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IN THE SUPERIOR COURT OF WASHINGTON  
IN AND FOR SNOHOMISH COUNTY

CHRISTOPHER J. HUPY, an individual, and	)	
THOMAS BRET HAGGERTY, an individual,	)	
	)	No. 14-2-03819-2
Plaintiffs,	)	
	)	DEFENDANTS' REPLY BRIEF IN
vs.	)	SUPPORT OF MOTION TO DISMISS
	)	
The Actors of KING COUNTY SUPERIOR	)	
COURT, et al.,	)	
	)	
Defendants.	)	

The Superior Court Defendants respectfully submit this reply brief in support of their motion to dismiss. For the reasons stated below, the arguments raised in the Plaintiffs' response brief fail to establish their standing to bring this action. Accordingly, the complaint must be dismissed.

**A. The Supreme Court has Rejected the Plaintiffs' Argument that Asking the Attorney General to Bring Suit Would be Useless in This Case.**

The Plaintiffs claim it would have been useless to ask the Attorney General to take action before bringing their own lawsuit because the Attorney General represents the Superior Court Defendants, and therefore could not simultaneously defend them as clients and sue them on behalf of the taxpayers. Plaintiffs' Response at 3-4.

1 It is worth noting that the Attorney General does not, in fact, represent the Superior Court  
2 Defendants in this case. But more importantly, the Supreme Court has previously rejected the  
3 Plaintiffs' argument. In *Reiter v. Wallgren*, 28 Wn.2d 872 (1947), a taxpayer brought sought to  
4 enjoin the state capital committee, which included the Governor, the Commissioner of Public  
5 Lands, and the State Auditor, from completing a sale of state timber to a private corporation.  
6 The taxpayer argued it would have been useless to demand the Attorney General to take action,  
7 as evidenced by the fact that the Attorney General was representing the defendants. *Id.* at 877-  
8 78. The Court disagreed, reasoning that the Attorney General's statutory duties may include  
9 both prosecuting and defending an action:

10 Inevitably, the [A]ttorney [G]eneral, whatever may be his personal views, will be charged  
11 as a public officer with the responsibility of seeing that both sides of an issue are  
12 adequately presented to the court when there is a conflict between state officials or  
13 departments, or when there is a question as to whether a state officer, committee, or  
14 department is acting in an illegal manner, to the detriment of the public interest.

13 *Id.* at 879.

14 In *Farris v. Munro*, 99 Wn.2d 326 (1983), a taxpayer sued the Secretary of State and the  
15 Governor challenging the constitutionality of a state lottery in Washington. The petitioner  
16 claimed that it would have been futile to first make a request upon the Attorney General to bring  
17 suit to oppose the state lottery act because the attorney general was responsible for representing  
18 the respondents in defending the act. Citing its decision in *Reiter*, the Court again rejected this  
19 argument, stating that it:

20 ignores this court's explicit holding that even though the Attorney General is defending  
21 against the taxpayer's suit such a demand is not considered useless. The *Reiter* court  
22 reached that conclusion because such a defense is part of the attorney general's statutory  
23 duties, and in some instances the attorney general must both prosecute and defend a suit.

(Citations omitted). *Farris*, 99 Wn.2d at 329; *see also*, *Amoss v. University of Washington*, 40  
Wash. App. 666, 672-73 (1985)(no impropriety or violation of appearance of fairness doctrine

1 for attorney general to represent opposing state employees in adversarial administrative  
2 proceeding where the two assistant attorneys generals kept separate files and did not confer about  
3 the matter with each other).

4 As the above authority makes clear, the Attorney General's dual responsibilities to  
5 defend state officials and agencies and represent the interests of taxpayers do not provide a basis  
6 for excusing the Plaintiffs from first requesting the Attorney General to take action before filing  
7 suit themselves. Accordingly, because the Plaintiffs did not satisfy this requirement for taxpayer  
8 standing, the complaint must be dismissed.

