

1 House Joint Resolution

2 State of Washington 64th Legislature 2017 Regular Session

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

4  
5 BE IT RESOLVED, BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE STATE OF  
6 WASHINGTON, IN LEGISLATIVE SESSION ASSEMBLED FINDS:

7 THAT, WA State Bar Associate, Kevin Hull, WSBA #23994, while serving as Kitsap County  
8 Superior Court Judge, committed acts in said capacity that are reprehensible to the people of  
9 WA, and is hereby REMOVED from the BENCH under the power granted this LEGISLATURE by  
10 ARTICLE 4, SECTION 9.

11 FINDINGS OF FACT:

12 BACKGROUND

13 On March 18, 2009, William Scheidler instituted a lawsuit, pro se, against his former attorney,  
14 Scott M. Ellerby, WSBA #16277. The lawsuit alleged Mr. Ellerby committed fraud, among other  
15 allegations, when Mr. Ellerby withdrew his representation of Scheidler, on the eve of a formal  
16 hearing before the Board of Tax Appeals, by making up an untrue excuse.

17 Mr. Ellerby's withdrawal came after billing Mr. Scheidler over \$2,000 in attorney fees. The  
18 reasons Mr. Ellerby gave for his withdrawal was explained to Mr. Scheidler that the opponent  
19 to the lawsuit, Kitsap County, through their attorney, Cassandra Noble, WSBA #12390, raised a  
20 conflict of interest, which mandated Ellerby's withdrawal under ethical rules established by the  
21 WA State Supreme Court. Mr. Ellerby filed his "Notice of Withdrawal" with the Board of Tax  
22 Appeals citing the reason for his immediate withdrawal as "based on the allegation of a conflict  
23 of interest". Mr. Scheidler later asked for the refund of attorney fees paid to Mr. Ellerby as Mr.  
24 Ellerby failed to represent him and withdrew for conflict reasons – a reimbursable event.

25 In answer to Mr. Scheidler's refund request he was told by Lawrence Mills, WSBA #6129, who is  
26 Mr. Ellerby's superior and president of the law firm, Mills, Meyers, Swartling, that "You (Mr.  
27 Scheidler) and your wife decided not to have Mr. Ellerby represent you...Mr. Ellerby never  
28 declined to represent you and was never disqualified from representing you because of Kitsap  
29 County's allegation that Mr. Ellerby or our firm may have a conflict of interest...". Both Mr.  
30 Mills and Mr. Ellerby joined in this excuse for not refunding the attorney fees they charged Mr.  
31 Scheidler.

32 Mr. Scheidler filed a WA State Bar Grievance [WSBA] against Mr. Ellerby for the lies Mr. Ellerby  
33 told and was telling. The WSBA grievance was dismissed by Zachery Mosner, WSBA #9566. The  
34 dismissal was challenged to the WA State Bar's Disciplinary Board, which upheld the dismissal  
35 with the caveat that "should there be a judicial finding of impropriety, the grievant may request

1 that the grievance be reopened”. Mr. Scheidler’s lawsuit followed as a consequence of the  
2 Disciplinary Boards caveat.

3 **THE SENATE AND HOUSE further finds, Kitsap Superior Court judicial officers, contrary to the**  
4 **Legislatures express intent to simplify the process of pleadings and practice, codified by RCW**  
5 **2.04.190, and uphold the constitution of the United States and WA, in fact, unnecessarily**  
6 **delay, complicate and raise the cost of litigation due to arbitrary and capricious application of**  
7 **court rules by their judicial officials and deny fundamental due process “fairness” in casting a**  
8 **blind-eye to misconduct – even unlawful conduct -- committed by their associates in either**  
9 **public or private practice.**

10 At the outset of the lawsuit, Mr. Ellerby’s defense team from the firm of Lee Smart P.S. Inc.,  
11 David L. Martin, WSBA #1241, Jeffrey P. Downer, WSBA #12625, Gauri Shrotriya Locker, WSBA  
12 #39022, and others, filed for a Jury demand of 12, and “counter-claimed” against Mr. Scheidler  
13 that the action against Scott Ellerby was “frivolous” and “barred by the statute of limitations”  
14 and demanded attorney fees.

15 WA State Bar Associate, Russell Hartman, WSBA #7104, as Kitsap Superior Court Judge  
16 presiding over the case established a case schedule and set a trial date for November 2010.

