

**FILED**

OCT 14 2014

SONYA KRASKI  
SNOHOMISH COUNTY CLERK  
EX-OFFICIO CLERK OF COURT

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

CHRISTOPHER J. HUPY, an individual,

Plaintiff,

vs.

No. 14-2-06148-8

MICHAEL R. DOWNES, ANITA FARRIS,  
ROBERT TERWILLIGER, and SHERALYN  
R. BARTON (FKA SHERALYN  
McCORMICK) all in their professional  
capacity, and any unknown 1 to 50 JOHN  
and/or JANE DOE(S) at this time,

Defendant(s).

DEFENDANTS' MOTION TO  
DISMISS PURSUANT TO CR 12(b)(6)

**I. RELIEF REQUESTED**

MICHAEL DOWNES, ANITA FARRIS, ROBERT TERWILLIGER, and  
SHERALYN R. BARTON (the "Defendants"), by and through their attorney of record,  
William C. Steffener, Deputy Prosecuting Attorney, move for an order dismissing this  
action against them, pursuant to CR 12(b)(6) for failure to state a claim against the  
Defendants upon which relief can be granted.

Motion to Dismiss, CR 12(b)(6) - 1

COPY

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1  
2 **II. STATEMENT OF FACTS**

3 Although not abundantly clear from the plaintiff's complaint, it appears that the plaintiff  
4 is challenging the authority of Snohomish County Superior Court official reporters, aka  
5 court reporters, to charge a fee for their transcription services and for Snohomish County to  
6 provide office space to the court reporters.  
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9 **III. STATEMENT OF THE ISSUES**

- 10 1) Whether the Plaintiff has "taxpayer standing" to bring the current action?  
11 2) Whether there is legal authority for Snohomish County Superior Court official  
12 reporters (aka "court reporters") to collect a fee for preparing a written transcript?  
13 3) Whether there is legal authority for Snohomish County Superior Court to provide its  
14 court reporters with office space, supplies, and support services in order to fulfill  
15 their duties?  
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18 **IV. EVIDENCE RELIED UPON**

19 This motion is based upon the Declaration of Christopher J. Hupy, the statutory  
20 authority and case law cited below, and the records on file herein.  
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23 **V. AUTHORITY AND ARGUMENT**

24 A CR 12(b)(6) motion only presents questions of legal sufficiency of the allegations  
25 in the complaint. Contreras v. Crown Zellerbach Corp., 88 Wn.2d 735, 742 (1977). "The  
26 only issue before the trial judge is whether it can be said there is no state of facts which

1 plaintiff could have proven entitling him to relief under his claim.” Id. at 742(citing  
2 Barnum v. State, 72 Wash.2d 928, 435 P.2d 678 (1967); Grimsby v. Samson, 85 Wash.2d  
3 52, 55 (1975).

4 A. THE COMPLAINT SHOULD BE DISMISSED BECAUSE THE  
5 PLAINTIFF LACKS TAXPAYER STANDING TO BRING THIS  
6 ACTION.

7 Standing is a party’s right to make a legal claim or seek judicial enforcement of a  
8 duty or right. State v. Link, 136 Wn.App. 685, 692 (2008), *review denied*, 160 Wn.2d 1025  
9 (2007). The doctrine of standing prohibits a party from asserting another’s legal right.  
10 West v. Thurston County, 144 Wn.App. 573, 578 (2008).

11 To properly plead “taxpayer standing”, a plaintiff’s complaint must allege (1) a  
12 taxpayer’s cause of action and facts supporting the plaintiff’s taxpayer status; (2) that the  
13 plaintiff pays the type of taxes funding the project in question; and (3) that the plaintiff  
14 asked the Attorney General’s office to take action before bringing suit. Dick Enters., Inc. v.  
15 King County, 83 Wn.App. 566, 572-73 (1996). Taxpayers need not allege a direct, special,  
16 or precuniary interest in the outcome of the lawsuit, but they must demonstrate that their  
17 demand to the Attorney General’s office to initiate the action was refused, unless a request  
18 would have been futile. Robinson v. City of Seattle, 102 Wn.App 795, 805 (2000)(citing  
19 City of Tacoma v. O’Brien, 85 Wn.2d 266, 269 (1975)).

21 Here, the plaintiff has failed to properly plead taxpayer standing. The Complaint  
22 alleges that the Plaintiff has standing simply because the Plaintiff is a Snohomish County  
23 resident and “contribute(s) to the Snohomish County Tax base on an almost daily basis via  
24 the purchase of goods and services, including gasoline.” See Plaintiff’s Complaint, ¶ 20.  
25 However, the Complaint fails to allege whether the taxes paid by the Plaintiff are the type

1 of taxes that funds the 'project' in question. More importantly, the Plaintiff does not allege  
2 that he made a written request to the Attorney General's office to take action before filing  
3 this law suit. Therefore, the Plaintiff has not satisfied the mandatory elements necessary to  
4 properly plead taxpayer standing and state a claim. Thus, the Complaint must be dismissed.

