

99-2-13911-4 3241116 TSPR 04-28-03

TERMED MTNDDL
JRYDMD

U.S. District Court
U.S. District Court -- Western Washington (Tacoma)

CIVIL DOCKET FOR CASE #: 00-CV-5332

99-2-13911-4

Kirby, et al v. Tacoma City of, et al
Assigned to: Judge Franklin D. Burgess
Demand: \$0,000
Lead Docket: None
Dkt # in Pierce Co Superior : is 99-2-13911-4
Cause: 42:1983 Civil Rights Act
Filed: 06/06/00
Jury demand: Plaintiff
Referred to: Law Clerk Barbara W Miener
Nature of Suit: 440
Jurisdiction: Federal Question
PIERCE COUNTY CLERK'S OFFICE
A.M. APR 17 2001 P.M.
PIERCE COUNTY, WASHINGTON
TED RUTT COUNTY CLERK
DEPUTY

JOSEPH J KIRBY, husband
plaintiff

John L Messina
FTS FAX
FAX 1-253-475-7886
[COR LD NTC]
MESSINA LAW FIRM
5316 ORCHARD ST W
TACOMA, WA 98467-3633
253-472-6000

DEBORAH A KIRBY, wife
plaintiff

John L Messina
(See above)
[COR LD NTC]

v.

TACOMA CITY OF, a municipal
corporation
defendant

Shelley M Kerslake
FTS FAX
FAX 1-253-591-5755
[COR LD NTC]
TACOMA CITY ATTORNEY'S OFFICE
747 MARKET ST
STE 1120
TACOMA, WA 98402-3767
253-591-5885

RAY CORPUZ
defendant

Shelley M Kerslake
(See above)
[COR LD NTC]

JANE DOE CORPUZ, wife
defendant

Shelley M Kerslake
(See above)
[COR LD NTC]

APR 17 2001
CERTIFIED TRUE COPY
TEST: BRUCE RIFKIN
Clerk, U.S. District Court
Western District of Washington
By [Signature]
Deputy Clerk

Proceedings include all events.

3:00cv5332 Kirby, et al v. Tacoma City of, et al

TERMED

MTNDDL JRYDMD

PHILIP ARREOLA, husband
defendant

Shelley M Kerlake
(See above)
[COR LD NTC]

JANE DOE ARREOLA, wife
defendant

Shelley M Kerlake
(See above)
[COR LD NTC]

WILLIAM WOODARD, husband
defendant

Shelley M Kerlake
(See above)
[COR LD NTC]

CATHERINE WOODARD, wife
defendant

Shelley M Kerlake
(See above)
[COR LD NTC]

RAYMOND ROBERTS, husband
defendant

Shelley M Kerlake
(See above)
[COR LD NTC]

JANE DOE ROBERTS
defendant

Shelley M Kerlake
(See above)
[COR LD NTC]

DAVID BRAME, husband
defendant

Shelley M Kerlake
(See above)
[COR LD NTC]

JANE DOE BRAME, wife
defendant

Shelley M Kerlake
(See above)
[COR LD NTC]

JAMES HAIRSTON, husband
defendant

Shelley M Kerlake
(See above)
[COR LD NTC]

JANE DOE HAIRSTON, wife
defendant

Shelley M Kerlake
(See above)
[COR LD NTC]

Proceedings include all events.

TERMED

3:00cv5332 Kirby, et al v. Tacoma City of, et al

MTNDDL JRYDMD

6/6/00 1 NOTICE of petition for REMOVAL by defendant from Pierce Co Superior Court, Case Number: 99-2-13911-4 Receipt No. 500102 (km)

6/6/00 2 AFFIDAVIT OF SERVICE by defendant of removal petition [1-1], of complaint [1-2] (km)

6/7/00 3 ORDER/NOTICE OF JOINT STATUS REPORT Joint Status Report due 10/6/00 (cc: counsel, Judge) (car)

6/7/00 4 ORDER re: DISCOVERY and DEPOSITIONS by Judge Franklin D. Burgess (cc: counsel, Judge) (car)

6/15/00 5 ANSWER AND AFFIRMATIVE DEFENSES to Amended Complaint [1-2] by defendant Tacoma City of (car) [Entry date 06/19/00]

6/15/00 6 CERTIFICATE of Shelley M. Kerslake (car) [Entry date 06/19/00]

8/16/00 7 DEMAND for JURY TRIAL by plaintiff [REDACTED] (car)

9/19/00 8 JOINT STATUS REPORT filed by all parties. Est. Trial Days: 5-10 (car)

10/16/00 9 TRIAL NOTICE Discovery cutoff 3/12/01 Motion filing deadline 3/30/01 Pretrial order to be submitted by 6/7/01 Pretrial conference set for 2:30 6/15/01 jury trial set for 9:00 7/9/01 Trial briefs to be submitted by 6/7/01 Voir dire/Jury Inst. to be submitted by 6/7/01 39.1 designation effective 3/21/01 (cc:all counsel) (km)

10/25/00 10 JURY INSTRUCTIONS Court's standard cc: Counsel (km)

12/28/00 11 EXPERT WITNESS DISCLOSED by defendant (ec)

12/29/00 12 EXPERT WITNESS DISCLOSED by plaintiff (ec)

1/12/01 13 REBUTTAL WITNESSES DISCLOSED by plaintiff (ec)

1/31/01 14 NOTICE OF UNAVAILABILITY by cnsl for dfts (car) [Entry date 02/01/01]

2/2/01 15 MOTION by dfts for partial summary judgment of P' claim of retaliation under RCW 49.60 NOTED FOR 3/2/01 (car) [Entry date 02/05/01]

2/2/01 16 MEMORANDUM by dfts in support of motion for partial summary judgment of P' claim of retaliation under RCW 49.60 [15-1] (car) [Entry date 02/05/01]

2/2/01 17 AFFIDAVIT of Shelley M. Kerslake in support of motion for partial summary judgment of P' claim of retaliation under RCW 49.60 [15-1] (car) [Entry date 02/05/01]

Proceedings include all events.

TERMED

3:00cv5332 Kirby, et al v. Tacoma City of, et al

MTNDDL JRYDMD

2/2/01 -- LODGED ORDER re: motion for partial summary judgment of P' claim of retaliation under RCW 49.60 [15-1] (car) [Entry date 02/05/01]

2/5/01 -- PROPOSED Stip Mtn for Order to Ext Disc Cutoff Date (car) [Entry date 02/06/01]

2/7/01 18 ORDER by Judge Franklin D. Burgess tha the mtn to ext disc ddl is granted up to 3/30/01. All other ddls in the court's scheduling order shall remain the same. The attn of the parties is particularly called to the disp mtn ddl of 3/30/01 and the mediation ddl of 3/21/01. (cc: counsel, Judge) (car)

2/7/01 19 MOTION by Dfts' for a protective order NOTED FOR 2/23/01 (car)

2/7/01 20 MEMORANDUM by defendants in support of motion for a protective order [19-1] (car)

2/7/01 21 AFFIDAVIT of Shelley M. Kerslake in support of dfts' motion for a protective order [19-1] (car)

2/7/01 -- LODGED ORDER re: motion for a protective order [19-1] (car)

2/8/01 22 MOTION by dfts to continue trial date and adjust scheduling order NOTED FOR 2/23/01 (car)

2/8/01 23 AFFIDAVIT of Shelley M. Kerslake in support of motion to continue trial date and adjust scheduling order [22-1] (car)

2/8/01 -- LODGED ORDER re: motion to continue trial date and adjust scheduling order [22-1] (car)

2/14/01 24 OPPOSITION by Pltfs' to Dfts' motion to continue trial date and adjust scheduling order [22-1] (car) [Entry date 02/15/01]

2/14/01 25 POTENTIAL TRIAL WITNESSES DISCLOSED by plaintiff (car) [Entry date 02/15/01]

2/16/01 26 LETTER by dfts re: STRIKING motion for partial summary judgment of P' claim of retaliation under RCW 49.60 [15-1] (car)

2/16/01 27 RESPONSE by Pltfs to Dfts' motion for a protective order [19-1] (car)

2/16/01 28 DECLARATION of Jeffrey H. Sadler RE: Pltfs' response to Dfts' mtn for protective order [27-1] (car)

2/16/01 -- LODGED ORDER re:DENYING dfts' motion for a protective order [19-1] (car)

Proceedings include all events.

TERMED

3:00cv5332 Kirby, et al v. Tacoma City of, et al

MTNDDL JRYDMD

2/22/01 29 REPLY by dfts to motion to continue trial date and adjust scheduling order [22-1] (car)

2/22/01 30 AFFIDAVIT of Shelley M. Kerslake in support of dfts' reply to mtn to continue trial date and adjust scheduling order [29-1] (car)

2/22/01 31 REPLY by dfts IN SUPPORT of motion for a protective order [19-1] (car)

2/22/01 32 AFFIDAVIT of David Brame in support of Dfts' motion for a protective order [19-1] (car)

2/22/01 33 AFFIDAVIT of William Meeks in support of Dfts' motion for a protective order [19-1] (car)

2/23/01 34 ORDER by Judge Franklin D. Burgess DENYING motion to continue trial date and adjust scheduling order [22-1] and DENYING motion for a protective order [19-1] (cc: counsel, Judge) (car) [Entry date 02/26/01]

2/28/01 35 AMENDMENT by Pltfs to Amended Complaint for Personal Injuries and Damages in Tort (car) [Entry date 03/01/01]

3/1/01 36 MOTION by Pltfs to compel NOTED FOR 3/16/01 (car)

3/1/01 37 DECLARATION of Kenneth Blanford re motion to compel [36-1] (car)

3/1/01 -- LODGED ORDER re: motion to compel [36-1] (car)

3/1/01 38 OBJECTIONS by dfts to Pltfs' expert witness [25-1] (car)

3/1/01 39 AFFIDAVIT OF SERVICE OF DEPOSITION SUBPOENA of David Olsen on 2/28/01 (car)

3/2/01 -- PROPOSED Stip/Order of Dismissal (car) [Entry date 03/05/01]

3/2/01 40 AFFIDAVIT OF SERVICE OF DEPOSITION SUBPOENA of John L. Messina on 3/9/01 (car) [Entry date 03/05/01]

3/5/01 41 STIPULATION and ORDER by Judge Franklin D. Burgess that the court enters an order dismissing Pltfs' claim of race discrimination pursuant to 42 USC Sec 1983, with prejudice. Pltfs' causes of action based on state law claims remain. (cc: counsel, Judge) (car)

3/9/01 42 AFFIDAVIT OF SERVICE OF DEPOSITION SUBPOENA of Gary Wiegand on 3/8/01 (car)

3/12/01 43 NOTICE by defendant of taking depo of Philip Lindsay, M.D. on 3/19/01 (car)

3/12/01 44 REPLY by dfts to Pltfs' motion to compel [36-1] (car)

Proceedings include all events.
3:00cv5332 Kirby, et al v. Tacoma City of, et al

TERMED

MTNDDL JRYDMD

3/12/01 45 AFFIDAVIT of James O. Hairston in support of Dfts' reply to
Pltfs' mtn to compel [44-1] (car)

3/13/01 46 NOTICE by dfts of taking depo of D.P. Van Blaricom on
3/28/01 (car)

3/14/01 47 AFFIDAVIT OF SERVICE OF DEPOSITION SUBPOENA of Charles
Howard on 3/13/01 (car)

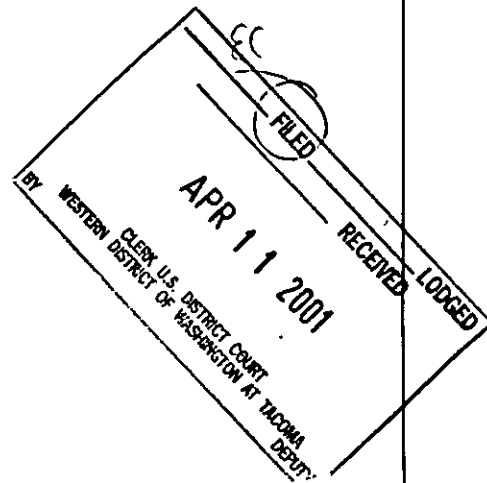
3/14/01 48 ORDER by Judge Franklin D. Burgess that this case is
remanded to Pierce County Superior Court. (cc: counsel,
Judge) (car)

3/15/01 49 JUDGMENT by Judge Franklin D. Burgess that this action is
remanded to Pierce County Superior Court. Case termed.
(cc: counsel, Judge, Jgm. Book) Entered on: 3/15/01 (car)

3/28/01 50 NOTICE by Court Reporter of filing original deposition
transcript of Michael J. Darland with Jeffrey H. Sadler (car)

4/11/01 51 NOTICE of depo of Willaim Woodard taken on 3/15/01 by CR C
Sanderson on file w/Jeffrey Sadler (ec)

IN NOTICE



4 Date: *April 3, 2001*

5 To: Clerk of the Court

6
7

8 Case Name: Kirby vs. City of Tacoma; et al.

9 Venue and No.: C00-5332 FDB

10 Deposition/Date Taken: William R. Woodard, March 15, 2001

11

12 Original deposition filed with Jeffrey H. Sadler.

13

14 Filed with signature. Change sheet attached.

15

16 Filed without signature.

17

18 Signature waived.

19

20 Not signed within 30 days of notice.

21

22 Trial/arb. Date imminent.

23 Cindy Sanderson, RMR, CRR
24 Court Reporter
25 945 Tacoma Avenue South, Suite B
Tacoma, Washington 98402

cc/Counsel

23

24

25

76
51

DEPOSITION NOTICE

<i>MVG</i>	FILED	LODGED
		RECEIVED
MAR 28 2001		
CLERK U.S. DISTRICT COURT WESTERN DISTRICT OF WASHINGTON AT TACOMA		
BY		DEPUTY

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

Date: March 26, 2001

To: Clerk of the Court

Case Name: KIRBY v. THE CITY OF TACOMA

Venue and No.: District Court C00-5332 FDB

Deposition/Date Taken: MICHAEL J. DARLAND, FEBRUARY 7, 2001

Original deposition filed with Jeffrey H. Sadler

Filed with signature. Change sheet attached.

Filed without signature.

Signature waived.

Not signed within 30 days of notice.

Trial/arb. Date imminent.

Cindy Sanderson, RMR, CRR
Court Reporter
945 Tacoma Avenue South, Suite B
Tacoma, Washington 98402

cc/Counsel

NO BENCH COPY PROVIDED

50

ENTERED
ON DOCKET
MAR 15 2001
BY DEPUTY *[Signature]*

United States District Court

WESTERN DISTRICT OF WASHINGTON

FILED	LOGGED
RECEIVED	
MAR 15 2001	
CLERK U.S. DISTRICT COURT WESTERN DISTRICT OF WASHINGTON AT TACOMA	
DEPUTY	

JOSEPH J. KIRBY and
DEBORAH A. KIRBY, husband and wife,

JUDGMENT IN A CIVIL CASE

v.

THE CITY OF TACOMA, et al.,

CASE NUMBER: C00-5332FDB

 Jury Verdict. This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

 XX **Decision by Court.** This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED

This action is remanded to the Pierce County Superior Court.

CERTIFIED TRUE COPY
 ATTEST: BRUCE RIFKIN
 Clerk, U.S. District Court
 Western District of Washington
 By *[Signature]*
 Deputy Clerk

March 15, 2001

BRUCE RIFKIN

Clerk

[Signature]
 By B. Kay McDermott, Deputy Clerk

ENTERED
ON DOCKET

MAR 14 2001

BY DEPUTY CMG

<i>mg</i> FILED	LODGED
RECEIVED	
MAR 14 2001	
CLERK U.S. DISTRICT COURT	
WESTERN DISTRICT OF WASHINGTON AT TACOMA	

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JOSEPH J. KIRBY and DEBORAH A.
KIRBY, husband and wife,

Plaintiff,

v.

