our clients in direct contravention of the agreement they signed, causing substantial damages to our clients. Apparently, based on your emails today, they also misrepresented their authority to sign. There are significant questions as to when you knew they did not do a formal resolution, as represented. If you represent them individually, just say so. If you don't, just say do.

Bill

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---

**From:** Tyler Lloyd <TLloyd@gravislaw.com>  
**Sent:** Friday, February 4, 2022 3:24:33 PM  
**To:** William J. Schroeder <william.schroeder@ksblit.legal>; Ken Miller <kmiller@mmclegal.net>  
**Cc:** Steve Stocker <Sstocker@bssslawfirm.com>; mfc@ettermcmahon.com <mfc@ettermcmahon.com>  
**Subject:** RE: Mediation-Reflection Lake [GL-21-009925]

Bill, if you will please outline your clients' claims (both as to **what breach** and **by whom**), I will be happy to confirm the legal representation. From your last email I infer the only purported disparagement was in emails sent out by the RLCA Board. If that is the case, please clarify on what grounds you would seek to hold the board members individually liable.

**From:** William J. Schroeder <william.schroeder@ksblit.legal>  
**Sent:** Friday, February 4, 2022 3:09 PM  
**To:** Tyler Lloyd <TLloyd@gravislaw.com>; Ken Miller <kmiller@mmclegal.net>  
**Cc:** Steve Stocker <Sstocker@bssslawfirm.com>; mfc@ettermcmahon.com  
**Subject:** RE: Mediation-Reflection Lake [GL-21-009925]

Ken –

One thing we need to resolve prior to commencement of mediation is whether Tyler represents the Board members who signed the settlement agreement in their individual capacity. I raised that question with Tyler and he didn't respond to me. We have a fairly significant claim against the individuals for disparaging my clients. The settlement agreement contains a non-disparagement clause, ironically drafted by Mr. Lloyd. We have the emails that the Board members sent out to members of the community disparaging our clients as evidence. For a productive mediation, we may need the insurers for each of those individuals to be present. I look forward to hearing from you.

Thanks, Bill

**From:** Tyler Lloyd <TLloyd@gravislaw.com>  
**Sent:** Friday, February 4, 2022 2:36 PM  
**To:** Ken Miller <kmiller@mmclegal.net>  
**Cc:** Steve Stocker <Sstocker@bssslawfirm.com>; William J. Schroeder <william.schroeder@ksblit.legal>;

[mfc@ettermcmahon.com](mailto:mfc@ettermcmahon.com)

**Subject:** RE: Mediation-Reflection Lake [GL-21-009925]

Thanks, Ken. I can make myself available any time this afternoon.

Steve is still involved, though RWA has hired its own attorney, Mike Connelly, whom I've copied on this email. I'll leave to Steve and Mike whether either or both wants to join, as it sounds like the immediate dispute is between only Bill's clients and RLCA.

**From:** Ken Miller <[kmiller@mmcllegal.net](mailto:kmiller@mmcllegal.net)>

**Sent:** Friday, February 4, 2022 2:23 PM

**To:** Tyler Lloyd <[TLloyd@gravislaw.com](mailto:TLloyd@gravislaw.com)>

**Cc:** Steve Stocker <[Sstocker@bssslawfirm.com](mailto:Sstocker@bssslawfirm.com)>; William J. Schroeder <[william.schroeder@ksblit.legal](mailto:william.schroeder@ksblit.legal)>

**Subject:** RE: Mediation-Reflection Lake [GL-21-009925]

I am available this afternoon if that works. However, is Steve still involved or is there a new attorney?

Kenneth A. Miller  
Miller, Mertens & Comfort, PLLC  
1020 N. Center Parkway, Suite B  
Kennewick, WA 99336  
(509)-374-4200

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**From:** Tyler Lloyd <[TLloyd@gravislaw.com](mailto:TLloyd@gravislaw.com)>

**Sent:** Friday, February 4, 2022 1:53 PM

**To:** Ken Miller <[kmiller@mmcllegal.net](mailto:kmiller@mmcllegal.net)>

**Cc:** Steve Stocker <[Sstocker@bssslawfirm.com](mailto:Sstocker@bssslawfirm.com)>; William J. Schroeder <[william.schroeder@ksblit.legal](mailto:william.schroeder@ksblit.legal)>

**Subject:** RE: Mediation-Reflection Lake [GL-21-009925]

Ken, please let us know when you can be available for a phone call or zoom meeting to discuss Bill's request for mediation. Thank you.