17 Mr. Ellerby’s defense team initiated discovery, including discovery of medical records this  
18 Legislature specifically intended to be “exempt from discovery” when we codified this  
19 exemption by RCW 5.60.060(9). Over Scheidler’s objections to the records request made to his  
20 health care providers for records that are “exempt” as this Legislature intended, Judge  
21 Hartman, without authority, order Mr. Scheidler to produce these “exempt records”. Mr.  
22 Scheidler appealed to the Court of Appeals II, where Commissioner Ernetta G. Skerlec, WSBA  
23 #14128, affirmed Judge Hartman’s order to produce exempt medical records and awarded  
24 attorney fees and costs to Mr. Ellerby. Scheidler sought review of Commissioner Skerlec’s  
25 unlawful decision by the WA State Supreme Court on the ground RCW 5.60.060(9) was of public  
26 importance and recently passed by this Legislature and being an issue of ‘First Impression”,  
27 required Supreme Court review under the Courts own Rules and as this legislature intended by  
28 RCW 2.06.030 – Scheidler’s review was denied.

29 Mr. Ellerby’s defense team conducted record depositions of all Scheidler’s medical providers  
30 and obtained, unlawfully, all of Scheidler’s exempt medical records. Mr. Ellerby’s defense team  
31 subpoenaed Mr. Scheidler’s wife, Mary Scheidler, for her deposition. Mary’s deposition was  
32 scheduled on a work day and was conducted in the same forceful manner as the unlawful  
33 records depositions of Mr. Scheidler’s medical providers. Mary Scheidler was questioned about  
34 her childhood, her parent’s professions, her parent’s parents, her education, her work history,  
35 her love for her husband ... over a period of 8-hours. When Mr. Scheidler ended this badgering  
36 of his wife, Mr. Ellerby’s defense team immediately brought a motion before Judge Hartman for  
37 discovery violations and sanctions and the need to continue the date for trial to May 9, 2011.

1 Judge Hartman granted the motion to continue the trial, but reserved ruling on imposing  
2 additional sanctions for discovery violations.

3 Within days of the rescheduled trial by jury, Mr. Ellerby's defense team motioned Judge  
4 Hartman for dismissal of the case and an award of attorney fees. Mr. Hartman, in an ex-parte  
5 hearing (Mr. Scheidler's health, due to the Courts arbitrary and capricious exercise of power  
6 and the outrageous legal tactics, had deteriorated to a point where he only appeared through  
7 his pleadings) ruled Scheidler's case was frivolous, barred by statute and awarded Mr. Ellerby  
8 his legal costs to defend against such a suit in the amount of \$132,427.23. Mr. Scheidler, after  
9 posting \$170,000 in place of a supercedeas bond, appealed to the Court of Appeals Division II.  
10 Mr. Scheidler again argued the Legislature's intent in privacy by the codification of RCW  
11 5.60.060(9); and argued the common law doctrine established by the Supreme Court – **136**  
12 **Wn.2d 67, DISCIPLINE OF DANN**, holding that "misconduct by a lawyer as conduct involving  
13 dishonesty, fraud, deceit, or misrepresentation - is administered in a manner that holds  
14 attorneys accountable for the results of their conduct, even unintended results." This common  
15 law holding provides Mr. Scheidler immunity from Mr. Ellerby's counterclaims as the lawsuit is  
16 a consequence of Mr. Ellerby's dishonesty, fraud, deceit or misrepresentation. Mr. Scheidler  
17 also argued the constitutional right to a jury trial that was demanded but never conducted,  
18 among other common law holdings concerning fraud tolling the statute of limitation and issues  
19 of first impression and of public importance are never "frivolous". The appellate court affirmed  
20 Judge Hartman's order of dismissal, remained silent about the common law immunity  
21 established in **DANN**, ignored the jury request, then misstated the facts regarding our intent in  
22 protecting medical records (thus avoiding its duty to address issues of first impression, supra)  
23 and engaged in other fact finding in Mr. Ellerby's favor, but reversed the entire \$132,427.23 fee  
24 award as "manifestly unreasonable" saying the "bulk of the fees" were associated with  
25 "unnecessary" discovery tactics. Neither Mr. Ellerby or Mr. Ellerby's defense team suffered any  
26 ill-effects in conducting "unnecessary discovery" or driving up the cost improperly. This  
27 legislature intended lawyers adhere to their oath, RCW 2.48.210, and rules of professional  
28 conduct, RCW 2.48.230, and must be punished for driving up the cost in unnecessary discovery  
29 tactics. The appellate court, upon remand, stated fees should be awarded as if the case were  
30 brought "promptly to summary judgment." The appellate court also ruled against awarding Mr.  
31 Ellerby fees on appeal. However, Mr. Ellerby nevertheless sought an award of fees from the  
32 Court of Appeal's Clerk, David Ponzoha. Mr. Ponzoha granted Mr. Ellerby's fee request over Mr.  
33 Scheidler's objection and argument the Court of Appeals had already ruled on this matter and  
34 declined to award attorney fees. Mr. Scheidler sought discretionary review by the WA State  
35 Supreme Court citing "issues of first impression" and errors in law and fact by Justice Joel  
36 Penoyar in his "unpublished opinion." Mr. Scheidler's petition was Denied.