THE CITY OF TACOMA, et al,

Defendant.

Case No. C00-5332 FDR

ORDER REMANDING CASE

CERTIFIED TRUE COPY
 ATTEST: BRUCE RIFKIN
 Clerk, U.S. District Court
 Western District of Washington
 Deputy Clerk

This case was removed to federal court on June 6, 2000. The basis for federal jurisdiction was the plaintiff's claim for relief under 42 U.S.C. §1983. On March 5, 2001, the court approved the parties' stipulated order for dismissal of the federal claim. The dismissal of the federal claim destroyed the basis for federal jurisdiction and the court declines to maintain jurisdiction over the remaining state law matters.

THEREFORE IT IS HEREBY ORDERED: this case is remanded to Pierce County Superior Court.

DATED this 14 day of March, 2001.

Franklin D. Burgess

FRANKLIN D. BURGESS
UNITED STATES DISTRICT JUDGE

United States Dis

WESTERN DISTRICT OF

JOSEPH J. KIRBY, et. al.

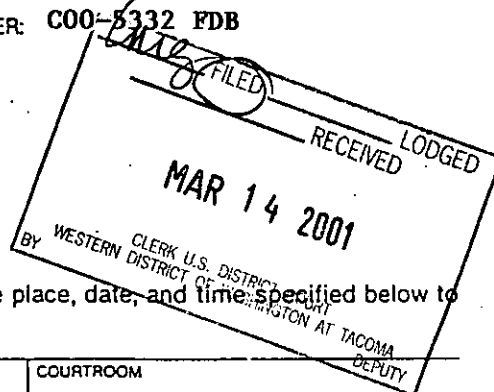
v.

THE CITY OF TACOMA, et. al.

SUBPOENA IN A CIVIL CASE

CASE NUMBER: COO-5332 FDB

TO: CHARLES HOWARD



YOU ARE COMMANDED to appear in the United States District Court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY

COURTROOM

DATE AND TIME

YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION

Messina Bulzomi
55316 Orchard Street West
Tacoma, WA 98467

DATE AND TIME

Monday, March 26, 2001
11:00 a.m.

YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

PLACE

DATE AND TIME

YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES

DATE AND TIME

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b) (6).

ISSUING OFFICER SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)

DATE

Assistant City Attorney, Attorney for Defendants

March 13, 2001

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER

Shelley M. Kerslake, Assistant City Attorney, Tacoma City Attorney's Office,
747 Market Street, Suite 1120, Tacoma, WA 98402, (253) 591-5268

ORIGINAL

Handwritten mark resembling a stylized '4' or 'H'.

PROOF OF SERVICE

SERVED	DATE	PLACE
	March 13, 2001	Messina Bulzomi, 5316 Orchard Street West Tacoma, WA 98467
SERVED ON (PRINT NAME)		MANNER OF SERVICE
Jeffrey Sadler Messina Bulzomi		ABC/Legal Messengers
SERVED BY (PRINT NAME)		TITLE
Jin H. Yi		Legal Assistant

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on March 13, 2001
DATE

Jin H. Yi
SIGNATURE OF SERVER

747 Market Street, Suite 1120
ADDRESS OF SERVER

Tacoma, WA 98402

Rule 45, Federal Rules of Civil Procedure, Parts C & D:

(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

- (i) fails to allow reasonable time for compliance;
- (ii) requires a person who is a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in per-

son, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or

- (iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or
- (iv) subjects a person to undue burden.

(B) If a subpoena

- (i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or
- (ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or
- (iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) DUTIES IN RESPONDING TO SUBPOENA.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

HONORABLE FRANKLIN D. BURGESS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

FILED
MAR 13 2001
BY WESTERN CLERK U.S. DISTRICT COURT TACOMA

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JOSEPH J. KIRBY and DEBORAH A.
KIRBY, husband and wife,

Plaintiffs,

v.

THE CITY OF TACOMA, a municipal corporation; RAY CORPUZ and "JANE DOE" CORPUZ, husband and wife; PHILIP ARREOLA and "JANE DOE" ARREOLA, husband and wife; WILLIAM WOODARD and CATHERINE WOODARD, husband and wife; RAYMOND ROBERTS and "JANE DOE" ROBERTS, husband and wife; DAVID BRAME and "JANE DOE" BRAME, husband and wife; and JAMES HAIRSTON and "JANE DOE" HAIRSTON, husband and wife,

Defendants.

No. C00-5332 FDB

**SUBPOENA DUCES TECUM
TO DEPOSITION UPON
ORAL EXAMINATION OF
D.P. VAN BLARICOM**

TO: D.P. VAN BLARICOM

GREETINGS:

YOU ARE HEREBY COMMANDED to appear as follows:

DATE: March 28, 2001

TIME: 10:30 a.m.

NAL

Tacoma City Attorney
Civil Division
747 Market Street, Room 1120
Tacoma, Washington 98402-3767
(253) 591-5885/FAX 591-5755

46

PLACE: Messina Bulzomi
5316 Orchard Street West
Tacoma, WA 98467

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

You shall then and there testify in the above-entitled cause and remain until discharged.


YOU ARE FURTHER COMMANDED to bring with you at that time and place the following:

- 1. A current copy of your curriculum vitae;
- 2. All documents data or other materials, including drafts, that you have accumulated, reviewed or prepared in connection with forming an opinion in this action, including but not limited to all documents, data or other materials supplied to you by plaintiff or his counsel;
- 3. A copy of your time sheets and billings for professional services rendered to the plaintiff or his counsel in this action;
- 4. Any and all other documentation that relates to the facts of this case that you were provide, reviewed and/or prepared, and upon which you base your opinion in this matter.

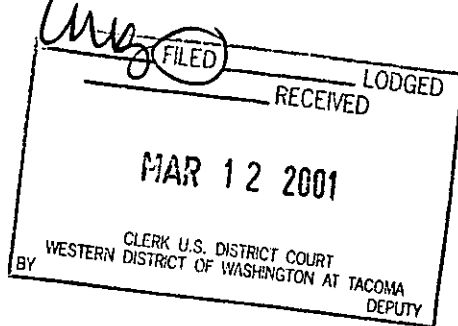
HEREIN FAIL NOT AT YOUR PERIL.

DATED this 11 day of March, 2001.

ROBIN S. JENKINSON, City Attorney
ELIZABETH A. PAULI, Ch. Asst. City Atty.

By: 
SHELLEY M. KERSLAKE
WSBA# 21820
Assistant City Attorney
Of Attorneys for Defendants

HONORABLE FRANKLIN D. BURGESS



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JOSEPH J. KIRBY and DEBORAH A.
KIRBY, husband and wife,

Plaintiffs,

v.

THE CITY OF TACOMA, a municipal
corporation; RAY CORPUZ and "JANE
DOE" CORPUZ, husband and wife; PHILIP
ARREOLA and "JANE DOE" ARREOLA,
husband and wife; WILLIAM WOODARD
and CATHERINE WOODARD, husband and
wife; RAYMOND ROBERTS and "JANE
DOE" ROBERTS, husband and wife; DAVID
BRAME and "JANE DOE" BRAME, husband
and wife; and JAMES HAIRSTON and
"JANE DOE" HAIRSTON, husband and wife,

Defendants.

No. C00-5332 FDB

AFFIDAVIT OF JAMES O.
HAIRSTON IN SUPPORT OF
DEFENDANTS' REPLY TO
MOTION TO COMPEL

NOTE FOR HEARING:
March 16, 2001

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

JAMES O. HAIRSTON, being first duly sworn, under oath, deposes and
states:

||

ORIGINAL

Tacoma City Attorney
Civil Division
747 Market Street, Room 1120
Tacoma, Washington 98402-3767
(253) 591-5885/FAX 591-5755

45

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

That he is the Chief of Police for the Tacoma Police Department, and makes this affidavit based on personal knowledge.

1. That the "pre-hire" files maintained by the Tacoma Police Department are used only for the selection of candidates for entry into the Department.

2. The type of material contained in these files are:

- a) credit reports;
- b) criminal history;
- c) background reference checks;
- d) medical history;
- e) polygraph tests;
- f) medical reports;
- g) psychological assessment; and
- h) application for employment.

3. Once hired, these files are maintained separate and apart from the employee's personnel file.

4. The "pre-hire" files are not used for any purpose once hired. They are not considered in promotions, or disciplinary actions.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

James O. Hairston

 JAMES O. HAIRSTON

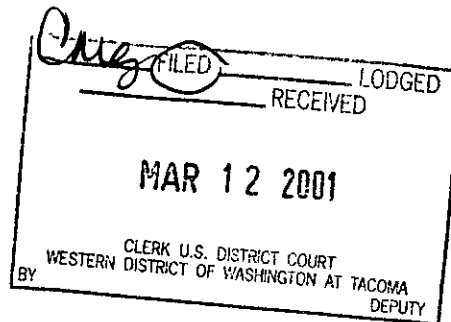
SUBSCRIBED and SWORN to before me this 12th day of March, 2001.



Jeanette L. Blackwell

 Printed Name: *Jeanette L. Blackwell*
 NOTARY PUBLIC in and for the State of
 Washington, residing at Tacoma
 My commission expires: 10/16/01

HONORABLE FRANKLIN D. BURGESS



UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JOSEPH J. KIRBY and DEBORAH A.
KIRBY, husband and wife,

Plaintiffs,

v.

THE CITY OF TACOMA, a municipal
corporation; RAY CORPUZ and "JANE
DOE" CORPUZ, husband and wife; PHILIP
ARREOLA and "JANE DOE" ARREOLA,
husband and wife; WILLIAM WOODARD
and CATHERINE WOODARD, husband and
wife; RAYMOND ROBERTS and "JANE
DOE" ROBERTS, husband and wife; DAVID
BRAME and "JANE DOE" BRAME, husband
and wife; and JAMES HAIRSTON and
"JANE DOE" HAIRSTON, husband and wife,

Defendants.

No. C00-5332 FDB

DEFENDANTS' REPLY TO
MOTION TO COMPEL

NOTE FOR HEARING:
March 16, 2001

FACTUAL BACKGROUND

Plaintiff seeks to compel the production of the pre-hire records of all
Tacoma Police Department lieutenants from 1996-2000. This request
encompasses twenty-six employees. The pre-hire files contain, among other

ORIGINAL

Tacoma City Attorney
Civil Division
747 Market Street, Room 1120
Tacoma, Washington 98402-3767
(253) 591-5885/FAX 591-5755

44

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

1 things, credit reports, polygraph tests, background investigative reports and
2 questionnaires that include personal information, medical history, medical
3 records, report of medical examination, psychological records and criminal
4 history records and non-conviction data. (See Affidavit of James O. Hairston.)

5 This information gathered by the Police Department is used only to determine
6 fitness for the position of patrol officer at the time of hiring. Id. This information
7 is not used by the Police Department once the candidate is hired. Id. It is not
8 used in any disciplinary process, nor is it used in any promotional process. Id.

9 Most of the documents contained in this file have been determined to be
10 confidential by the Washington State Legislature. (See RCW 10.97, holding
11 that non-conviction data cannot be disseminated; RCW 70.02 stating that it is
12 the policy of this state that a patient's interest in the proper use and disclosure
13 of the patient's healthcare information survives even when the information is
14 held by others than healthcare providers.)

15
16 **Plaintiff has failed to demonstrate how the release of non-party,**
17 **confidential pre-hire files is calculated to lead to the discovery of**
18 **admissible evidence.**

19 CR 26(b) states that to be discoverable, the information sought must be
20 relevant, or likely to lead to the discovery of relevant information. That standard
21 has not been met in this case.

22 Plaintiff claims that the documents relating to the hiring of police officers
23 who later became lieutenants are relevant to this case. However, plaintiff has
24

1 no cause of action which relates the hiring practices of the police department,
2 or the hiring of any of these particular lieutenants.¹

3 Plaintiff claims he is entitled to these records because he wants to show
4 that other officers in similar situations were treated with preferential treatment,
5 yet plaintiff has made no showing that these lieutenants are similarly situated
6 in any way to the plaintiff. Plaintiff has not identified any preferential treatment
7 that he is claiming these individuals received. He has demonstrated no nexus
8 between these individuals and his claim. Furthermore, to be calculated to lead
9 to admissible evidence, that preferential treatment would also have to be
10 related to the rank of lieutenant. The only way this request makes sense, is if
11 plaintiff identifies situations of treatment that are unique to lieutenants. For
12 example, if Lt. Kirby claimed that all lieutenants were able to choose their shift,
13 and he was not, the comparison to all other lieutenants might be relevant.
14 Plaintiff has not made such a claim in this case. Moreover, the pre-hire file
15 would contain no information related to this comparison. There is no nexus
16 between these twenty-six people and plaintiff's claims of discrimination. What a
17 lieutenants medical history indicated, or psychological evaluation revealed at
18 the time of hire, is simply not calculated to lead to admissible evidence in
19 plaintiff's claims of discrimination in this case.
20
21

22 Even if the court does believe a comparison to all people who have held
23 the rank of lieutenant is related to plaintiff's claim, the relevant inquiry would not
24

25 ¹ Plaintiff plead a cause of action for negligent hiring of all defendants; however, he has dropped
26 his claim against all but Philip Arreola, Police Chief.

1 be the pre-hire file, but instead the individuals personnel file. The personnel
2 files house performance evaluations, training records, commendations, age
3 records and discipline records. These records are used for the promotional
4 process.

5 In his materials, plaintiff indicates that "prior to bringing this motion,
6 defendant City of Tacoma forced production of Joseph Kirby's pre-hire file from
7 the Police Department." This is not only inaccurate, but has no bearing on this
8 issue. The Tacoma Police Department is the City of Tacoma. In defending
9 itself, the City of Tacoma is allowed to look at any and all of *its* records. Mr.
10 Kirby placed himself, and his employment, at issue when he filed suit.
11 Moreover, he has placed his mental status at issue, and his pre-hire file
12 contains records directly relevant to this issue. He had to understand that *all* of
13 his records would be reviewed. Thus, to use the fact that the City looked at his
14 file as some sort of justification for compelling the disclosure of all police
15 lieutenants' pre-hire files is without merit.

16
17
18 Should the court consider ordering the release of this material, the
19 defendants ask that an in camera review be conducted prior to a final
20 determination, so that the court can see the contents of such files, and
21 determine their discoverability. The defendants also respectfully request that
22 any personal and confidential medical/psychological records be ordered
23 redacted to protect the privacy of non-parties.
24
25
26

Plaintiff's request for sanctions should not be granted.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

The nature of the records requested is highly personal, and contains confidential records. Plaintiff has no cause of action which relates to the hiring of police officers. Plaintiff has not demonstrated any connection, nor any theory upon which this information would lead to admissible evidence. It was reasonable, and justified to object to this request for production. Thus, sanctions pursuant to CR 37 would not be appropriate.


CONCLUSION

The defendants respectfully request that Plaintiff's Motion to Compel be denied, or that an in camera inspection of these records be had prior to a ruling on this motion.

DATED this 12 day of March, 2001.

ROBIN S. JENKINSON, City Attorney
ELIZABETH A. PAULI, Ch. Asst. City Atty.

By:


SHELLEY M. KERSLAKE
WSBA# 21820
Attorney for Defendants

HONORABLE FRANKLIN D. BURGESS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JOSEPH J. KIRBY and DEBORAH A.
KIRBY, husband and wife,

Plaintiffs,

v.