**From:** William J. Schroeder <[william.schroeder@ksblit.legal](mailto:william.schroeder@ksblit.legal)>

**Sent:** Friday, February 4, 2022 1:46 PM

**To:** Tyler Lloyd <[TLloyd@gravislaw.com](mailto:TLloyd@gravislaw.com)>

**Cc:** Steve Stocker <[Sstocker@bssslawfirm.com](mailto:Sstocker@bssslawfirm.com)>; Ken Miller <[kmiller@mmcllegal.net](mailto:kmiller@mmcllegal.net)>

**Subject:** Re: Mediation-Reflection Lake [GL-21-009925]

Thank you for this. It will be very useful. Bill

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**From:** Tyler Lloyd <[TLloyd@gravislaw.com](mailto:TLloyd@gravislaw.com)>

**Sent:** Friday, February 4, 2022 1:39:45 PM

**To:** William J. Schroeder <[william.schroeder@ksblit.legal](mailto:william.schroeder@ksblit.legal)>



**Cc:** Steve Stocker <[Sstocker@bssslawfirm.com](mailto:Sstocker@bssslawfirm.com)>; Ken Miller <[kmiller@mmclegal.net](mailto:kmiller@mmclegal.net)>  
**Subject:** RE: Mediation-Reflection Lake [GL-21-009925]

The board simply wasn't aware that a "resolution" required more than a discussion, decision, and vote. If we had an enforceable settlement, I would have instructed them to follow through on all their obligations, including the formal resolution. With respect, they *did* keep minutes of the meeting and made those minutes available to their community-- which is more than your clients did when they were on the board. So forgive me if your clients' protests ring a little hollow.

Besides, what advantage do you imagine the board would obtain by refusing to adopt a resolution? They were willing to enter the proposed settlement—they *still* want to settle this matter once we resolve the internal issues at RWA. I'm still waiting to hear from you what substantive breach of the purported settlement agreement my clients are supposed to have committed. All of this feels like your clients are looking for any reason to keep the dispute going, now that their appeal of our summary judgment has been denied (and deemed frivolous).

Mr. Connelly and I are working toward a resolution of the RLCA-RWA disputes, after which RLCA anticipates settling all disputes with your clients. What is it your clients still want to fight about?

**From:** William J. Schroeder <[william.schroeder@ksblit.legal](mailto:william.schroeder@ksblit.legal)>  
**Sent:** Friday, February 4, 2022 1:27 PM  
**To:** Tyler Lloyd <[TLloyd@gravislaw.com](mailto:TLloyd@gravislaw.com)>  
**Cc:** Steve Stocker <[Sstocker@bssslawfirm.com](mailto:Sstocker@bssslawfirm.com)>; Ken Miller <[kmiller@mmclegal.net](mailto:kmiller@mmclegal.net)>  
**Subject:** Re: Mediation-Reflection Lake [GL-21-009925]

How can it be a misunderstanding if they know their duties as board members and they had you to consult with if they had questions? Bill

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---

**From:** William J. Schroeder <[william.schroeder@ksblit.legal](mailto:william.schroeder@ksblit.legal)>  
**Sent:** Friday, February 4, 2022 1:12:02 PM  
**To:** Tyler Lloyd <[TLloyd@gravislaw.com](mailto:TLloyd@gravislaw.com)>  
**Cc:** Steve Stocker <[Sstocker@bssslawfirm.com](mailto:Sstocker@bssslawfirm.com)>; Ken Miller <[kmiller@mmclegal.net](mailto:kmiller@mmclegal.net)>  
**Subject:** Re: Mediation-Reflection Lake [GL-21-009925]

I don't believe that. Bill

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---

**From:** Tyler Lloyd <[TLloyd@gravislaw.com](mailto:TLloyd@gravislaw.com)>  
**Sent:** Friday, February 4, 2022 1:10:03 PM  
**To:** William J. Schroeder <[william.schroeder@ksblit.legal](mailto:william.schroeder@ksblit.legal)>  
**Cc:** Steve Stocker <[Sstocker@bssslawfirm.com](mailto:Sstocker@bssslawfirm.com)>; Ken Miller <[kmiller@mmclegal.net](mailto:kmiller@mmclegal.net)>  
**Subject:** RE: Mediation-Reflection Lake [GL-21-009925]

A simple misunderstanding. I'm sure the RLCA Board would have followed through with a formal resolution had the settlement process not been derailed.