37 Upon remand to Kitsap Superior Court, WA State Bar Associate, Kevin Hull, WSBA #23994, was  
38 assigned the case as the judicial replacement to Judge Russell Hartman who took early  
39 retirement during the year the case was in appeal. Mr. Scheidler immediately motioned for the  
40 return of his \$170,000 held by the clerk in place of the supercedeas bond as the Appellate Court

1 reversed the entire amount the \$170,000 was to guarantee. Judge Hull denied Scheidler's  
2 motion and retained all of Mr. Scheidler's funds without any basis to do so. Mr. Scheidler  
3 argued to Judge Hull that he was disqualified, as this Legislature intended when it codified RCW  
4 2.28.030(2), from making any rulings about any matter for which he wasn't present and sitting  
5 as a member of the court. Mr. Scheidler also argued the factual inaccuracies and bias in the  
6 COA II's rulings by not holding WA State Bar Associates, Scott Ellerby and his defense team to  
7 the law and code of conduct, and blind-eye to the common law holding in **DANN** committed by  
8 Justice Joel Penoyar, WSBA #6407, who authored the opinion for the COA II. Such gross errors  
9 rendered Penoyar's "unpublished opinion" as void. Scheidler based his "void and  
10 unenforceable" argument in the common law holding established by the WA State Supreme  
11 court in **35 Wn.2d 791, BATEY v. BATEY**, stating, "It is doubtless true that fraud vitiates  
12 everything tainted by it, even to the most solemn determinations of courts of justice, but like  
13 every other subject of judicial inquiry, it must be investigated in the proper forum and by  
14 appropriate methods of procedure." Mr Scheidler argued his right to a jury trial as demanded  
15 and guaranteed by WA Constitution Article 1, Section 21, and additionally as **BATEY v. BATEY**  
16 provides in order to prove a "VOID judgment". Mr. Scheidler argued Judge Hull needed to  
17 institute summary judgment hearings before any fee award can be made to address these gross  
18 distortions of fact and the utter disregard of the common law. Judge Hull denied Scheidler's  
19 motion by claiming a jury trial was never requested, and re-awarded Scott Ellerby \$88,409.40.  
20 Judge Hull was silent as to the false statements of fact and law committed by Justice Joel  
21 Penoyar. Because Judge Hull ignored the common law, ignored this Legislature's intent that he  
22 "disqualify" himself, and continued the tactics of misstating the facts, Mr. Scheidler had to  
23 appeal yet again.

24 **The SENATE and the HOUSE further admonishes these WA State Bar Associates noted herein,**  
25 **in whatever capacity they serve the public, stating it is public policy by this joint resolution**  
26 **that WA State Bar Associates shall no longer continue: to create controversy by disregarding**  
27 **the express intent of this Legislature to abide by the common law, as codified in RCW**  
28 **4.04.010; to profit or be compensated in any manner by the controversies they create as the**  
29 **common law of DANN establishes; to ignore the disqualification law imposed upon judges, as**  
30 **codified by RCW 2.28.030; to obtain exempt medical records, as codified by RCW 5.60.060(9);**  
31 **to ignore their duty to establish rules of procedure to "simplify... to promote the speedy**  
32 **determination of litigation on the merits", as codified in RCW 2.04.190; to be truthful, as**  
33 **codified by RCW 2.48.210; to be impartial as demanded by WA Constitution Article 4, Section**  
34 **28 and the U.S. Supreme Court in GOLDBERG V KELLY, infra.**

35 Specifically, Judge Kevin Hull, by ignoring the intentions expressed by this Legislature, in the  
36 laws passed, has violated the preeminent duty of his office – to protect and maintain individual  
37 rights as demanded of him by WA Constitution Article 1, Section 1!

38 As a consequence of Judge Hull's misconduct, Mr. Scheidler proceeded to file his Notice of  
39 Appeal, pay the filing fee, transfer the records, and provide transcripts ... all of which cost Mr.