5 Because the plaintiff lacks taxpayer standing, the court should dismiss his action.  
6 However, even if the action continues, it should be dismissed because the acts complained  
7 of comply with Washington State law.

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9  
10 B. RCW 2.32.240 REQUIRES THE REQUESTING PARTY TO PAY THE  
11 COURT REPORTER'S TRANSCRIPTION FEES.

12 Although not entirely clear, it appears the plaintiff is challenging the fact that, as the  
13 party requesting a written transcript, he is required to pay the court reporter a transcription  
14 fee. However, this practice is required by chapter 2.32 RCW.

15 Superior court reporters, also known as "official reporters", are governed by the  
16 provisions of chapter 2.32 RCW. Superior court judges are required by statute to appoint  
17 court reporters and "[s]uch reporter in each court is hereby declared to be a necessary part  
18 of the judicial system of the state of Washington" and deemed to be an "officer of the  
19 court". RCW 2.32.180.

20  
21 The duties of a court reporter are delineated in RCW 2.32.200, and include attending  
22 court and taking shorthand notes of the oral testimony. The official reporter is required to  
23 be compensated for the performance of such duties with a salary as set forth and fixed by  
24 the legislature. RCW 2.32.210. Moreover, court reporters must be licensed by the  
25 Department of Licensing. See chapter 18.145 RCW.

1 In addition to the duties specifically set forth in RCW 2.32.200, the official reporter  
2 is required by statute to provide transcripts of proceedings upon the request of the court, a  
3 party, or a party's attorney. RCW 2.32.240. RCW 2.32.240 also requires the party  
4 requesting a transcript to pay the transcript fees. Specifically, RCW 2.32.240 states as  
5 follows:

6 When a record has been taken in any cause as provided in  
7 RCW 2.32.180 through 2.32.310, if the court, or either party  
8 to the suit or action, or his or her attorney, request a  
9 transcript, the official reporter and clerk of the court shall  
10 make, or cause to be made, with reasonable diligence, full  
11 and accurate transcript of the testimony and other  
12 proceedings, which shall, when certified to as hereinafter  
13 provided, be filed with the clerk of the court where such trial  
14 is had for the use of the court or parties to the action. **The**  
15 **fees of the reporter** and clerk of the court for making such  
16 transcript shall be fixed in accordance with costs as allowed  
17 in cost bills in civil cases by the supreme court of the state of  
18 Washington, and when such transcript is ordered by any  
19 party to any suit or action, **said fee shall be paid forthwith**  
20 **by the party ordering the same, and in all cases where a**  
21 **transcript is made** as provided for under the provisions of  
22 **RCW 2.32.180** through **2.32.310** the cost thereof shall be  
23 taxable as costs in the case, and shall be so taxed as other  
24 costs in the case are taxed: PROVIDED, That when, from  
25 and after December 20, 1973, a party has been judicially  
26 determined to have a constitutional right to a transcript and to  
be unable by reason of poverty to pay for such transcript, the  
court may order said transcript to be made by the official  
reporter, which transcript fee therefor shall be paid by the  
state upon submission of appropriate vouchers to the clerk of  
the supreme court.

(Emphasis added.)

Under the scheme established by chapter 2.32 RCW, the fees for transcription  
preparation, RCW 2.32.240, are separate and apart from the salary compensation  
established and fixed pursuant to RCW 2.32.210. Moreover, the plain language of RCW

1 2.32.240 clearly establishes that the transcription fees are the reporter's. Specifically, RCW  
2 2.32.240 refers to transcription fees as the "fees of the reporter". Accordingly, the official  
3 court reporter is entitled to retain any fees collected for preparation of transcripts of a  
4 hearing.

5 In 1994, the Attorney General's office came to the same conclusion and stated:

6 Applying these rules of statutory construction, we observe that  
7 the language of RCW 2.32.240 preceding the proviso refers to  
8 transcription fees as the "fees of the reporter". We infer from  
9 this language that the Legislature intended that transcription  
10 fees are the property of the official reporter, not the county, and  
11 thus may be retained by him or her. This intention is further  
12 evidenced by the Legislature's provision for transcription  
13 services separately from the official reporter's duties described  
14 in RCW 2.32.200. It is for the performance of these latter  
duties that we assume the official reporter is paid a salary by  
the county under RCW 2.32.210. Transcription appears to be  
an additional duty for which the official reporter has  
responsibility, when requested, but for which he or she is to be  
separately compensated by the prescribed fee.