**From:** William J. Schroeder <[william.schroeder@ksblit.legal](mailto:william.schroeder@ksblit.legal)>  
**Sent:** Friday, February 4, 2022 11:21 AM  
**To:** Tyler Lloyd <[TLloyd@gravislaw.com](mailto:TLloyd@gravislaw.com)>

**Cc:** Steve Stocker <[Sstocker@bssslawfirm.com](mailto:Sstocker@bssslawfirm.com)>; Ken Miller <[kmiller@mmclegal.net](mailto:kmiller@mmclegal.net)>  
**Subject:** RE: Mediation-Reflection Lake [GL-21-009925]

Tyler –

Your clients have some explaining to do. They represented that a formal resolution had been passed, and that a copy was attached to the settlement agreement. It's taken three months of me asking for the resolution to produce this document, which is not a resolution and does not support their representations in the signed settlement document. I checked the website and there is no resolution on it which relates to this matter.

Regards,  
Bill

**From:** Tyler Lloyd <[TLloyd@gravislaw.com](mailto:TLloyd@gravislaw.com)>  
**Sent:** Friday, February 4, 2022 10:55 AM  
**To:** William J. Schroeder <[william.schroeder@ksblit.legal](mailto:william.schroeder@ksblit.legal)>  
**Cc:** Ken Miller <[kmiller@mmclegal.net](mailto:kmiller@mmclegal.net)>; Steve Stocker <[Sstocker@bssslawfirm.com](mailto:Sstocker@bssslawfirm.com)>  
**Subject:** RE: Mediation-Reflection Lake [GL-21-009925]

Bill, attached is the informal resolution provided me by RLCA. The RLCA board met and discussed the settlement on Nov. 5, agreed (verbally) to sign the agreement, but apparently never prepared a formal resolution.

**From:** Tyler Lloyd  
**Sent:** Friday, February 4, 2022 9:01 AM  
**To:** 'William J. Schroeder' <[william.schroeder@ksblit.legal](mailto:william.schroeder@ksblit.legal)>  
**Cc:** Ken Miller <[kmiller@mmclegal.net](mailto:kmiller@mmclegal.net)>; Steve Stocker <[Sstocker@bssslawfirm.com](mailto:Sstocker@bssslawfirm.com)>  
**Subject:** RE: Mediation-Reflection Lake [GL-21-009925]

Bill, I have requested a copy of the resolution from my clients. You will have it as soon as I do.

**From:** William J. Schroeder <[william.schroeder@ksblit.legal](mailto:william.schroeder@ksblit.legal)>  
**Sent:** Friday, February 4, 2022 6:04 AM  
**To:** Tyler Lloyd <[TLloyd@gravislaw.com](mailto:TLloyd@gravislaw.com)>  
**Cc:** Ken Miller <[kmiller@mmclegal.net](mailto:kmiller@mmclegal.net)>; Steve Stocker <[Sstocker@bssslawfirm.com](mailto:Sstocker@bssslawfirm.com)>  
**Subject:** Re: Mediation-Reflection Lake [GL-21-009925]

Tyler -

I still have not received the Board resolution approving the settlement. I have a conference call scheduled with my clients at 10 a.m. today. Please email the resolution to me before 9:30 a.m. this morning.

Regards,  
Bill

Sent from my iPhone

On Feb 3, 2022, at 6:15 AM, William J. Schroeder <[william.schroeder@ksblit.legal](mailto:william.schroeder@ksblit.legal)> wrote:

Tyler -

I am in depositions today. I will get back to you tomorrow or Monday after I speak with my clients. In the meantime, please email me today the board resolution approving the settlement. Also, please advise whether you represent the board members in their individual capacity concerning breach of the settlement agreement.

Regards,  
Bill

Sent from my iPhone

On Feb 2, 2022, at 4:55 PM, Tyler Lloyd <[TLloyd@gravislaw.com](mailto:TLloyd@gravislaw.com)> wrote:

All,

RLCA believes that the three settlement agreements negotiated among the parties were in effect a single settlement in three documents, and that RWA's refusal to sign renders each of the three documents unenforceable—as the four of us discussed late last November. In addition, given that the parties have failed to resolve the ownership of the water system, the express purpose of the settlements has been frustrated. *However*, I have advised RLCA to adhere to its purported obligations and commitments to Bill's clients because in the interest of preserving the possibility of reaching a settlement in the future. And I am not aware of any breach of the settlement terms by RLCA.