THE CITY OF TACOMA, a municipal
corporation; RAY CORPUZ and "JANE
DOE" CORPUZ, husband and wife; PHILIP
ARREOLA and "JANE DOE" ARREOLA,
husband and wife; WILLIAM WOODARD
and CATHERINE WOODARD, husband and
wife; RAYMOND ROBERTS and "JANE
DOE" ROBERTS, husband and wife; DAVID
BRAME and "JANE DOE" BRAME, husband
and wife; and JAMES HAIRSTON and
"JANE DOE" HAIRSTON, husband and wife,

Defendants.

No. C00-5332 FDB

SUBPOENA DUCES TECUM
TO DEPOSITION UPON
ORAL EXAMINATION OF
PHILIP LINDSAY, M.D.

FILED
MAR 12 2003
RECEIVED
LOGGED
BY COURT CLERK
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
TACOMA, WA

TO: PHILIP LINDSAY, M.D.

GREETINGS:

YOU ARE HEREBY COMMANDED to appear as follows:

DATE: March 19, 2001
TIME: 1:00 p.m.
PLACE: 1101 Madison Street, Suite 1260
Seattle, Washington

Tacoma City Attorney
Civil Division
747 Market Street, Room 1120
Tacoma, Washington 98402-3767
(253) 591-5885/FAX 591-5755

FINAL

43

1 You shall then and there testify in the above-entitled cause and remain
2 until discharged.

3 YOU ARE FURTHER COMMANDED to bring with you at that time and
4 place the following:

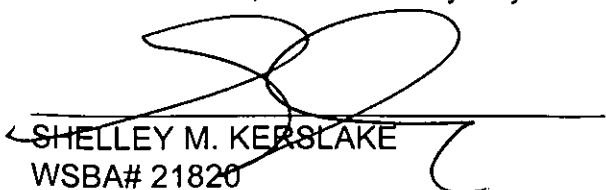
- 5 1. A current copy of your curriculum vitae;
- 6 2. The bibliography of any and all writings that you have submitted
7 for publication to medical journals or learned medical texts;
- 8 3. All documents data or other materials, including drafts, that you
9 have accumulated, reviewed or prepared in connection with
10 forming an opinion in this action, including but not limited to all
11 documents, data or other materials supplied to you by plaintiff or
12 his counsel;
- 13 4. A copy of your time sheets and billings for professional services
14 rendered to the plaintiff or his counsel in this action;
- 15 5. Any and all other documentation that relates to the facts of this
16 case that you were provide, reviewed and/or prepared, and upon
17 which you base your opinion in this matter; and
- 18 6. Any and all medical records of Joseph J. Kirby including, but not
19 limited to: chart notes, reports, x-rays and other radiological or
20 diagnostic test results, notes, correspondence, laboratory reports,
21 and any and all other information in your files regarding this
22 patient.

23 **HEREIN FAIL NOT AT YOUR PERIL.**

24 DATED this 11 day of March, 2001.

25 ROBIN S. JENKINSON, City Attorney
26 ELIZABETH A. PAULI, Ch. Asst. City Atty.

By:


SHELLEY M. KERSLAKE
WSBA# 21820
Assistant City Attorney
Of Attorneys for Defendants

COO-5332700

SERVICE	
SERVED	DATE: March 8, 2001 PLACE: Messina Bulzomi, 5316 Orchard Street West Tacoma, WA 98467
SERVED ON (PRINT NAME) Messina Bulzomi	MANNER OF SERVICE: ABC/LMI TITLE: Legal Assistant
SERVED BY (PRINT NAME) Jin H. Yi	TITLE: Legal Assistant
DECLARATION OF SERVER BY <u>WESTERN DISTRICT OF WASHINGTON AT TACOMA DEPUTY CLERK U.S. DISTRICT COURT</u>	

FILED
 RECEIVED
 MAR 09 2001
 LODGED
 TITLES

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on March 8, 2001
DATE

Jin Yi
SIGNATURE OF SERVER

747 Market Street, Suite 1120
ADDRESS OF SERVER

Tacoma, WA 98402

Rule 45, Federal Rules of Civil Procedure, Parts C & D:

(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

- (i) fails to allow reasonable time for compliance;
- (ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in per-

son, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or

- (iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or
- (iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) DUTIES IN RESPONDING TO SUBPOENA.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

United States District Court

WESTERN

DISTRICT OF WASHINGTON AT TACOMA

JOSEPH J. KIRBY, ET. AL.

V.

THE CITY OF TACOMA, ET. AL.

SUBPOENA IN A CIVIL CASE

CASE NUMBER: C00-5332 FDB

TO: GARY WIEGAND

YOU ARE COMMANDED to appear in the United States District Court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME

YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION Messina Bulzomi 5316 Orchard Street West Tacoma, WA 98467	DATE AND TIME Monday, March 26, 2001 10:00 a.m.
--	---

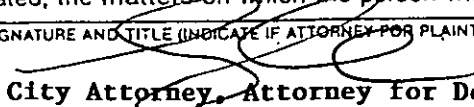
YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

PLACE	DATE AND TIME
-------	---------------

YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME
----------	---------------

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b) (6).

ISSUING OFFICER SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)  Assistant City Attorney, Attorney for Defendants	DATE March 8, 2001
--	-----------------------

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER Shelley M. Kerslake, Assistant City Attorney, Tacoma City Attorney's Office 747 Market Street, Suite 112 Tacoma, WA 98402, (253) 591-5800
--

ORIGINAL

ENTERED
ON DOCKET

MAR 05 2001

HONORABLE FRANKLIN D. BURGESS
BY DEPUTY *Chry*

RECEIVED

MAR 02 2001 *v/A
4:02
1:45*

TACOMA CITY ATTORNEY
CIVIL DIVISION

Chry FILED _____ LODGED _____
RECEIVED
MAR 05 2001
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT TACOMA
BY _____ DEPUTY

FILED _____ LODGED _____
RECEIVED
MAR 02 2001
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT TACOMA
BY _____ DEPUTY

5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JOSEPH J. KIRBY and DEBORAH A.
KIRBY, husband and wife,

No. C00-5332 FDB

Plaintiffs,

STIPULATION AND ORDER
OF DISMISSAL

v.

THE CITY OF TACOMA, a municipal
corporation; RAY CORPUZ and "JANE
DOE" CORPUZ, husband and wife; PHILIP
ARREOLA and "JANE DOE" ARREOLA,
husband and wife; WILLIAM WOODARD
and CATHERINE WOODARD, husband and
wife; RAYMOND ROBERTS and "JANE
DOE" ROBERTS, husband and wife; DAVID
BRAME and "JANE DOE" BRAME, husband
and wife; and JAMES HAIRSTON and
"JANE DOE" HAIRSTON, husband and wife,

Defendants.

STIPULATION


COMES NOW the defendants by and through their attorney, Shelley M.
Kerslake, and the plaintiff, by and through his attorney, John L. Messina, and
stipulate that an order dismissing plaintiff's claim of race discrimination pursuant
to 42 U.S.C. § 1983 be entered by the court in this matter.


ORIGINAL

41

MESSINA BULZOMI

ROBIN S. JENKINSON, City Attorney
ELIZABETH A. PAULI, Ch. Asst. City Atty.

By: 
JOHN L. MESSINA
WSBA# 4440
Attorney for Plaintiffs

By: 
SHELLEY M. KERSLAKE
WSBA# 21820
Attorney for Defendants

ORDER

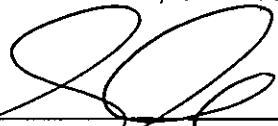
Based upon the foregoing stipulation, the court hereby enters an order dismissing plaintiff's claim of race discrimination pursuant to 42 U.S.C. § 1983, with prejudice. Plaintiff's causes of action based on state law remain.

DATED this 5 day of March, 2001.


HONORABLE FRANKLIN D. BURGESS


Presented by:

ROBIN S. JENKINSON, City Attorney
ELIZABETH A. PAULI, Ch. Asst. City Atty.

By: 
SHELLEY M. KERSLAKE
WSBA# 21820
Attorney for Defendants

Approved as to form; Notice of Presentment Waived:

MESSINA BULZOMI

By: 
JOHN L. MESSINA
WSBA# 4440
Attorney for Plaintiff

car

United States District Court
for the
Western District of Washington
March 5, 2001

* * MAILING CERTIFICATE OF CLERK * *

Re: 3:00-cv-05332

True and correct copies of the attached were mailed by the clerk to the following:

John L Messina, Esq.
MESSINA LAW FIRM
5316 ORCHARD ST W
TACOMA, WA 98467-3633
FAX 1-253-475-7886

Shelley M Kerlake, Esq.
TACOMA CITY ATTORNEY'S OFFICE
STE 1120
747 MARKET ST
TACOMA, WA 98402-3767
FAX 1-253-591-5755

Judge Burgess

t Court

WESTERN DISTRICT OF WASHINGTON AT TACOMA

JOSEPH J. KIRBY, ET. AL.

v.

THE CITY OF TACOMA, ET. AL.

SUBPOENA IN A CIVIL CASE

FILED	LODGED
RECEIVED	
MAR 02 2001	
CLERK U.S. DISTRICT COURT WESTERN DISTRICT OF WASHINGTON AT TACOMA DEPUTY	
BY	

CASE NUMBER: C00-5332 FDB

TO:

YOU ARE COMMANDED to appear in the United States District Court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME

YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION Messina Bulzomi 5316 Orchard Street West Tacoma, WA 98467	DATE AND TIME Friday, March 9, 2001 1:30 p.m.
---	---

YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

PLACE	DATE AND TIME
-------	---------------

YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME
----------	---------------

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b) (6).

ISSUING OFFICER SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT) Assistant City Attorney, Attorney for Defendants	DATE March 2, 2001
--	------------------------------

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER Shelley M. Kerslake, City Attorney's Office, 747 Market Street, #1120, Tacoma, WA 98402 (253) 591-5885

ORIGINAL 40

PROOF OF SERVICE

SERVED	DATE	PLACE
	March 2, 2001	5316 Orchard Street West, Tacoma, WA 98467
SERVED ON (PRINT NAME) John L. Messina		MANNER OF SERVICE ABC/LMI
SERVED BY (PRINT NAME) Jin H. Yi		TITLE Legal Assistant

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on March 2, 2001
DATE

Jin H. Yi
SIGNATURE OF SERVER

747 Market Street, Suite 1120
ADDRESS OF SERVER

Tacoma, WA 98402

Rule 45, Federal Rules of Civil Procedure, Parts C & D:

(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

- (i) fails to allow reasonable time for compliance;
- (ii) requires a person who is a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in per-

son, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or

- (iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or
- (iv) subjects a person to undue burden.

(B) If a subpoena

- (i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or
- (ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or
- (iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) DUTIES IN RESPONDING TO SUBPOENA.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

006-5332FDR

PROOF OF SERVICE

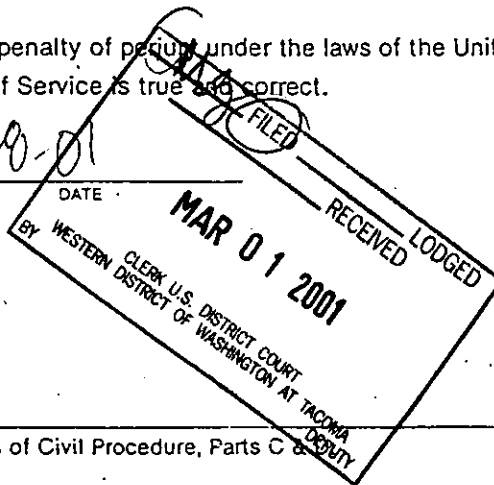
SERVED	DATE	PLACE
	February 28, 2001	5316 Orchard Street West Tacoma, WA 98467
SERVED ON (PRINT NAME)		MANNER OF SERVICE
John L. Messina, Attorney for Plaintiff		ABC/LMI
SERVED BY (PRINT NAME)		TITLE
Jin Yi		Legal Assistant

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on 2-28-01

Jin Yi
SIGNATURE OF SERVER



747 Market St., #1120, Tacoma, WA 98408
ADDRESS OF SERVER

Rule 45, Federal Rules of Civil Procedure, Parts C & D

(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

- (i) fails to allow reasonable time for compliance;
- (ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in per-

son, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or

- (iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or
- (iv) subjects a person to undue burden.

(B) If a subpoena

- (i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or
- (ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) DUTIES IN RESPONDING TO SUBPOENA.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a particularization of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

MA

United States District Court

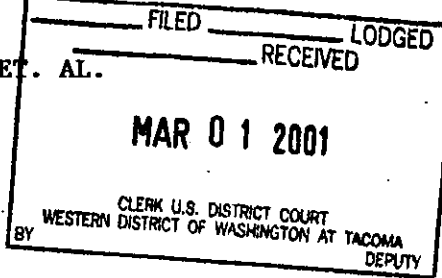
WESTERN DISTRICT OF WASHINGTON AT TACOMA

JOSEPH J. KIRBY, ET. AL.

SUBPOENA IN A CIVIL CASE

THE CITY OF TACOMA, ET. AL.

CASE NUMBER: C00-5332 FDB



TO: DAVID OLSEN

YOU ARE COMMANDED to appear in the United States District Court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME

YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION Messina Bulzoni 5316 Orchard Street West Tacoma, WA 98467	DATE AND TIME Thursday, March 8, 2001 1:30 p.m.
--	---

YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

PLACE	DATE AND TIME
-------	---------------

YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME
----------	---------------

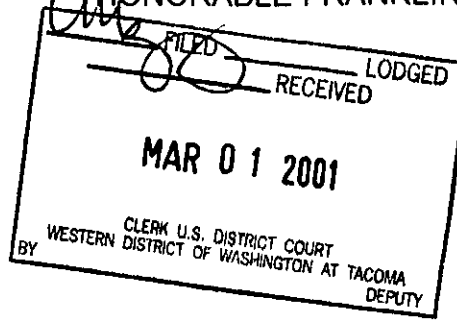
Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b) (6).

ISSUING OFFICER SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT) <i>Shelley M. Kerslake for CWB 27084</i> Shelley M. Kerslake, Asst. City Atty, Atty for Defs.	DATE February 28, 2001
---	---------------------------

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER
Shelley M. Kerslake, 747 Market Street, Suite 1120, Tacoma, WA 98402, (253) 591-5885

ORIGINAL

HONORABLE FRANKLIN D. BURGESS



UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JOSEPH J. KIRBY and DEBORAH A.
KIRBY, husband and wife,

Plaintiffs,

v.

THE CITY OF TACOMA, a municipal
corporation; RAY CORPUZ and "JANE
DOE" CORPUZ, husband and wife; PHILIP
ARREOLA and "JANE DOE" ARREOLA,
husband and wife; WILLIAM WOODARD
and CATHERINE WOODARD, husband and
wife; RAYMOND ROBERTS and "JANE
DOE" ROBERTS, husband and wife; DAVID
BRAME and "JANE DOE" BRAME, husband
and wife; and JAMES HAIRSTON and
"JANE DOE" HAIRSTON, husband and wife,

Defendants.

No. C00-5332 FDB

DEFENDANTS' OBJECTION TO
PLAINTIFFS' EXPERT

COME NOW the defendants by and through their undersigned attorneys,
and file this objection to one of the opposition's experts. Pursuant to the
Court's Minute Order Scheduling Jury Trial and Pretrial Dates entered October
16, 2000, and FRCP 26, defendants object to the plaintiff's expert, D. P. Van
Blaricom, based on Federal Rules of Evidence 704(a), 702 and 802.