1 Scheidler more money and time. However when Mr. Scheidler submitted his "Opening Brief",  
2 which described and validated all the violations of law, the misconduct by Associates of the WA  
3 State Bar, the lies told and the perjury suborned by these WA State Bar Associates, the clerk of  
4 the Court of Appeals, David Ponzoha, refused to file his brief, then dismissed Mr. Scheidler's  
5 appeal and then mandated Judge Hull finalize the \$88,409.40 fee award, plus interest at 12%  
6 for the time the case was being appealed, for a total amount of \$119,373.45, judgment in favor  
7 of Scott Ellerby, WSBA #16277.

8 With the case back in Kitsap Superior Court, without any consideration of Mr. Scheidler's  
9 appeal and the issues raised in his "Opening Brief" in support of his appeal, Mr. Scheidler  
10 motioned the Kitsap Superior Court for a "Stay of Judgment," and for the "VACATION" of the  
11 judgment as this Legislature provides by the codification of RCW 4.72.020, based upon all the  
12 "irregularities" occurring in his case. Mr. Scheidler also demanded Kitsap County provide an  
13 "inquiry judge" as this Legislature expressly authorizes in cases as Mr. Scheidler's, codified as  
14 RCW 10.29. However Judge Kevin Hull again refused to disqualify himself as require by RCW  
15 2.28.030, and refused to put all parties under oath, as Mr. Scheidler requested, so Mr. Scheidler  
16 could cross-examine all the WA State Bar Associates who join against Mr. Scheidler by the lies,  
17 perjury and false reporting levied against him. Furthermore, despite Mr. Scheidler's criticisms  
18 of Judge Hull, or in retribution for Mr. Scheidler's criticisms of Judge Hull made in his appeal  
19 brief and grievances filed with the Commission on Judicial Conduct, Judge Hull continued to  
20 enter orders against Mr. Scheidler.

21 **The SENATE and the HOUSE**, further resolves that Mr. Scheidler, as do all litigants, has a  
22 constitutional right, under Article 4, Section 28, and the common law right to an "impartial  
23 decision-maker," to "cross-examine" any associate of the WA State Bar who offers facts or law  
24 against him as a basic element of due process fairness as stated by the United State Supreme  
25 Court in **GOLDBERG v KELLY 397 U.S. 254; 90 S.CT. 1011; 25 L.ED.2D 287 (1970)**. **And further,**  
26 **Mr. Scheidler, as do all litigants, has a statutory right to establish the 'common law' by an**  
27 **action heard before a jury, unless a jury is waived, so long as it is not inconsistent with**  
28 **constitutional provisions or legislatively established laws, as we intent by RCW 4.04.010.**

29 **Mr. Scheidler, in his motion to VACATE raised these issues, which the SENATE and the HOUSE**  
30 **incorporate herein and demand Judge Hull NOW address.**

31 **II. GROUNDS FOR MOTION - IRREGULARITIES**

32 **1) Scheidler has absolute immunity and Judge Hull lacks authority to penalize him under**  
33 **court rules.**

34 **2) Scheidler has quasi-judicial immunity. The WSBA delegated to Scheidler, by written**  
35 **"finding and order", the task of obtaining a "judicial finding of impropriety" and Judge Hull**  
36 **lacks authority to penalize him for his role that the WSBA delegated to Scheidler.**

1 **3) The “mandate”, Ellerby cites at page 1, In 18, issued by David Ponzoha, Clerk, COA II, is**  
2 **a consequence of “unlawful” conduct and is fraud upon the court.**

3 **4) Scheidler’s appeal, #45435-1, incorporated by reference, was never heard due to the**  
4 **criminal conduct by David Ponzoha, clerk, COA II who refused to file Scheidler’s opening brief**  
5 **and then dismissed Scheidler’s appeal for non-filing; Scheidler’s constitutional right of petition**  
6 **has been violated by David Ponzoha’s obstruction.**

7 **5) As an unfortunate consequence of the criminal conduct by Ponzoha to obstruct**  
8 **Scheidler’s right of appeal, the grievances noted in his “opening brief” as issues for review,**  
9 **have not be resolved and are raised in this motion as issues to be decided on trial. See**  
10 **opening brief pages 18-21.**

11 **6) All orders by Judge Hartman and Judge Hull are void due to their violation of RCW**  
12 **2.28.030(1)**

13 **7) No jury was impaneled to decide this matter as demanded by Ellerby and required by**  
14 **Article 1, Sec 21, and there were no waivers of a jury trial as required by CR 38(d). Rather, this**  
15 **case has been improperly litigated based solely upon Superior Court Rules, which are**  
16 **administrative in application.**

17 **These issues must be addressed by Judge Kevin Hull or his non-response will be**  
18 **deemed admission his conduct is unlawful.**