Bill, if you care to specify your clients' claims regarding the alleged breach by RLCA, we can try to resolve this without both sides gearing back up for litigation. I would be happy to involve Ken in this process, either formally or informally, or we can discuss one-on-one. I would request that you hold off on your discovery requests and depositions while we try to work this out. Consider that the settlement agreement you are attempting to enforce requires a stay of litigation and a good-faith effort at mediation prior to further litigation.

In the interest of keeping everyone on the same page, I will let you know that Michael Connelly and I have been in discussions to resolve a further dispute among RWA members as to the makeup of their board of directors. We hope to resolve as quickly as possible (and with finality) the question who is authorized to act on the part of RWA—including with respect to this lawsuit and potential settlement decisions. Resolution of this question will likely facilitate settlement of the lawsuit with minimal further time and expense—another reason for all parties to be patient.

I would be happy to continue this discussion by phone as soon as may be convenient, or we can schedule a formal mediation.

Best regards,  
Tyler

**From:** William J. Schroeder <[william.schroeder@ksblit.legal](mailto:william.schroeder@ksblit.legal)>

**Sent:** Monday, January 31, 2022 8:36 AM

**To:** Ken Miller <[kmiller@mmcllegal.net](mailto:kmiller@mmcllegal.net)>; Steve Stocker <[Sstocker@bssslawfirm.com](mailto:Sstocker@bssslawfirm.com)>;

Tyler Lloyd <[TLloyd@gravislaw.com](mailto:TLloyd@gravislaw.com)>  
**Subject:** RE: Mediation-Reflection Lake

Ken,

Tyler is contending that the Settlement Agreement his clients signed with an effective date of 11/09/2021 is nonbinding. Paragraph C.1 of the Agreement requires mediation before a motion can be brought to enforce the agreement. Accordingly, on behalf of my clients, I have demanded mediation. Please let me know your available dates.

Regards,

Bill  
**WILLIAM J. SCHROEDER**  
**KSB LITIGATION, P.S. | TRIAL ATTORNEYS**  
510 W. Riverside Ave. #300 Spokane, WA 99201  
**T** 509 624 8988 **F** 509 474 0358 / [williams.schroeder@KSBlit.legal](mailto:williams.schroeder@KSBlit.legal) / [KSBlit.com](http://KSBlit.com)

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**From:** Ken Miller <[kmiller@mmclegal.net](mailto:kmiller@mmclegal.net)>  
**Sent:** Friday, January 28, 2022 1:33 PM  
**To:** Steve Stocker <[Sstocker@bsslslawfirm.com](mailto:Sstocker@bsslslawfirm.com)>; William J. Schroeder <[william.schroeder@ksblit.legal](mailto:william.schroeder@ksblit.legal)>; Tyler Lloyd <[TLloyd@gravislaw.com](mailto:TLloyd@gravislaw.com)>  
**Subject:** Mediation-Reflection Lake

Gentlemen

I have heard nothing new on this for quite some time. Let me know if resolution was reached, you need my further assistance or if I should close my file. Thanks.

Kenneth A. Miller  
Miller, Mertens & Comfort, PLLC  
1020 N. Center Parkway, Suite B  
Kennewick, WA 99336  
(509)-374-4200

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# **EXHIBIT J**

## Tyler Lloyd

---

**From:** Tyler Lloyd  
**Sent:** Thursday, February 24, 2022 3:04 PM  
**To:** 'William J. Schroeder'  
**Subject:** RE: Mediation on Enforceability Issue [GL-21-009925]

RLCA agrees to participate in mediation. We will not set a date or discuss anything further until we have received a statement of claims as we have requested repeatedly.

# Gravis Law

## Tyler Lloyd

Attorney  
Civil Litigation  
1309 W. Dean Avenue, Suite 100  
Spokane, WA 99201  
509-608-3083  
GravisLaw.com

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**From:** William J. Schroeder <william.schroeder@ksblit.legal>  
**Sent:** Thursday, February 24, 2022 2:01 PM  
**To:** Tyler Lloyd <TLloyd@gravislaw.com>  
**Subject:** Mediation on Enforceability Issue [GL-21-009925]

Good Afternoon Tyler,

I exchanged emails with Ken Miller several days ago and advised that my clients would only be mediating with those who signed the Mediated Settlement Agreement. If Ken does not wish to proceed in that fashion, we will need to select another mediator.

As to RLCA's position that it will refuse to mediate unless certain conditions are met, I would ask that it reconsider. The Agreement does not provide that a party can demand certain conditions be met before they will agree to mediate. Certainly, once a mediator is selected, the parties can work with the mediator to discuss how the mediation will proceed. I would appreciate it if you would let me know by next Monday whether or not your client is refusing to mediate unless its conditions are met. If that is its position, I will file a motion to compel mediation. I sincerely hope that will not be necessary.