ORIGINAL


Tacoma City Attorney
Civil Division
747 Market Street, Room 1120
Tacoma, Washington 98402-3767
(253) 591-5885/FAX 591-5755

30

Defendants reserve the right to add additional objections once the expert's deposition is completed.

Respectfully submitted this 1 day of March, 2001.

ROBIN S. JENKINSON, City Attorney
ELIZABETH A. PAULI, Ch. Asst. City Atty.

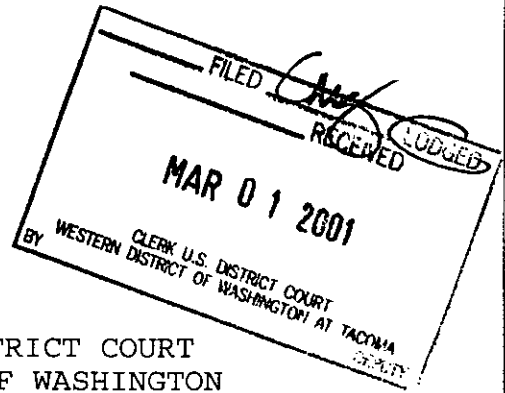
BY: 
SHELLEY M. KERSLAKE
WSB #21820
Assistant City Attorney
Attorney for Defendants

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

ORIGINAL

HON. FRANKLIN D. BURGESS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25



IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

JOSEPH J. KIRBY and DEBORAH A.)
KIRBY, husband and wife,)
)
Plaintiffs,)

No. C00-5332FDB

vs.)

ORDER GRANTING PLAINTIFFS'
MOTION TO COMPEL

THE CITY OF TACOMA, a municipal)
corporation; RAY CORPUZ and)
"JANE DOE" CORPUZ, husband and)
wife; PHILIP ARREOLA and "JANE)
DOE" ARREOLA, husband and)
wife; WILLIAM WOODARD and)
CATHERINE WOODARD, husband and)
wife; RAYMOND ROBERTS and "JANE)
DOE" ROBERTS, husband and wife;)
DAVID BRAME and "JANE DOE")
BRAME, husband and wife; and)
JAMES HAIRSTON and "JANE DOE")
HAIRSTON, husband and wife,)
)
Defendants.)

THIS MATTER having come before the undersigned Judge of
the above-entitled Court upon Plaintiffs' Motion to Compel, and

MESSINA • BULZOMI
5316 Orchard St. W.
Tacoma, WA 98467-3633
(253) 472-6000

1 the Court having reviewed the following pleadings submitted in
2 support of and in opposition to said motion:

- 3 1. Plaintiffs' Motion to Compel;
- 4 2. Declaration of Jeffrey H. Sadler;
- 5 3. Declaration of Kenneth Blanford;
- 6 4. _____
7 _____;
- 8 5. _____
9 _____;
- 10 6. _____
11 _____;
- 12 7. _____
13 _____;
- 14 8. _____
15 _____;

16 And the Court having heard argument of counsel, and being
17 in all things duly advised, it is now, therefore,

18 ORDERED, ADJUDGED AND DECREED that Plaintiffs' Motion to
19 Compel responses to Plaintiffs' Request for Production dated
20 2/6/01 is hereby GRANTED. It is further

21 ORDERED, ADJUDGED AND DECREED that plaintiffs are awarded
22
23
24
25

MESSINA • BULZOMI
5316 Orchard St. W.
Tacoma, WA 98467-3633
(253) 472-6000

1 sanctions from defendants in the sum of \$ _____.

2 DONE IN OPEN COURT this ___ day of _____ 2001.

3

4

5


HON. FRANKLIN D. BURGESS, JUDGE

6

Presented by:
MESSINA BULZOMI

7

8

By 
JEFFREY H. SADLER 27136

9

Attorney for Plaintiffs

10

Copy received; notice of
presentation waived:

11

12

SHELLEY M. KERSLAKE # _____
Attorney for Defendants

13

14

15

16

17

18

19

20

21

22

23

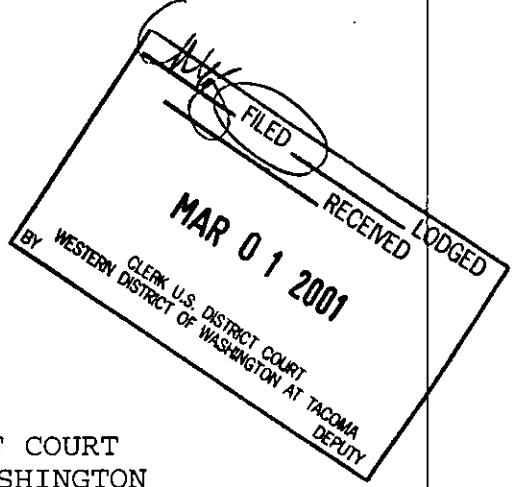
24

25

MESSINA • BULZOMI

5316 Orchard St. W.
Tacoma, WA 98467-3633
(253) 472-6000

HON. FRANKLIN D. BURGESS



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

JOSEPH J. KIRBY and DEBORAH A.)
KIRBY, husband and wife,)
)
Plaintiffs,)
)
vs.)
)
THE CITY OF TACOMA, a municipal)
corporation; RAY CORPUZ and)
"JANE DOE" CORPUZ, husband and)
wife; PHILIP ARREOLA and "JANE)
DOE" ARREOLA, husband and)
wife; WILLIAM WOODARD and)
CATHERINE WOODARD, husband and)
wife; RAYMOND ROBERTS and "JANE)
DOE" ROBERTS, husband and wife;)
DAVID BRAME and "JANE DOE")
BRAME, husband and wife; and)
JAMES HAIRSTON and "JANE DOE")
HAIRSTON, husband and wife,)
)
Defendants.)
_____)

No. C00-5332FDB

DECLARATION OF KENNETH
BLANFORD

Kenneth Blanford declares as follows:

37

1 I am over the age of 18 and competent to testify as to
2 the matters contained herein. I make this declaration based
3 upon my personal knowledge.

4 On February 6, 2001, Plaintiffs requested pursuant to
5 FRCP 34 a copy of the following for each lieutenant with the
6 Tacoma Police Department between 1996 and 2000:

7 All pre-hiring documents in possession of the
8 City of Tacoma, including but not limited to
9 questionnaires, applications for employment, pre-
10 employment evaluations, polygraph results,
11 medical and psychological record and documenta-
12 tion of all pre-employment background checks.

13 On February 9, 2001, Defendant objected stating that
14 this request for production was overly broad, unduly burden-
15 some, and not calculated to lead to admissible evidence.

16 On February 21, 2000, I called defendant's attorney
17 Ms. Kerslake in an attempt to secure the disclosure without
18 resorting to court action. I explained the plaintiffs needed
19 the material to be able to compare the harassment suffered by
20 Plaintiff Kirby to officers in equivalent positions. After
21 discussing this matter, Ms. Kerslake stated that she would
22 inform the defendants of the reasons for our requests and
23 call Plaintiffs' attorney on 2/22/2001.


24 Attached hereto and incorporated herein as Exhibit A is
25 a true and correct copy of the February 26, 2001 letter from
Ms. Kerslake.

MESSINA • BULZOMI

5316 Orchard St. W.
Tacoma, WA 98467-3633
(253) 472-6000

1 I certify under penalty of perjury under the laws of
 2 the State of Washington that the foregoing is true and
 3 correct.

4 DATED this 27 day of February 2001, at
 5 Tacoma, Washington.


6 
 7 _____
 8 KENNETH BLANFORD

9
 10 CERTIFICATE OF SERVICE

11 I, VICKIE A. LO FRANCO, certify that on this day I
 12 caused to be served by ABC Legal Messenger copies of the
 13 document to which this certificate is attached on counsel of
 14 record as follows:

15 Shelley M. Kerslake
 16 Tacoma City Attorney
 17 Civil Division
 18 747 Market St., Rm. 1120
 19 Tacoma, WA 98402-3767

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

22 
 23 _____
 24 VICKIE A. LO FRANCO
 25 Legal Assistant

26 2/27, 2001
 27 Tacoma, Washington

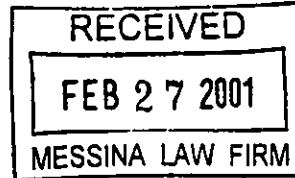
MESSINA • BULZOMI

5316 Orchard St. W.
 Tacoma, WA 98467-3633
 (253) 472-6000



City of Tacoma
Office of the City Attorney

EXHIBIT# A



February 26, 2001

Jeffrey H. Sadler
Attorney at Law
5316 Orchard Street West
Tacoma, WA 98467

FAX: (253) 475-7886

Re: Kirby, et. al. v. City of Tacoma, et. al.
Pierce County Superior Court Cause No. 99-2-13911-4

Dear Mr. Sadler:

After speaking with your law clerk on February 22, 2001, pursuant to our CR 37 conference, I am not convinced that the pre-hire files of all lieutenants from 1996-2000 are relevant or calculated to lead to admissible evidence to any cause of action your client has before the court. Thus, my clients' objection stands.

Very truly yours,


SHELLEY M. KERSLAKE
Assistant City Attorney

SMK/jhy

cc: Clients

f:\emps\smk\99-059\Sadler-ltr23.doc

HON. FRANKLIN D. BURGESS

CALL FILED
RECEIVED
LOGGED
MAR 01 2001
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT TACOMA
DEPUTY

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

JOSEPH J. KIRBY and DEBORAH A.)
KIRBY, husband and wife,)
)
Plaintiffs,)
)
vs.)
)
THE CITY OF TACOMA, a municipal)
corporation; RAY CORPUZ and)
"JANE DOE" CORPUZ, husband and)
wife; PHILIP ARREOLA and "JANE)
DOE" ARREOLA, husband and)
wife; WILLIAM WOODARD and)
CATHERINE WOODARD, husband and)
wife; RAYMOND ROBERTS and "JANE)
DOE" ROBERTS, husband and wife;)
DAVID BRAME and "JANE DOE")
BRAME, husband and wife; and)
JAMES HAIRSTON and "JANE DOE")
HAIRSTON, husband and wife,)
)
Defendants.)
)

No. C00-5332FDB

PLAINTIFFS' MOTION TO
COMPEL

I. RELIEF REQUESTED

Plaintiffs respectfully request that this Court grant
their motion to compel responses to Plaintiffs' Request for
Production propounded pursuant to FRCP 34 to defendant the

36

1 City of Tacoma in addition to their motion for sanctions,
2 pursuant to FRCP 37(a).

3 II. STATEMENT OF FACTS

4 JEFFREY H. SADLER declares as follows:

5 I am one of the attorneys for plaintiffs in the above
6 matter and make the following statements based upon my personal
7 knowledge. I am over the age of 18 and competent to testify as
8 to the matters contained herein.

9 On August 30, 1999, Plaintiff Kirby filed a claim for
10 damages against the City of Tacoma. Said claim has neither
11 been admitted nor denied.

12 On December 20, 1999, Plaintiff Kirby filed a complaint
13 against the City of Tacoma and specific members of the Tacoma
14 Police Department. Plaintiff Kirby alleged that he was
15 subjected to continued harassment and discrimination, including
16 discriminatory remarks, offensive language, disparate
17 treatment, adverse employment decisions and unjustified
18 disciplinary actions. This harassment and discrimination were
19 targeted at the plaintiff because of his age, known disability
20 and participation in union activities. Plaintiff Kirby also
21 claimed that he was retaliated against for exercising his
22 rights under RCW 49.60, and that defendant The City of Tacoma
23 was negligent in the hiring, retention and supervision of the
24 other defendants.

25

MESSINA • BULZOMI

5316 Orchard St. W.
Tacoma, WA 98467-3633
(253) 472-6000

1 On May 22, 2000, Plaintiff filed an amended complaint,
2 alleging that his rights were violated under 42 U.S.C. §1983.

3 On February 6, 2001, Plaintiffs requested pursuant to
4 FRCP 34 a copy of the following for each lieutenant with the
5 Tacoma Police Department between 1996 and 2000:

6 All pre-hiring documents in possession of the City
7 of Tacoma, including but not limited to question-
8 naires, applications for employment, pre-employ-
9 ment evaluations, polygraph results, medical and
psychological record and documentation of all pre-
employment background checks.

10 On February 9, 2001, Defendant objected stating that this
11 request for production was overly broad, unduly burdensome, and
12 not calculated to lead to admissible evidence.

13 On February 21, 2001, attorney Kenneth Blanford, as Law
14 Clerk for Messina Bulzomi, had a telephone conference with Ms.
15 Kerslake, the attorney for the City of Tacoma, in an attempt to
16 secure the disclosure without resorting to court action. Ms.
17 Kerslake indicated that she would contact her clients and would
18 contact plaintiffs' attorney. See, Declaration of Kenneth
19 Blanford.

20 On February 26, 2001, Defendants indicated that they
21 would not turn over the requested records without a court
22 order. Prior to bringing this motion, defendant City of Tacoma
23 forced production of Joe Kirby's pre-hiring file from the police
24 department. Now the City takes the position that the other
25

MESSINA • BULZOMI

5316 Orchard St. W.
Tacoma, WA 98467-3633
(253) 472-6000

1 files for the named defendants and other lieutenants and
 2 captains are not relevant. See Exhibit A.

3 The Discovery Cutoff in this case was originally set for
 4 March 30, 2001.

5 I certify under penalty of perjury under the laws of the
 6 State of Washington that the foregoing is true and correct.

7 DATED this 27th day of February 2001, at
 8 Tacoma, Washington.

9
 10 
 11 JEFFREY H. SADLER 27136

12 III. STATEMENT OF ISSUES

13 A. Should the Court compel production of essential
 14 evidence only in the possession of the defendant?

15 B. Should the Court impose sanctions upon defense
 16 counsel and/or defendants for making it necessary to bring this
 17 motion?

18 IV. EVIDENCE RELIED UPON

19 Declaration of Jeffrey H. Sadler, hereinabove.

20 Declaration of Kenneth Blanford.

21 V. AUTHORITY

22 The Request for Production which plaintiffs now seek to
 23 have compelled were propounded pursuant to Rules 26 and 34 of
 24 the Federal Rules of Civil Procedure.

25 Applicable portions of FRCP 26 read as follows:

MESSINA • BULZOMI

5316 Orchard St. W.
 Tacoma, WA 98467-3633
 (253) 472-6000

1 FRCP 26. GENERAL PROVISIONS GOVERNING DISCOVERY.

2 (a) Required Disclosures; Methods to Discover
3 Additional Matter

4 (1) Methods of Discovery. In addition
5 to the disclosures required under sub-
6 sections (2) and (3), parties may obtain
7 discovery by one or more of the follow-
8 ing methods: depositions upon oral
9 examination or written questions;
10 written interrogatories; production of
11 documents or things or permission to
12 enter upon land or other property under
13 rule 34 or 45(a)(1)(C), for inspection
14 and other purposes; physical and mental
15 examination; and requests fro admission.

16 (b) **Discovery Scope and Limits.** Unless other-
17 wise limited by order of the court in accordance
18 with these rules, the scope of discovery is as
19 follows:

20 (1) **In General.** Parties may obtain dis-
21 covery regarding any matter, not priv-
22 ileged, which is relevant to the subject
23 matter involved in the pending action,
24 whether it relates to the claim or
25 defense of the party seeking discovery
or to the claim or defense of any other
party, including the existence, descrip-
tion, nature, custody, condition and
location of any books, documents, or
other tangible things and the identity
and location of persons having knowledge
of any discoverable matter. *The infor-
mation sought need not be admissible at
the trial if the information sought
appears reasonably calculated to lead to
the discovery of admissible evidence.*
(Emphasis added).