9 **B. The Plaintiffs' Interests are no Different Than the Interests of Taxpayers in**  
10 **General.**

11 The Plaintiffs brought this action as a taxpayer's suit. Complaint at 11, ¶ 77 (alleging  
12 taxpayer standing). They do not seek damages. Rather, they request an order enjoining the  
13 Superior Court Defendants from further engaging in all (alleged) "unconstitutional and illegal  
14 acts ... to protect the plaintiffs and citizens at large[,] and from undertaking "any additional  
15 dissemination of Judicial Intellectual Property to any private gain and/or cause, save for the  
16 informed and/or poor." Complaint, at 15. These are taxpayer claims—the Plaintiffs interests in  
17 this case, as they have chosen to fashion the Complaint, are no different than that of other  
18 taxpayers. *See also*, Complaint at 12, ¶ 77 (alleging that "Defendants have engaged in a pattern  
19 of long term diversion of **Public** resources for a Private cause"); at 13, ¶ 78 (alleging that "[t]he  
20 **Public** has historically been denied access to these meetings<sup>1</sup>[.]"). Accordingly, the Plaintiffs  
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22 <sup>1</sup> It bears emphasizing that the meetings in question are the KCBA Family Law Section's meetings, not  
23 the Superior Court Defendants', and it is not *per se* improper for a judicial officer to be an honorary  
member of a county bar association or bar association section. *See* Ethics Advisory Committee Opinion  
92-02 ([http://www.courts.wa.gov/programs\\_orgs/pos\\_ethics/?fa=pos\\_ethics.dispopin&mode=9202](http://www.courts.wa.gov/programs_orgs/pos_ethics/?fa=pos_ethics.dispopin&mode=9202))  
(citing former CJC Canons 2 and 4).

1 must satisfy the necessary elements to allege taxpayer standing and they have failed to do so  
2 here.

3 **C. “Judicial Intellectual Property” is Neither Public Property nor Public**  
4 **Funding and Therefore Cannot be the Subject to a Gift or Lending of Credit**  
5 **Claim.**

6 Finally, the Plaintiffs portray this case as raising issues of first impression concerning  
7 access to justice, citing to the dissemination of Judicial Intellectual Property to a “special class’  
8 or group while at the same time disadvantaging the plaintiffs and others not belong to this group  
9 and/or class.” The term Judicial Intellectual Property is not defined in the complaint, but  
10 presumably is addressed to a judge or commissioner attending a KCBA Family Law Section  
11 meeting and providing the “view from the bench” perspective to those in attendance. However,  
12 the furnishing of practice tips by a judicial officer at meetings, seminars and CLE classes is a  
13 common educational occurrence in federal, state and local jurisdictions across the country. The  
14 public does not own a judge’s opinions in any of these settings. Undoubtedly, the reason why  
15 the Plaintiffs have uncovered no case law on point is because it is facially specious to begin with.  
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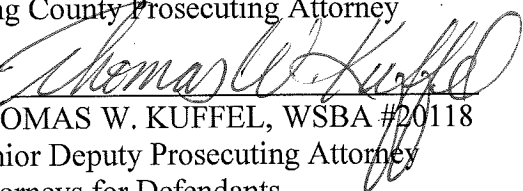
**D. Conclusion.**

For the reasons set forth supra, the Superior Court Defendants respectfully ask this Court to enter an order dismissing the Complaint against them in this matter.

DATED this 26<sup>th</sup> day of June, 2014.

Respectfully submitted,

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**DECLARATION OF FILING AND SERVICE**

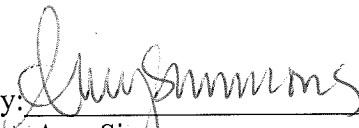
I hereby certify that on June 26<sup>th</sup>, 2014, I sent the foregoing document via ABC Legal Messenger to be filed with the Clerk of the Snohomish County Superior Court.

I also caused a copy of the foregoing document(s) to be served on the following individual(s) via E-mail:

Plaintiff Christopher J. Hupy 13222 29 <sup>th</sup> Avenue SE Mill Creek, WA 98012 amakirkland@hotmail.com	Plaintiff Thomas Bret Haggerty 13222 29 <sup>th</sup> Avenue SE Mill Creek, WA 98012 Bhaggerty85@gmail.com
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I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 26<sup>th</sup> day of June, 2014 at Seattle, Washington.

By:   
 Amy Simmons  
 Legal Secretary/Paralegal, Civil Division  
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 Email: Amy.Simmons@kingcounty.gov