Regards,

Bill

WILLIAM J. SCHROEDER

KSB LITIGATION, P.S. | TRIAL ATTORNEYS

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T 509 624 8988 F 509 474 0358 / [williams.schroeder@KSBlit.legal](mailto:williams.schroeder@KSBlit.legal) / [KSBlit.com](http://KSBlit.com)

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**From:** Tyler Lloyd <[TLloyd@gravislaw.com](mailto:TLloyd@gravislaw.com)>  
**Sent:** Thursday, February 24, 2022 1:28 PM  
**To:** William J. Schroeder <[william.schroeder@ksblit.legal](mailto:william.schroeder@ksblit.legal)>  
**Subject:** RE: Mediation on Enforceability Issue [GL-21-009925]

Hi Bill,

I spoke with Ken Miller earlier this week and clarified for him RLCA's willingness to participate in mediation—without conceding that the settlement agreement is in force or that RLCA has any *obligation* to mediate thereunder. We have no objection to Mr. Miller serving as mediator, but based on my discussion with him I believe he anticipates the mediation will address resolution of the water system with RWA, not merely your clients' concerns re the purported settlement. So we'll need to clarify the scope of the mediation.

I also informed Ken that RLCA will not agree to mediation until we have received a detailed written statement of your clients' claims, including specification re defendants, their allegedly breaching conduct, and your clients' damages. It is only reasonable that we understand your client's claims in detail before we sit down to discuss how they can be resolved.

Regards,

**Gravis** Law

**Tyler Lloyd**  
Attorney  
Civil Litigation  
1309 W. Dean Avenue, Suite 100  
Spokane, WA 99201  
509-608-3083  
[GravisLaw.com](http://GravisLaw.com)

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**From:** William J. Schroeder <[william.schroeder@ksblit.legal](mailto:william.schroeder@ksblit.legal)>  
**Sent:** Thursday, February 24, 2022 7:23 AM  
**To:** Tyler Lloyd <[TLloyd@gravislaw.com](mailto:TLloyd@gravislaw.com)>  
**Subject:** Mediation on Enforceability Issue

Good Morning Tyler,

Given the parties disagreement as to the enforceability of the settlement agreement, I want to schedule mediation on the enforceability issue. As you know, the settlement agreement requires mediation as a condition precedent before filing a motion to enforce. Please let me know your availability over the next two weeks. Also, please let me know if you wish to use Ken Miller as a mediator or someone else.

I would appreciate it if you would get back to me at your earliest convenience, so we can get the mediation scheduled.

Regards,

Bill

**WILLIAM J. SCHROEDER**

**KSB LITIGATION, P.S. | TRIAL ATTORNEYS**

510 W. Riverside Ave. #300 Spokane, WA 99201

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DECLARATION OF SERVICE

On said day below, I electronically served a true and accurate copy of the ***Brief of Respondents*** in Court of Appeals, Division III Cause No. 39039-0-III to the following:

Tyler Lloyd, WSBA #50748  
Gravis Law  
1309 W. Dean Ave.  
Spokane, WA 99201

William Schroeder, WSBA #41986  
KSB Litigation, PS  
510 W. Riverside Ave, # 300  
Spokane, WA 99201

Brian Walker, WSBA #26586  
Ogden Murphy Wallace, PLLC  
1 Fifth Street, Suite 200  
Wenatchee, WA 98801

Original electronically delivered via appellate portal to:  
Court of Appeals, Division III  
Clerk's Office

I declare under penalty of perjury under the laws of the State of Washington and the United States that the foregoing is true and correct.

DATED: January 13, 2023, at Seattle, Washington.

/s/ Matt J. Albers  
Matt J. Albers, Paralegal  
Talmadge/Fitzpatrick

# TALMADGE/FITZPATRICK

January 13, 2023 - 12:33 PM

## Transmittal Information

**Filed with Court:** Court of Appeals Division III  
**Appellate Court Case Number:** 39039-0  
**Appellate Court Case Title:** Banner Bank v. Reflection Lake Community Association, et al  
**Superior Court Case Number:** 20-2-03199-7

### The following documents have been uploaded:

- 390390\_Briefs\_20230113123231D3295886\_4090.pdf  
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### Comments:

Motion to Include Extrarecord Materials in Appendix; Brief of Respondents

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