26 CR 34. PRODUCTION OF DOCUMENTS AND THINGS AND
27 ENTRY UPON LAND FOR INSPECTION AND OTHER PURPOSES.

28 (a) **Scope.** Any party may serve on any other
29 party a request (1) to produce and permit the
30 party making the request, or someone acting on the
31 requestor's behalf, to inspect and copy, any
32 designated documents (including writings, draw-

1 | ings, graphs, charts, photographs, phono records,
2 | and other data compilations from which information
3 | can be obtained, translated, if necessary, by the
4 | respondent through detection devices into reason-
5 | ably usable form), or to inspect and copy, test,
6 | or sample any tangible things which constitute or
7 | contain matters within the scope of Rule 26(b) and
8 | which are in the possession, custody or control of
9 | the party upon whom the request is served...

10 | These rules form the foundation for plaintiffs' motion to
11 | compel production. Defendant objected to Plaintiffs' request
12 | for production on February 9, 2000, stating that the request
13 | was overly broad, unduly burdensome and not calculated to lead
14 | to admissible evidence. Declaration of Jeffrey Sadler. On
15 | February 21, 2000, Plaintiffs made a good faith effort to
16 | obtain these materials without resorting to a court order.
17 | Declaration of Kenneth Blanford.

18 | It is a well-known and frequently stated principle,
19 | embodied in numerous written decisions, that the rules
20 | pertaining to discovery are to be *liberally construed*. See,
21 | *Hickman v. Taylor*, 329 U.S. 495 (1947). Many cases have
22 | addressed questions underlying the basic concepts and purposes
23 | of the discovery rules.

24 | An example of a perspective of the scope and application
25 | of these rules is stated in *Hickman v. Taylor*, 329 U.S.
26 | 495(1947). The court stated at page 501:

27 | The pre-trial deposition-discovery mechanism
28 | established by Rules 26 to 37 is one of the most
29 | significant innovations of the Federal Rules of
30 | Civil Procedure. Under the prior federal practice,
31 | the pre-trial functions of notice-giving, issue-

MESSINA • BULZOMI

5316 Orchard St. W.
Tacoma, WA 98467-3633
(253) 472-6000

1 formulation and fact-revelation were performed
2 primarily and inadequately by the pleadings.
3 Inquiry into the issues and the facts before trial
4 was narrowly confined and was often cumbersome in
5 method. The new rules, however, restrict the
6 pleadings to the task of general notice-giving and
7 invest the deposition-discovery process with a
8 vital role in the preparation for trial... The way
9 is now clear, consistent with recognized privi-
10 leges, for the parties to obtain the fullest
11 possible knowledge of the issues and facts before
12 trial.

13 The court in *Hickman* recognized the importance of the
14 discovery processing stating:

15 Mutual knowledge of all of the relevant facts
16 gathered by both parties is essential to proper
17 litigation. *Hickman v. Tayler, supra*, at 507.

18 Certainly, the documents relating to the hiring of police
19 officers are relevant to this case. At the least the documents
20 are calculated to lead to admissible evidence. This case is a
21 complex harassment case. Plaintiffs have requested records
22 relating to other officers on the force. The only way for
23 Plaintiffs to show harassment is to show other officers in
24 similar situations were treated with preferential treatment.
25 The defendants are the only ones with access to these
materials. The disclosure of these materials will not be
unduly burdensome as the material has already been compiled by
the city in its evaluation of the officers. Further, the
request is not overbroad. The plaintiffs did not request the
hiring record of every officer on the police report, only those
officers who were in a similar situation or position to the
plaintiff.

MESSINA • BULZOMI

5316 Orchard St. W.
Tacoma, WA 98467-3633
(253) 472-6000

1 Clearly, plaintiffs are entitled to the requested
2 material, especially since the discovery cutoff in this case is
3 fast approaching. Without these answers, plaintiffs will not
4 be able to continue with further discovery before the deadline
5 and ask that this Court grant their motion.

6 **B. Plaintiff is Entitled to Sanctions.**

7 Additionally, plaintiffs request the imposition of terms
8 against defense counsel and/or defendants in the amount of \$750
9 for having to bring this motion. Plaintiffs' request for terms
10 is made pursuant to FRCP 37(a), which states in pertinent part
11 as follows:

12 (2) (A) If a party fails to make a disclosure
13 required by Rule 26(a), any other party may move
14 to compel disclosure and for appropriate sanc-
15 tions. The motion must include a certification
16 that the movant has in good faith conferred or
17 attempted to confer with the party not making the
18 disclosure in an effort to secure the disclosure
19 without court action.

20 (4) (A) *Expenses and Sanctions.* If the motion is
21 granted or if the disclosure or requested discov-
22 ery is provided after the motion was filed, the
23 court shall, after affording opportunity to be
24 heard, require the party or deponent whose conduct
25 necessitated the motion or the party or attorney
advising such conduct or both of them to pay to
the moving party the reasonable expenses incurred
in making the motion, including attorney's fees,
unless the court finds that the motion was filed
with out the movant's first making a good faith
effort to obtain the disclosure or discovery
without court action, or that the opposing party's
nondisclosure, response or objection was substan-
tially justified, or that other circumstances make
an award of expenses unjust.

24 The above rules give this Court the power to award
25 plaintiffs reasonable costs and fees incurred for the

MESSINA • BULZOMI

5316 Orchard St. W.
Tacoma, WA 98467-3633
(253) 472-6000


1 inconvenience of having to bring this motion, especially since
2 defendants' objection lacks merit.

3 **VI. CONCLUSION**

4 In light of the above, plaintiffs would respectfully
5 request and urge this Court to enter an order compelling
6 production of the documents request by the plaintiffs as well
7 as sanctions in the amount of \$750.

8
9 DATED this 27th day of February 2001.

10 MESSINA BULZOMI


11
12 By 
13 JEFFREY H. SADLER 27136
Attorneys for Plaintiffs

14 **CERTIFICATE OF SERVICE**

15 I, VICKIE A. LO FRANCO, certify that on this day I caused
16 to be served by ABC Legal Messenger copies of the document to
17 which this certificate is attached on counsel of record as
18 follows:

17 Shelley M. Kerslake
18 Tacoma City Attorney
Civil Division
19 747 Market St., Rm. 1120
Tacoma, WA 98402-3767

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

22 
VICKIE A. LO FRANCO
23 Legal Assistant

24 2/27, 2001
Tacoma, Washington

25 **MESSINA • BULZOMI**

5316 Orchard St. W.
Tacoma, WA 98467-3633
(253) 472-6000



City of Tacoma
Office of the City Attorney

EXHIBIT#

A

RECEIVED
FEB 27 2001
MESSINA LAW FIRM

February 26, 2001

FAX: (253) 475-7886

Jeffrey H. Sadler
Attorney at Law
5316 Orchard Street West
Tacoma, WA 98467

Re: Kirby, et. al. v. City of Tacoma, et. al.
Pierce County Superior Court Cause No. 99-2-13911-4

Dear Mr. Sadler:

After speaking with your law clerk on February 22, 2001, pursuant to our CR 37 conference, I am not convinced that the pre-hire files of all lieutenants from 1996-2000 are relevant or calculated to lead to admissible evidence to any cause of action your client has before the court. Thus, my clients' objection stands.

Very truly yours,

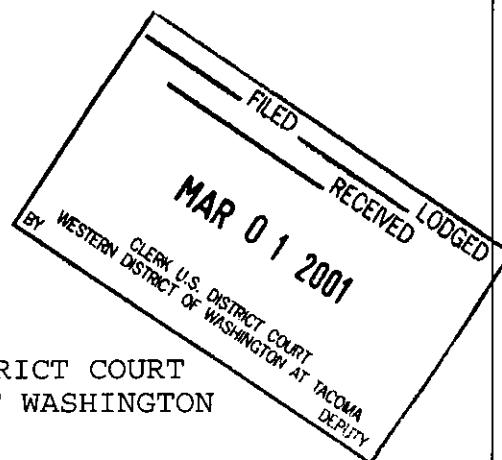
SHELLEY M. KERSLAKE
Assistant City Attorney

SMK/jhy

cc: Clients

f:\emps\smk\99-059\Sadler-ltr23.doc

HON. FRANKLIN D. BURGESS



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

JOSEPH J. KIRBY and DEBORAH A.)
KIRBY, husband and wife,)
Plaintiffs,)

No. C00-5332FDB

vs.)

NOTICE OF PLAINTIFFS'
MOTION TO COMPEL

THE CITY OF TACOMA, a municipal)
corporation; RAY CORPUZ and)
"JANE DOE" CORPUZ, husband and)
wife; PHILIP ARREOLA and "JANE)
DOE" ARREOLA, husband and)
wife; WILLIAM WOODARD and)
CATHERINE WOODARD, husband and)
wife; RAYMOND ROBERTS and "JANE)
DOE" ROBERTS, husband and wife;)
DAVID BRAME and "JANE DOE")
BRAME, husband and wife; and)
JAMES HAIRSTON and "JANE DOE")
HAIRSTON, husband and wife,)
Defendants.)

NOTE FOR HEARING:
March 9, 2001

TO THE CLERK OF THE COURT AND ALL PARTIES LISTED BELOW:

Please take notice that plaintiffs respectfully request

MESSINA • BULZOMI

5316 Orchard St. W.
Tacoma, WA 98467-3633
(253) 472-6000

1 that Plaintiffs' Motion to Compel be set for Friday, March 9,
2 2001.

3 DATED this 27th day of February 2001.

4 MESSINA BULZOMI

5
6 By 

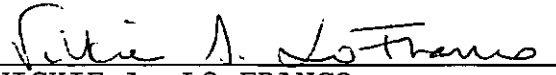
JEFFREY H. SADLER 27136
Attorneys for Plaintiffs

7
8 CERTIFICATE OF SERVICE

9 I, VICKIE A. LO FRANCO, certify that on this day I caused
10 to be served by ABC Legal Messenger copies of the document to
11 which this certificate is attached on counsel of record as
12 follows:

11 Shelley M. Kerslake
12 Tacoma City Attorney
13 Civil Division
14 747 Market St., Rm. 1120
15 Tacoma, WA 98402-3767

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

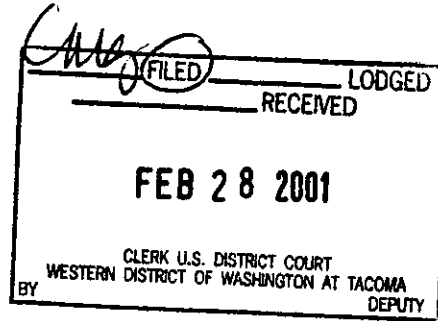
18 
19 VICKIE A. LO FRANCO
20 Legal Assistant

21 2/28, 2001
22 Tacoma, Washington
23
24
25

MESSINA • BULZOMI

5316 Orchard St. W.
Tacoma, WA 98467-3633
(253) 472-6000

HON. FRANKLIN D. BURGESS



IN THE UNITED STATES DISTRICT COURT
 FOR THE WESTERN DISTRICT OF WASHINGTON

JOSEPH J. KIRBY and DEBORAH A.)
 KIRBY, husband and wife,)
 Plaintiffs,)

No. C00-5332FDB

vs.)

AMENDMENT TO AMENDED
 COMPLAINT FOR PERSONAL
 INJURIES AND DAMAGES
 IN TORT

THE CITY OF TACOMA, a municipal)
 corporation; RAY CORPUZ and)
 "JANE DOE" CORPUZ, husband and)
 wife; PHILIP ARREOLA and "JANE)
 DOE" ARREOLA, husband and)
 wife; WILLIAM WOODARD and)
 CATHERINE WOODARD, husband and)
 wife; RAYMOND ROBERTS and "JANE)
 DOE" ROBERTS, husband and wife;)
 DAVID BRAME and "JANE DOE")
 BRAME, husband and wife; and)
 JAMES HAIRSTON and "JANE DOE")
 HAIRSTON, husband and wife,)
 Defendants.)

COME NOW plaintiffs and make the following clerical
 agreed amendment to plaintiffs' Amended Complaint for Personal
 Injuries and Damages in Tort:

Paragraph VII should read as follows:

VII.

7.1 For another cause of action against defendants, plaintiff claims that said defendants retaliated against him for exercising his rights under RCW 41.53, et seq. for exercising his union rights.

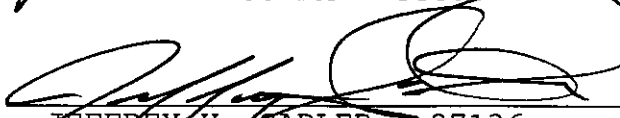
7.2 Plaintiffs' cause of action for harassment and discrimination due to his age and known disability is asserted pursuant to RCW 49.60, et seq.

The remainder of plaintiffs' allegations contained in plaintiffs' Amended Complaint for Personal Injuries and Damages in Tort remain unchanged and are hereby reincorporated and realleged.

MESSINA BULZOMI

DATED: 2/27/01

BY 
JOHN L. MESSINA 4440

BY 
JEFFREY H. SADLER 27136
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I, VICKIE A. LO FRANCO, certify that on this day I caused to be served by ABC Legal Messenger copies of the document to which this certificate is attached on counsel of record as follows:

Shelley M. Kerslake
Tacoma City Attorney
Civil Division
747 Market St., Rm. 1120
Tacoma, WA 98402-3767

MESSINA • BULZOMI

5316 Orchard St. W.
Tacoma, WA 98467-3633
(253) 472-6000

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

3 Vickie A. Lo Franco
4 VICKIE A. LO FRANCO
5 Legal Assistant

6 2/27, 2001
7 Tacoma, Washington
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

FILED LODGED
RECEIVED
FEB 23 2001
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT TACOMA

ENTERED
ON DOCKET

FEB 26 2001

BY DEPUTY WJ

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JOSEPH J. KIRBY and DEBORAH A.
KIRBY, husband and wife,

Plaintiff,

v.

THE CITY OF TACOMA, et al.,

Defendant.

Case No. C00-5332 FDB

ORDER DENYING MOTIONS FOR
CONTINUANCE AND PROTECTIVE
ORDER

This matter is before the court on defendants' motions for a continuance of the trial date and a protective order to limit the discovery of the plaintiffs. The plaintiffs have filed opposition to both of these motions.

1. Continuance

The defense asks the court to continue the trial date in this matter because assigned counsel will be unavailable from March 1-16, 2001, and working only part time for 2-3 weeks beyond that period. The defense notes that a number of depositions have been scheduled for each side, but that many more must be completed prior to the discovery cut off date on March 30, 2001.

Plaintiff asks that the court maintain the currently scheduled trial date, but offers to accommodate the defense by extending the discovery cut off date to April 30, 2001, relief which this

1 court has previously denied.

2 On December 1, 2000, new discovery rules for lawsuits in federal court went into effect.
3 Pursuant to FRCvP 30(a)(2)(A), no more than ten (10) depositions may be taken by either side.
4 Pursuant to FRCvP 30(d)(2), a deposition may not last longer than seven hours, except by
5 agreement of the parties. Thus, when the defendant states that five and six depositions are being
6 scheduled, the work of the parties is half done.

7 The scheduling order for this trial was entered on October 16, 2000. The schedule was set
8 on information submitted by counsel regarding their availability. Counsel have had sufficient notice
9 of the deadlines in this matter to complete their obligations as scheduled or arrange for coverage by
10 another attorney. The motion for a continuance is DENIED.