15 See AGO 1994 No. 23.

16 An official reporter is part of the judicial system and serves the court and the public in  
17 performance of his/her statutory duties, which includes providing transcription services.  
18 His or her salary is provided pursuant to RCW 2.32.210. Likewise, his or her fees for  
19 transcription services are provided pursuant to RCW 2.32.240. Accordingly, there is legal  
20 authority for the Snohomish County Superior Court's court reporters to charge and collect a  
21 fee for transcription services.  
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1 C. RCW 2.32.300 REQUIRES SNOHOMISH COUNTY TO PROVIDE THE  
2 COURT REPORTERS WITH OFFICE SPACE, SUPPLIES AND SUPPORT  
3 SERVICES.

4 The Plaintiff also appears to challenge whether there is legal authority for the  
5 Snohomish County Superior Court to provide its court reporters with office space, office  
6 supplies and support services. However, RCW 2.32.300 provides that “[s]uitable office  
7 space shall be furnished the official reporter.”

8 RCW 2.32.300 was last amended in 1943. This statutory requirement has since been  
9 construed to require a county to furnish the necessary supplies in transcript preparation in  
10 certain instances and for an official reporter’s other official duties required by statute.  
11 AGO 1945-46, p. 829.

12  
13 **VI. SUMMARY**

14 In this instance, the Superior Court judges appointed an official reporter to Judge Farris’  
15 department as required by RCW 2.32.180. On July 24, 2014, Ms. Barton in her capacity as  
16 a duly licensed court reporter/official reporter, carried out her statutory duties as outlined in  
17 RCW 2.32.200. Following the July 24<sup>th</sup> hearing, Mr. Hupy requested Ms. Barton to prepare  
18 a transcript of the court proceedings. In accordance with her obligation to prepare  
19 transcripts at a party’s request, under RCW 2.32.240, Ms. Barton prepared the requested  
20 transcript. Thereafter, Mr. Hupy paid for the preparation of said transcript. Ms. Barton is  
21 licensed as a court reporter, as required by chapter 18.145 RCW. Moreover, pursuant to  
22 RCW 2.32.300, Snohomish County provides its court reporters with an office and furnishes  
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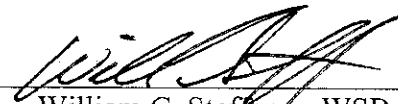
1 the necessary supplies required to perform their duties. Therefore, the acts complained of  
2 are authorized by statute.<sup>1</sup>

3  
4 **VII. CONCLUSION**

5 Defendants respectfully request the Court to grant their motion to dismiss the  
6 complaint in this matter, because the plaintiff has failed to properly plead taxpayer standing  
7 and because the acts complained of are authorized by State law.  
8

9  
10 RESPECTFULLY SUBMITTED this 13<sup>th</sup> day of OCTOBER, 2014.

11 MARK K. ROE  
12 Snohomish County Prosecuting Attorney

13  
14 By:   
15 William C. Steffener, WSBA #36641  
16 Deputy Prosecuting Attorney  
17 Attorney for Defendants  
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24 <sup>1</sup> Statutes are presumed to be constitutional. Island County v. State, 135 Wn.2d 141 (1998). The burden of  
25 proof is on the party challenging the statute and "must, by argument and research, convince the court that  
26 there is no reasonable doubt that the statute violates the constitution." Id. at 146-47. In the event plaintiff is  
seeking to challenge the constitutionality of RCW 2.32.240 and RCW 2.32.300, he must do so through the  
proper legal means and name and serve all necessary and indispensable parties.



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**DECLARATION OF SERVICE**

I, Carolyn J. Peterson, hereby certify that, on the 14th day of October 2014, I served a true and correct copy of the foregoing Defendants' Motion to Dismiss Pursuant to CR 12(b)(6) upon the person(s) listed herein by the following means:

Christopher J. Hupy 13222 29th Avenue SE Mill Creek, WA 98012 <a href="mailto:amakirkland@hotmail.com">amakirkland@hotmail.com</a> (503) 931-4991 <i>Plaintiff, Pro Se</i>	<input type="checkbox"/> Electronic Filing/Delivery <input type="checkbox"/> Facsimile <input type="checkbox"/> Express Mail <input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Messenger Service
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I declare under the penalty of perjury of the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge.

SIGNED at Everett, Washington, this 14<sup>th</sup> day of October, 2014.

  
\_\_\_\_\_  
Carolyn J. Peterson  
Legal Asst. to William C. Steffener  
Deputy Prosecuting Attorney