11 **2. Protective Order**

12 The defense also asks the court to enter a protective order preventing the plaintiff from
13 discovering facts regarding an incident involving a named defendant and the subsequent internal
14 investigation. The defense states that this information should not be discoverable by the plaintiff
15 because it is "irrelevant and inadmissible." However, the standard for discovery is considerably
16 more broad: "The information sought need not be admissible at the trial if the information sought
17 appears reasonably calculated to lead to the discovery of admissible evidence." FRCvP 26(b)(1).

18 The plaintiff claims discrimination. Discrimination is rarely shown with direct proof, which
19 lead the Supreme Court to describe methods of indirect proof in *McDonnell Douglas v. Green*, 411
20 U.S. 792, 802, 93 S.Ct. 1817, 1824, 36 L.Ed.2d 668 (1973). One of plaintiff's claims is that he is
21 disciplined disproportionately to other similarly situated officers. This can be demonstrated through
22 comparison.

23 The defense claims that disclosure of the contested facts will be harmful to the named
24 defendant. However, depositions are not public events, thus, the defendant is protected in that
25 setting. Also, any motions or affidavits which relate the contested facts can be filed under seal. The

1 defense will have the opportunity to object to any portion of a deposition sought to be introduced at
2 trial. CR 32(e). Admissibility of contested items will be determined by this court prior to trial, at
3 the pretrial conference. Finally, if the situation is as simple as the defense states, with the incident
4 investigated and determined to be of no significance, then the disclosure will demonstrate the
5 accuracy of that assessment and the internal investigation process.

6 The motion for a protective order is DENIED.

7
8 DATED this 23 day of February, 2001.

9
10 
11 _____
12 FRANKLIN D. BURGESS
13 UNITED STATES DISTRICT JUDGE
14
15
16
17
18
19
20
21
22
23
24
25
26

car

United States District Court
for the
Western District of Washington
February 26, 2001

* * MAILING CERTIFICATE OF CLERK * *

Re: 3:00-cv-05332

True and correct copies of the attached were mailed by the clerk to the following:

John L Messina, Esq.
MESSINA LAW FIRM
5316 ORCHARD ST W
TACOMA, WA 98467-3633
FAX 1-253-475-7886

Shelley M Kerlake, Esq.
TACOMA CITY ATTORNEY'S OFFICE
STE 1120
747 MARKET ST
TACOMA, WA 98402-3767
FAX 1-253-591-5755

Judge Burgess

HONORABLE FRANKLIN D. BURGESS

Ch... FILED

RECEIVED

FEB 22 2001

CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT TACOMA
DEPUTY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JOSEPH J. KIRBY and DEBORAH A.
KIRBY, husband and wife,

Plaintiffs,

v.

THE CITY OF TACOMA, a municipal
corporation; RAY CORPUZ and "JANE
DOE" CORPUZ, husband and wife; PHILIP
ARREOLA and "JANE DOE" ARREOLA,
husband and wife; WILLIAM WOODARD
and CATHERINE WOODARD, husband and
wife; RAYMOND ROBERTS and "JANE
DOE" ROBERTS, husband and wife; DAVID
BRAME and "JANE DOE" BRAME, husband
and wife; and JAMES HAIRSTON and
"JANE DOE" HAIRSTON, husband and wife,

Defendants.

No. C00-5332 FDB

AFFIDAVIT OF WILLIAM MEEKS
IN SUPPORT OF DEFENDANTS'
MOTION FOR A PROTECTIVE
ORDER

NOTE FOR HEARING:
February 23, 2001

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

WILLIAM MEEKS, being first duly sworn, under oath, deposes and
states:

1. That I am currently a Captain with the Tacoma Police Department.

INAL

Tacoma City Attorney
Civil Division
747 Market Street, Room 1120
Tacoma, Washington 98402-3767
(253) 591-5885/FAX 591-5755

33

2. That on February 16, 2001, Lt. Joseph Kirby asked me to come into his office, and he showed me the pleadings that had been filed by the City Attorney asking for a protective order regarding the allegations made against Assistant Chief David Brame.

3. Lt. Kirby had highlighted the paragraph which indicated that Assistant Chief Brame had been accused of date rape by a woman fifteen months after the alleged incident. He told me that it was not a date rape and was infact a first degree rape with under threat of a weapon. He said it like it was fact, not a mere allegation. Lt. Kirby indicated that he was showing me this because he "wanted me to know what my boy was really like."

4. I asked Lt. Kirby why he was doing this, why was he bringing this up, and he said, "They are nickel and diming me, so I am going after them"

FURTHER YOUR AFFIANT SAYETH NAUGHT.

[Handwritten Signature]
WILLIAM MEEKS

SUBSCRIBED and SWORN to before me this 22nd day of February, 2001.

[Handwritten Signature]
Printed Name: M. J. HUGHES
NOTARY PUBLIC in and for the State of
Washington, residing at TACOMA, WA
My commission expires: 11-1-03

HONORABLE FRANKLIN D. BURGESS
FILED
LODGED
RECEIVED
FEB 22 2001
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT TACOMA
DEPUTY

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JOSEPH J. KIRBY and DEBORAH A.
KIRBY, husband and wife,

Plaintiffs,

v.

THE CITY OF TACOMA, a municipal
corporation; RAY CORPUZ and "JANE
DOE" CORPUZ, husband and wife; PHILIP
ARREOLA and "JANE DOE" ARREOLA,
husband and wife; WILLIAM WOODARD
and CATHERINE WOODARD, husband and
wife; RAYMOND ROBERTS and "JANE
DOE" ROBERTS, husband and wife; DAVID
BRAME and "JANE DOE" BRAME, husband
and wife; and JAMES HAIRSTON and
"JANE DOE" HAIRSTON, husband and wife,

Defendants.

No. C00-5332 FDB

AFFIDAVIT OF DAVID BRAME
IN SUPPORT OF DEFENDANTS'
MOTION FOR A PROTECTIVE
ORDER

NOTE FOR HEARING:
February 23, 2001

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

DAVID BRAME, being first duly sworn, under oath, deposes and states:

1. That I am currently an Assistant Chief of the Tacoma Police
Department.
2. That I have been in that capacity since January 1999.

ORIGINAL

Tacoma City Attorney
Civil Division
747 Market Street, Room 1120
Tacoma, Washington 98402-3767
(253) 591-5885/FAX 591-5755

32

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

3. That in 1988, while I was police patrol officer, a woman that I had dated one time made a complaint to Tacoma Police Department Internal Affairs that I had raped her. This allegation was made fifteen months after the alleged incident.

4. That the allegation was investigated by Internal Affairs, and I was interrogated.

5. That after a full investigation, the Chief of Police at the time, Ray Fjetland, determined that the allegation against me was not sustained.

6. Chief Ray Fjetland retired in January 1996.

7. I was never arrested or charged with this crime.

8. Since Mr. Kirby has raised this issue in his lawsuit, I have received harassing alpha pages, which read "RAPE."

9. I believe this is being brought up to harass and embarrass me.

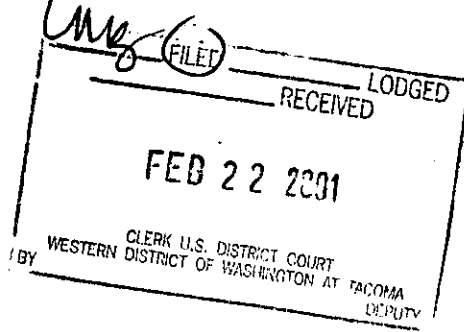
FURTHER YOUR AFFIANT SAYETH NAUGHT.

David Brame
DAVID BRAME

SUBSCRIBED and SWORN to before me this 29th day of February, 2001.

M. J. Hughes
Printed Name: M. J. HUGHES
NOTARY PUBLIC in and for the State of
Washington, residing at TACOMA
My commission expires: 11-11-2003

HONORABLE FRANKLIN D. BURGESS



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JOSEPH J. KIRBY and DEBORAH A.
KIRBY, husband and wife,

Plaintiffs,

v.

THE CITY OF TACOMA, a municipal
corporation; RAY CORPUZ and "JANE
DOE" CORPUZ, husband and wife; PHILIP
ARREOLA and "JANE DOE" ARREOLA,
husband and wife; WILLIAM WOODARD
and CATHERINE WOODARD, husband and
wife; RAYMOND ROBERTS and "JANE
DOE" ROBERTS, husband and wife; DAVID
BRAME and "JANE DOE" BRAME, husband
and wife; and JAMES HAIRSTON and
"JANE DOE" HAIRSTON, husband and wife,

Defendants.

No. C00-5332 FDB

REPLY IN SUPPORT OF
DEFENDANTS' MOTION FOR A
PROTECTIVE ORDER

NOTE FOR HEARING:
February 23, 2001

Defendants' Motion for Protective Order should be granted. Plaintiff has failed to demonstrate the material sought is relevant.

Plaintiff's response to the Defendants' Motion for a Protective Order has utterly failed to demonstrate the requisite relevance for the material sought. To

Tacoma City Attorney
Civil Division
747 Market Street, Room 1120
Tacoma, Washington 98402-3767
(253) 591-5885/FAX 591-5755

NAL

31

1 be discoverable, the information must be relevant or likely to lead to the
2 discovery of relevant information. CR 26(b). The information sought is neither.

3 Plaintiff claims that the material sought has some connection to Mr.
4 Kirby's "disparate treatment" claim. Nowhere in his material does he establish
5 the nexus between an allegation of a crime against a Police Patrol Officer - a
6 1987 allegation investigated by internal affairs, and found to be not sustained
7 by the Chief of Police - and any disparate treatment that he claims to have
8 received by being the member of a protected class. Simply put, there is no
9 connection.
10

11 The decision to not sustain the allegation, and not discipline David
12 Brame, was not made by any named defendant in this case. (See Affidavit of
13 David Brame.) Chief Raymond Fjetland was the chief of Police at the time of
14 the investigation, and retired in 1996. Id. Furthermore, Mr. Kirby has never
15 alleged that he was accused of a criminal offense for which it was concluded
16 was unsubstantiated and then treated differently than anyone else; thus, he has
17 not shown that this individual is similarly situated to him in any way.
18

19 More importantly, even if Assistant Chief Brame had been convicted of
20 this crime, it would not be admissible, as it is more than ten years old. ER 609.
21 Thus, it is amazing that plaintiff believes that a mere allegation which was
22 determined by the former Police Chief to be unsubstantiated, would be
23 admissible. It is even more amazing that plaintiff believes that this information
24 goes "to the credibility of Brame". (Plaintiff's response, page 3.) The law is
25
26

1 clear that a party cannot impeach a witness' reputation or credibility by specific
 2 acts of misconduct not resulting in a conviction. U.S. v. Cox, 536 F.2d 65 (5th
 3 Cir. 1976); U.S. v. Alarado, 519 F.2d 1133 (5th Cir. 1975), cert. denied, 96
 4 S.Ct. 1107, 424 U.S. 911, 47 L.Ed.2d 315 (1976); U.S. v. Hodnett, 537 F.2d
 5 828 (6th Cir. 1976) (**Effort to impeach witness on basis of mere accusation
 6 or arrest is not permissible.**); U.S. v. Largent, 545 F.2d 1039 (6th Cir. 1976),
 7 cert. denied, 97 S.Ct. 1117, 429 U.S. 1098, 51 L.Ed.2d 546 (1977) (Evidence of
 8 prior misconduct is not admissible to prove character of person.); Tafoya v.
 9 U.S., 386 F.2d 537 (10th Cir. 1967) (Only previous convictions, and not
 10 previous acts of misconduct which do not result in conviction may be used to
 11 impeach a witness' credibility.).
 12

13 Plaintiff is merely attempting to use their argument as a pretext for
 14 placing highly prejudicial accusations in front of the jury in an attempt to
 15 undermine a defendant's character. This thinly veiled attempt should not be
 16 condoned by the court. Plaintiff has failed to provide this court with any legal
 17 authority demonstrating this information has any evidentiary value to this case,
 18 and as such, the protection order should be granted.
 19

20 **Plaintiff is using this information to harass, annoy and embarrass**
 21 **defendant David Brame.**

22 Although plaintiff's counsel contends that this information is being sought
 23 because it is relevant to Mr. Kirby's claim, Mr. Kirby has articulated a very
 24 different reason for seeking to introduce this topic. (See Affidavit of William
 25 Meeks.) Mr. Kirby indicated that he was seeking this information because "they
 26

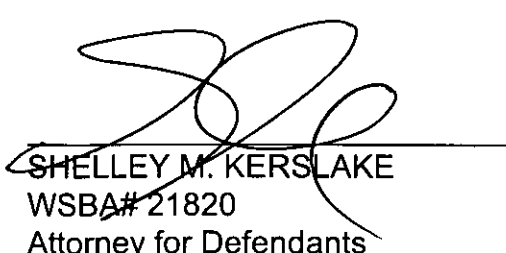
1 are nickel and diming me, so I am going after them." Id. Claiming that he is
 2 "going after" a defendant in this case is not a legitimate use of the discovery
 3 process, and this is exactly the type of "harassment by discovery" that CR 26
 4 seeks to prevent. Furthermore, the fact that David Brame has received an
 5 alpha page that said "Rape..." (See Affidavit of David Brame.) is
 6 unconscienable and demonstrates the harm this information can do when it is
 7 bandied about the work place solely for the purpose of Mr. Kirby's amusement.

8 Plaintiff has not demonstrated that the information sought is relevant, nor
 9 calculated to lead to admissible evidence. Thus, the defendants respectfully
 10 request that the court grant their motion for a protective order and order the
 11 plaintiff to refrain from disseminating this information any further.
 12

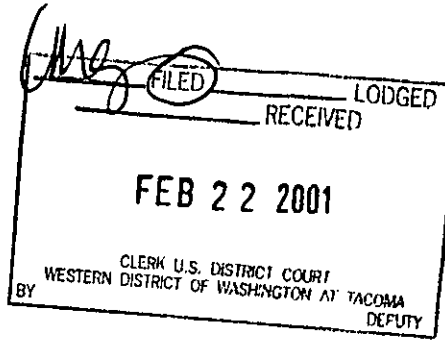
13 DATED this 22 day of February, 2001.

14 ROBIN S. JENKINSON, City Attorney
 15 ELIZABETH A. PAULI, Ch. Asst. City Atty.

16
 17
 18 By:


 19 SHELLEY M. KERSLAKE
 20 WSBA# 21820
 21 Attorney for Defendants
 22
 23
 24
 25
 26

HONORABLE FRANKLIN D. BURGESS



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JOSEPH J. KIRBY and DEBORAH A.
KIRBY, husband and wife,

Plaintiffs,

v.

THE CITY OF TACOMA, a municipal
corporation; RAY CORPUZ and "JANE
DOE" CORPUZ, husband and wife; PHILIP
ARREOLA and "JANE DOE" ARREOLA,
husband and wife; WILLIAM WOODARD
and CATHERINE WOODARD, husband and
wife; RAYMOND ROBERTS and "JANE
DOE" ROBERTS, husband and wife; DAVID
BRAME and "JANE DOE" BRAME, husband
and wife; and JAMES HAIRSTON and
"JANE DOE" HAIRSTON, husband and wife,

Defendants.

No. C00-5332 FDB

AFFIDAVIT OF SHELLEY M.
KERSLAKE IN SUPPORT OF
DEFENDANTS' REPLY TO
MOTION TO CONTINUE TRIAL
DATE AND ADJUST
SCHEDULING ORDER

NOTE FOR HEARING:
February 23, 2001

STATE OF WASHINGTON)

) ss.

COUNTY OF PIERCE)

SHELLEY M. KERSLAKE, being first duly sworn, under oath, deposes

and states:

Tacoma City Attorney
Civil Division
747 Market Street, Room 1120
Tacoma, Washington 98402-3767
(253) 591-5885/FAX 591-5755

L

30

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

1. That I am the attorney for the defendants in the above-referenced matter and makes this affidavit based on personal knowledge.

2. That for the past two weeks, my assistant has been in contact with John Messina's office, unsuccessfully attempting to schedule the independent medical examination of plaintiff.

3. That as of this date, the plaintiff's independent medical examination has not been scheduled, nor have defendants received a response to their request to schedule this examination.

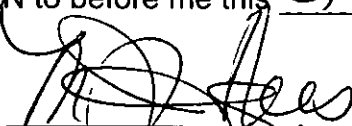
4. That attached hereto and marked as Exhibit "1" is a true and accurate copy of correspondence dated January 25, 2001 and February 20, 2001 addressed to John L. Messina, to which there has been no response.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

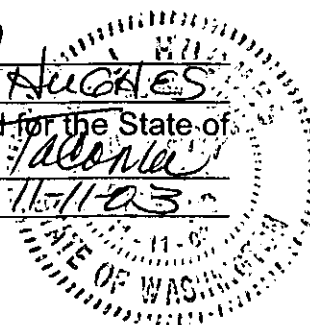


SHELLEY M. KERSLAKE

SUBSCRIBED and SWORN to before me this 21st day of February, 2001.



Printed Name: M J NUGLES
NOTARY PUBLIC in and for the State of
Washington, residing at Tacoma
My commission expires: 11-11-03



1



City of Tacoma
Office of the City Attorney

January 25, 2001

John L. Messina
MESSINA BULZOMI
Attn: Vickie A. Lo Franco
5316 Orchard Street West
Tacoma, WA 98467

Re: Kirby, et. al. v. City of Tacoma, et. al.
United States District Court Cause No. C00-5332FDB

Dear Vickie:

Please be advised that I would like to take the deposition of the following:

1. Deborah Kirby
2. Zachary Kirby
3. Lara Kirby
4. D. P. Van Blaricom
5. Philip Lindsay, M.D.

I am available for these depositions during the last two weeks of March, 2001.
Please advise of your availability for these depositions.

I look forward to hearing from you soon.

Very truly yours,



SHELLEY M. KERSLAKE
Assistant City Attorney

SMK/jhy

f:\emps\smk\99-059\Messina-ltr3.doc



City of Tacoma
Office of the City Attorney

February 20, 2001

John L. Messina
MESSINA BULZOMI
5316 Orchard Street West
Tacoma, WA 98467

VIA FAX: (253) 475-7886

Re: Kirby, et. al. v. City of Tacoma, et. al.
United States District Court Cause No. C00-5332FDB

Dear Mr. Messina:

Please be advised that in addition to those listed in my January 25, 2001 correspondence, I would like to depose the following individuals:

1. David Olsen
2. Chuck Howard
3. Gary Weigand
4. Laura Newsham
5. Steve Kirby

I am available for these depositions during the last two weeks of March, 2001. Please advise of your availability, and the availability of your witnesses, for these depositions as soon as possible.

If you should have any questions, please do not hesitate to contact me.

Very truly yours,



SHELLEY M. KERSLAKE
Assistant City Attorney

SMK/jhy

f:\emps\smk\99-059\Messina-ltr7.doc

HONORABLE FRANKLIN D. BURGESS

ms
FILED RECEIVED LODGED
FEB 22 2001
CLERK U.S. DISTRICT COURT
BY WESTERN DISTRICT OF WASHINGTON AT TACOMA DEPUTY

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JOSEPH J. KIRBY and DEBORAH A.
KIRBY, husband and wife,

Plaintiffs,

v.

THE CITY OF TACOMA, a municipal
corporation; RAY CORPUZ and "JANE
DOE" CORPUZ, husband and wife; PHILIP
ARREOLA and "JANE DOE" ARREOLA,
husband and wife; WILLIAM WOODARD
and CATHERINE WOODARD, husband and
wife; RAYMOND ROBERTS and "JANE
DOE" ROBERTS, husband and wife; DAVID
BRAME and "JANE DOE" BRAME, husband
and wife; and JAMES HAIRSTON and
"JANE DOE" HAIRSTON, husband and wife,

Defendants.

No. C00-5332 FDB

DEFENDANTS' REPLY TO
MOTION TO CONTINUE TRIAL
DATE AND ADJUST
SCHEDULING ORDER

NOTE FOR HEARING:
February 23, 2001

In response to defendant's motion to continue the trial date, plaintiff
claims he will be prejudiced due to the fact that he still works in "the hostile
environment which is the subject of this case." This is not an accurate
depiction. Not only do defendant's deny that plaintiff was ever subjected to a

||

AL

Tacoma City Attorney
Civil Division
747 Market Street, Room 1120
Tacoma, Washington 98402-3767
(253) 591-5885/FAX 591-5755

29

1 hostile work environment, since he has filed the present case, he has been
2 removed from working directly with any of the named defendants, per his
3 request. Thus, plaintiff's assertions in this regard is without merit.

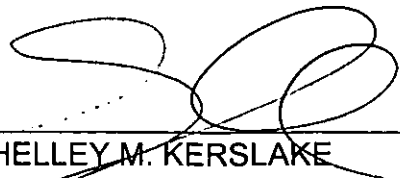
4 Furthermore, defendants have attempted to coordinate both depositions
5 and an IME of the plaintiff for mutually convenient times for all participants.
6 (See Exhibit 1.) To date, the plaintiff has not responded to these requests for
7 scheduling these matters. Thus, plaintiffs assertion that there has been ample
8 time to complete the discovery in this case is also without merit.

9 Finally, should the court wish to modify the discovery cutoff to
10 accommodate the City's request, the defendants would ask that the dispositive
11 motion deadline be adjusted accordingly, so that the defendants can have the
12 opportunity to finish their depositions prior to filing their dispositive motions.
13

14 Based on the foregoing and the material contained in the City's motion
15 for a continuance of the trial date, the City respectfully requests that the trial
16 date in this matter be continued.

17 DATED this 21st day of February, 2001.

18 ROBIN S. JENKINSON, City Attorney
19 ELIZABETH A. PAULI, Ch. Asst. City Atty.

20
21
22 By: 
23 SHELLEY M. KERSLAKE
24 WSB# 21820
25 Assistant City Attorney
26 Of Attorneys for Defendants

HON. FRANKLIN D. BURGESS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MS
FILED
RECEIVED
LOGGED
FEB 16 2001
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT TACOMA
BY DEPUTY

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

JOSEPH J. KIRBY and DEBORAH A.)
KIRBY, husband and wife,)
)
Plaintiffs,)
)
vs.)
)
THE CITY OF TACOMA, a municipal)
corporation; RAY CORPUZ and)
"JANE DOE" CORPUZ, husband and)
wife; PHILIP ARREOLA and "JANE)
DOE" ARREOLA, husband and)
wife; WILLIAM WOODARD and)
CATHERINE WOODARD, husband and)
wife; RAYMOND ROBERTS and "JANE)
DOE" ROBERTS, husband and wife;)
DAVID BRAME and "JANE DOE")
BRAME, husband and wife; and)
JAMES HAIRSTON and "JANE DOE")
HAIRSTON, husband and wife,)
)
Defendants.)
)

No. C00-5332FDB

DECLARATION OF JEFFREY
H. SADLER

JEFFREY H. SADLER declares as follows:

I am one of the attorneys of record for Mr. Kirby in the
above-captioned case. I make this declaration based upon my

DECL

MESSINA • BULZOMI
5316 Orchard St. W.
Tacoma, WA 98467-3633
(253) 472-6000

28

1 own personal knowledge and observation and based upon the
2 discovery thus far in this matter.

3 Central to the issues before the Court is the disparate,
4 discriminatory, retaliatory, and unfair treatment Lt. Kirby
5 faces in the work place. Plaintiffs will establish that this
6 conduct arises from Mr. Kirby's exercise of protected union
7 activities and age discrimination. Crucial to these claims is
8 the establishment of disparate treatment in the Department.

9 During the applicable time period, Mr. Kirby has been
10 disciplined for minor issues such as sending one isolated
11 personal email on the Department system stating to a fellow
12 officer that he knew where the officer could get some good
13 cedar wood. In addition, Lt. Kirby has been disciplined for
14 his role in a Seahawk bribery ticket scandal in which he
15 investigated and gathered evidence against the offending
16 officers. After gathering evidence, Lt. Kirby forwarded the
17 information to Captain Brame. Captain Brame did not forward
18 the evidence to the Chief of Police for many hours. Lt. Kirby
19 was disciplined for his delay, while Brame received no
20 reprimand or discipline. The list of this type of disparate
21 treatment is extensive.

22 One of the most egregious examples is that of the subject
23 of the defendants' motion. Plaintiffs have information that
24 defendant David Brame was investigated for first degree rape
25 (which included the use of a weapon) while he was an officer on

MESSINA • BULZOMI

5316 Orchard St. W.
Tacoma, WA 98467-3633
(253) 472-6000

1 the force. However, no written reprimand or formal discipline
2 was taken. On the other hand, Lt. Kirby is subject to extreme
3 disciplinary action for extremely minor issues. It is
4 plaintiffs' contention that Brame is one of the key offenders
5 in this action. In addition, Defendants mislead the Court by
6 representing that the victim accused Mr. Brame of "date rape".
7 The allegation by the victim was that of non-consensual forced
8 intercourse using a handgun as a threat. This background not
9 only goes to the disparate treatment issue, but also to the
10 credibility of Brame. As such, Plaintiffs should be entitled
11 to explore his background, including the rape allegation.

12 Plaintiffs are not pursuing this line of questioning to
13 "harass and embarrass a named party" as alleged in defendants'
14 motion. The purpose is to exemplify the disparate treatment
15 that Mr. Kirby is subject to.

16 I certify under penalty of perjury under the laws of the
17 State of Washington that the foregoing is true and correct.

18 DATED this 14th day of February 2001, at Tacoma,
19 Washington.

20
21 
22 JEFFREY H. SADLER 27138
23
24
25

MESSINA • BULZOMI

5316 Orchard St. W.
Tacoma, WA 98467-3633
(253) 472-6000

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE OF SERVICE

I, VICKIE A. LO FRANCO, certify that on this day I caused to be served by ABC Legal Messenger copies of the document to which this certificate is attached on counsel of record as follows:

Shelley M. Kerslake
Tacoma City Attorney
Civil Division
747 Market St., Rm. 1120
Tacoma, WA 98402-3767

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

Vickie A. Lo Franco
VICKIE A. LO FRANCO
Legal Assistant

2/14, 2001
Tacoma, Washington

MESSINA • BULZOMI

5316 Orchard St. W.
Tacoma, WA 98467-3633
(253) 472-6000

HON. FRANKLIN D. BURGESS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

File
FILED
RECEIVED
LODGED
FEB 16 2001
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT TACOMA
DENITY

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

JOSEPH J. KIRBY and DEBORAH A.)
KIRBY, husband and wife,)
)
Plaintiffs,)
)
vs.)
)
THE CITY OF TACOMA, a municipal)
corporation; RAY CORPUZ and)
"JANE DOE" CORPUZ, husband and)
wife; PHILIP ARREOLA and "JANE)
DOE" ARREOLA, husband and)
wife; WILLIAM WOODARD and)
CATHERINE WOODARD, husband and)
wife; RAYMOND ROBERTS and "JANE)
DOE" ROBERTS, husband and wife;)
DAVID BRAME and "JANE DOE")
BRAME, husband and wife; and)
JAMES HAIRSTON and "JANE DOE")
HAIRSTON, husband and wife,)
)
Defendants.)

No. C00-5332FDB

PLAINTIFFS' RESPONSE TO
DEFENDANTS' MOTION FOR
PROTECTIVE ORDER

I. INTRODUCTION

Plaintiffs respectfully request this Court deny
defendants' motion for a protective order as the line of
questioning, and information therefrom, is relevant to the

Pl

MESSINA • BULZOMI
5316 Orchard St. W.
Tacoma, WA 98467-3633
(253) 472-6000

27

1 | disparate treatment, retaliation and hostile work environment
2 | claims. One of plaintiffs' assertions is that he is subject to
3 | internal investigation and formal reprimand for every minor
4 | issue, while other officers in the department can be accused of
5 | felony crimes and receive no formal reprimand.

6 | II. STATEMENT OF RELEVANT FACTS

7 | Mr. Kirby is a lieutenant in the Tacoma Police Depart-
8 | ment. He has brought suit against the above-named defendants
9 | for discrimination, hostile work environment, age discrimina-
10 | tion, violation of rights for engaging in union activity, and
11 | negligent hiring and retention. See Amended Complaint filed
12 | herein.

13 | Central to the issues before the Court is the disparate,
14 | discriminatory, retaliatory, and unfair treatment Lt. Kirby
15 | faces in the work place. Plaintiffs will establish that this
16 | conduct arises from Mr. Kirby's exercise of protected union
17 | activities and age discrimination. Crucial to these claims is
18 | the establishment of disparate treatment in the Department.
19 | Declaration of Jeffrey H. Sadler, hereafter "Sadler Decl."

20 | During the applicable time period, Mr. Kirby has been
21 | disciplined for minor issues such as sending one isolated
22 | personal email on the Department system stating to a fellow
23 | officer that he knew where the officer could get some good
24 | cedar wood. In addition, Lt. Kirby has been disciplined for
25 | his role in a Seahawk bribery ticket scandal in which he

MESSINA • BULZOMI

5316 Orchard St. W.
Tacoma, WA 98467-3633
(253) 472-6000

1 investigated and gathered evidence against the offending
2 officers. After gathering evidence, Lt. Kirby forwarded the
3 information to Captain Brame. Captain Brame did not forward
4 the evidence to the Chief of Police for many hours. Lt. Kirby
5 was disciplined for his minor delay, while Brame received no
6 reprimand or discipline. The list of this type of disparate
7 treatment is extensive. Sadler Decl.

8 One of the most egregious examples is that of the subject
9 of the defendants' motion. Plaintiffs have information that
10 defendant David Brame was investigated for first degree rape
11 (which included the use of a weapon) while he was an officer on
12 the force. However, no written reprimand or formal discipline
13 was taken. On the other hand, Lt. Kirby is subject to extreme
14 disciplinary action for extremely minor issues. It is
15 plaintiffs' contention that Brame is one of the key offenders
16 in this action. In addition, Defendants mislead the Court by
17 representing that the victim accused Mr. Brame of "date rape".
18 The allegation by the victim was that of non-consensual forced
19 intercourse using a handgun as a threat. This background not
20 only goes to the disparate treatment issue, but also to the
21 credibility of Brame. As such, Plaintiffs should be entitled
22 to explore his background, including the rape allegation.
23 Sadler Decl.

24 Plaintiffs are not pursuing this line of questioning to
25 "harass and embarrass a named party" as alleged in defendants'

MESSINA • BULZOMI

5316 Orchard St. W.
Tacoma, WA 98467-3633
(253) 472-6000

1 motion. The purpose is to exemplify the disparate treatment
 2 that Mr. Kirby is subject to. Sadler Decl. This type of
 3 information is discoverable and should be allowed.

4 III. CONCLUSION

5 Based on the above stated, defendants' motion for a
 6 protective order should be denied as the allegations of rape
 7 and the investigation stemming therefrom are central to the
 8 issues of discrimination and disparate treatment before the
 9 court.

10 DATED this 14th day of February 2001.

11 MESSINA BULZOMI

12 By 


13 JEFFREY H. SADLER 27136
 14 Attorneys for Plaintiffs

15 CERTIFICATE OF SERVICE

16 I, VICKIE A. LO FRANCO, certify that on this day I caused
 17 to be served by ABC Legal Messenger copies of the document to
 18 which this certificate is attached on counsel of record as
 19 follows:

20 Shelley M. Kerslake
 21 Tacoma City Attorney
 22 Civil Division
 23 747 Market St., Rm. 1120
 24 Tacoma, WA 98402-3767

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

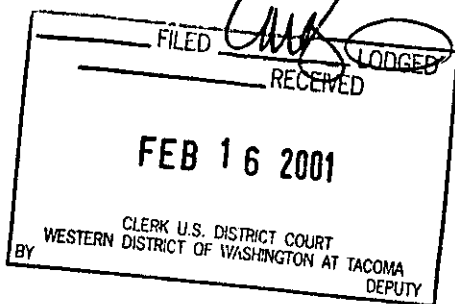
23 
 24 VICKIE A. LO FRANCO
 25 Legal Assistant

February 14, 2001
 Tacoma, Washington

MESSINA • BULZOMI

5316 Orchard St. W.
 Tacoma, WA 98467-3633
 (253) 472-6000

HON. FRANKLIN D. BURGESS



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

JOSEPH J. KIRBY and DEBORAH A.)
KIRBY, husband and wife,)
Plaintiffs,)

No. C00-5332FDB

vs.)

ORDER DENYING DEFENDANTS'
MOTION FOR PROTECTIVE
ORDER

THE CITY OF TACOMA, a municipal)
corporation; RAY CORPUZ and)
"JANE DOE" CORPUZ, husband and)
wife; PHILIP ARREOLA and "JANE)
DOE" ARREOLA, husband and)
wife; WILLIAM WOODARD and)
CATHERINE WOODARD, husband and)
wife; RAYMOND ROBERTS and "JANE)
DOE" ROBERTS, husband and wife;)
DAVID BRAME and "JANE DOE")
BRAME, husband and wife; and)
JAMES HAIRSTON and "JANE DOE")
HAIRSTON, husband and wife,)
Defendants.)

THIS MATTER having come before the undersigned Judge of
the above-entitled Court upon Defendants' Motion for Protective
Order, and the Court having reviewed the following pleadings
submitted in support of and in opposition to said motion:

MESSINA • BULZOMI

5316 Orchard St. W.
Tacoma, WA 98467-3633
(253) 472-6000

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1. Defendants' Motion for Protective Order;

2. Plaintiffs' Response to Defendants' Motion for Protective Order;

3. Declaration of Jeffrey H. Sadler;

4. _____
_____;

5. _____
_____;

And the Court having heard argument of counsel, and being in all things duly advised, it is now, therefore,

ORDERED, ADJUDGED AND DECREED that Defendants' Motion for Protective Order is hereby DENIED.

DONE IN OPEN COURT this ___ day of _____ 2001.

JUDGE

Presented by:
MESSINA BULZOMI

By 
JEFFREY H. SADLER 27136
Attorney for Plaintiffs

Copy received; notice of presentation waived:

SHELLEY M. KERSLAKE # _____
Attorney for Defendants

MESSINA • BULZOMI

5316 Orchard St. W.
Tacoma, WA 98467-3633
(253) 472-6000



City of Tacoma
Office of the City Attorney

February 15, 2001

Janet Thornton, Deputy Clerk
United States District Court
1717 Pacific Avenue, #3100
Tacoma, WA 98402

Re: Kirby, et. al. v. City of Tacoma, et. al.
No. C00-5332 FDB

Dear Ms. Thornton:

Please **strike** defendants' Motion for Partial Summary Judgment of Plaintiff's Claim of Retaliation Under RCW 49.60, previously noted for hearing on March 2, 2001.

Thank you for your assistance in this regard.

Very truly yours,

SHELLEY M. KERSLAKE
Assistant City Attorney

SMK/jhy

cc: John L. Messina

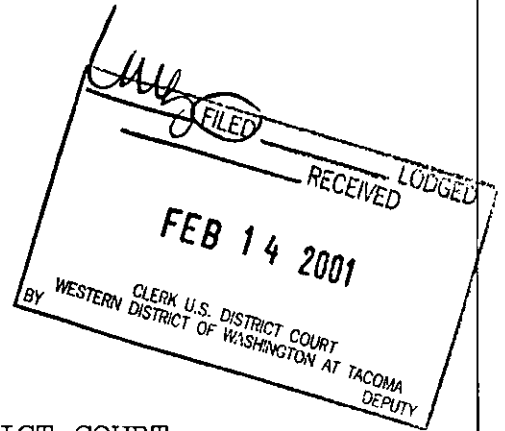
f:\emps\smk\99-059\Court-ltr2.doc



*c/Kay
FDB*

26

HON. FRANKLIN D. BURGESS



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

JOSEPH J. KIRBY and DEBORAH A.)
KIRBY, husband and wife,)
Plaintiffs,)

No. C00-5332FDB

vs.)

PLAINTIFFS' DISCLOSURE
OF POTENTIAL TRIAL
WITNESSES

THE CITY OF TACOMA, a municipal)
corporation; RAY CORPUZ and)
"JANE DOE" CORPUZ, husband and)
wife; PHILIP ARREOLA and "JANE)
DOE" ARREOLA, husband and)
wife; WILLIAM WOODARD and)
CATHERINE WOODARD, husband and)
wife; RAYMOND ROBERTS and "JANE)
DOE" ROBERTS, husband and wife;)
DAVID BRAME and "JANE DOE")
BRAME, husband and wife; and)
JAMES HAIRSTON and "JANE DOE")
HAIRSTON, husband and wife,)
Defendants.)

Joseph Kirby
Deborah Kirby
Zachary Kirby

MESSINA • BULZOMI

5316 Orchard St. W.
Tacoma, WA 98467-3633
(253) 472-6000

25

- 1 Lara Kirby
- 2 Jolin Lowry
- 3 Charles Meinema
- 4 Steve Kirby
- 5 David T. Olsen
- 6 Gary L. Wiegand
- 7 Charles N. Howard
- 8 Peter M. Habib
- 9 Jimmy T. Bass
- 10 Robert R. Blystone
- 11 Mary E. Eby
- 12 Darell Hughes
- 13 Mark K. Mann
- 14 Thomas C. Peltier
- 15 Mark Jenkins, Sergeant, Tacoma Police Department
- 16 Richard A. Warner
- 17 Steve W. Shake
- 18 Dennis Quilio
- 19 Russ Hauge
- 20 Karen Cobb
- 21 William Meeks
- 22 Paul Mielbrecht
- 23 William Garrison
- 24 Laura Newsham
- 25 John Kristofferson

MESSINA • BULZOMI

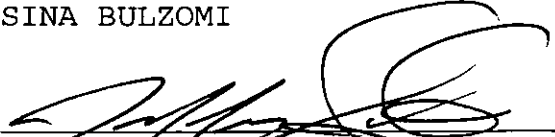
5316 Orchard St. W.
Tacoma, WA 98467-3633
(253) 472-6000

1 Barry McColeman

2 Plaintiffs reserve the right to call any of the
3 witnesses identified on their original disclosure, and agree
4 to provide adequate notice should that need arise.

5 DATED this 13th day of February 2001.

6 MESSINA BULZOMI

7 By 
8 JEFFREY H. SADLER 27136
9 Attorneys for Plaintiffs

10 CERTIFICATE OF SERVICE

11 I, VICKIE A. LO FRANCO, certify that on this day I
12 caused to be served by ABC Legal Messenger copies of the
13 document to which this certificate is attached on counsel of
14 record as follows:

15 Shelley M. Kerslake
16 Tacoma City Attorney
17 Civil Division
18 747 Market St., Rm. 1120
19 Tacoma, WA 98402-3767

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

22 
23 VICKIE A. LO FRANCO
24 Legal Assistant

25 2, 13, 2001
Tacoma, Washington

MESSINA • BULZOMI

5316 Orchard St. W.
Tacoma, WA 98467-3633
(253) 472-6000

FILED
COURT OF APPEALS
HON. FRANKLIN D. BURGESS

01 FEB 14 AM 10:11

STATE OF WASHINGTON

BY _____

DEPUTY

File (FILED) RECEIVED LODGED
FEB 14 2001
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT TACOMA
DEPUTY

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

JOSEPH J. KIRBY and DEBORAH A.)
KIRBY, husband and wife,)
)
Plaintiffs,)
)
vs.)
)
THE CITY OF TACOMA, a municipal)
corporation; RAY CORPUZ and)
"JANE DOE" CORPUZ, husband and)
wife; PHILIP ARREOLA and "JANE)
DOE" ARREOLA, husband and)
wife; WILLIAM WOODARD and)
CATHERINE WOODARD, husband and)
wife; RAYMOND ROBERTS and "JANE)
DOE" ROBERTS, husband and wife;)
DAVID BRAME and "JANE DOE")
BRAME, husband and wife; and)
JAMES HAIRSTON and "JANE DOE")
HAIRSTON, husband and wife,)
)
Defendants.)
_____)

No. C00-5332FDB

PLAINTIFFS' OPPOSITION TO
DEFENDANTS' MOTION TO
CONTINUE TRIAL

I. INTRODUCTION

COME NOW the plaintiffs, by and through their attorney of
record, and respectfully request this Court deny defendants'

MESSINA • BULZOMI

5316 Orchard St. W.
Tacoma, WA 98467-3633
(253) 472-6000

2A

1 motion to continue the trial date and adjust the scheduling
2 order. By way of concession, plaintiffs have no objection to
3 continuing the discovery cut-off date until April 30, 2001, in
4 order to accommodate defense counsel's unique scheduling
5 problems.

6 II. ARGUMENT

7 This court has the inherent authority to grant a motion
8 to continue the trial date in this case. Plaintiffs assert
9 that this case should proceed towards the current trial date of
10 July 9, 2001. In an effort to address some of the concerns
11 raised by the defense counsel in her affidavit, plaintiffs have
12 supplied defendants with a significantly reduced list of
13 anticipated trial witnesses. Plaintiffs' list contains 29 lay
14 witnesses who may be used at trial. This is a manageable
15 amount of witnesses in this complex case.

16 Defendants have had ample time to conduct discovery with
17 regard to these witnesses. The Plaintiffs should not have to
18 postpone the resolution of this case. Plaintiff Joseph Kirby
19 continues to work in the hostile work environment which is the
20 subject of this case. Any delay in the resolution of this case
21 is prejudicial to the plaintiffs. As such, the trial should
22 not be continued.

23 However, plaintiffs are aware of the unique situation
24 which defense counsel has revealed to the court regarding her
25 unavailability. In an effort to assist in this situation,

MESSINA • BULZOMI

5316 Orchard St. W.
Tacoma, WA 98467-3633
(253) 472-6000


1 | Plaintiffs have no objection to the adjustment of the discovery
2 | cut-off. An extension to April 30, 2001 should remedy the
3 | concerns set forth by defense counsel.

4 | **III. CONCLUSION**

5 | For the above stated reasons, plaintiffs respectfully
6 | request this Court deny defendants' motion to continue the
7 | trial date. However, Plaintiffs have no objection to the
8 | extension of the discovery cut-off.

9 | DATED this 13th day of February 2001.

10 | MESSINA BULZOMI

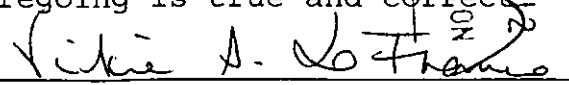
11 | By 
12 | JEFFREY H. SADLER 27136
13 | Attorneys for Plaintiffs

14 | **CERTIFICATE OF SERVICE**

15 | I, VICKIE A. LO FRANCO, certify that on this day I caused
16 | to be served by ABC Legal Messenger copies of the document to
17 | which this certificate is attached on counsel of record as
18 | follows:

18 | Shelley M. Kerslake
19 | Tacoma City Attorney
20 | Civil Division
21 | 747 Market St., Rm. 1120
22 | Tacoma, WA 98402-3767

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

22 | 
23 | VICKIE A. LO FRANCO
24 | Legal Assistant

23 | February 13, 2001
24 | Tacoma, Washington

FILED
COURT OF APPEALS
DIVISION II
01 FEB 14 AM 11:12
STATE OF WASHINGTON
DEPUTY

MESSINA • BULZOMI

5316 Orchard St. W.
Tacoma, WA 98467-3633
(253) 472-6000

HONORABLE FRANKLIN D. BURGESS

MS FILED

RECEIVED LODGED

FEB 08 2001

CLERK U.S. DISTRICT COURT
BY WESTERN DISTRICT OF WASHINGTON AT TACOMA
DEPUTY

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JOSEPH J. KIRBY and DEBORAH A.
KIRBY, husband and wife,

Plaintiffs,

v.

THE CITY OF TACOMA, a municipal
corporation; RAY CORPUZ and "JANE
DOE" CORPUZ, husband and wife; PHILIP
ARREOLA and "JANE DOE" ARREOLA,
husband and wife; WILLIAM WOODARD
and CATHERINE WOODARD, husband and
wife; RAYMOND ROBERTS and "JANE
DOE" ROBERTS, husband and wife; DAVID
BRAME and "JANE DOE" BRAME, husband
and wife; and JAMES HAIRSTON and
"JANE DOE" HAIRSTON, husband and wife,

Defendants.

No. C00-5332 FDB

AFFIDAVIT OF SHELLEY M.
KERSLAKE IN SUPPORT OF
DEFENDANTS' MOTION TO
CONTINUE TRIAL DATE AND
ADJUST SCHEDULING ORDER

NOTE FOR HEARING:
February 23, 2001

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

SHELLEY M. KERSLAKE, being first duly sworn, under oath, deposes
and states:

AFFI
f:ven

Tacoma City Attorney
Civil Division
747 Market Street, Room 1120
Tacoma, Washington 98402-3767
(253) 591-5885/FAX 591-5755

23

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

1. That I am the attorney for the defendants in the above-referenced matter and makes this affidavit based on personal knowledge.

2. That the discovery cutoff in this case is March 12, 2001, and the court has granted an extension until March 30, 2001.

3. That on January 31, 2001, I filed a Notice of Unavailability for March 1, 2001 through March 16, 2001. This notice was necessary due to medical treatment I will be receiving during that time.

4. That for the 2 -3 weeks following my leave, I will only be able to work part-time due to my recovery.

5. That plaintiff has listed 114 witnesses in this matter.

6. That the plaintiff wants to depose one of the parties who resides in Colorado, and we will have to travel to Denver for that deposition. Due to my medical treatment, I will not be able to travel until mid April.

7. That we are currently attempting to schedule five depositions for the plaintiff's witnesses, an IME for the plaintiff and six depositions for the defendants. There will be many more that will have to be scheduled to ready this case for trial. Given the restriction on time necessitated by my medical treatment, it will be impossible to complete this work by March 30, 2001. Thus, the City respectfully requests that the court continue the trial date in this matter to a mutually convenient date.

/ /

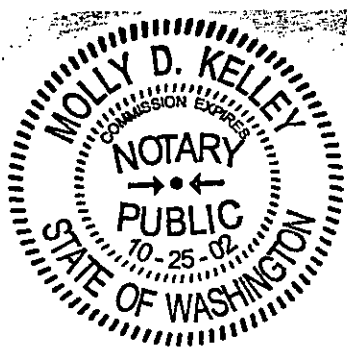
/

FURTHER YOUR AFFIANT SAYETH NAUGHT.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

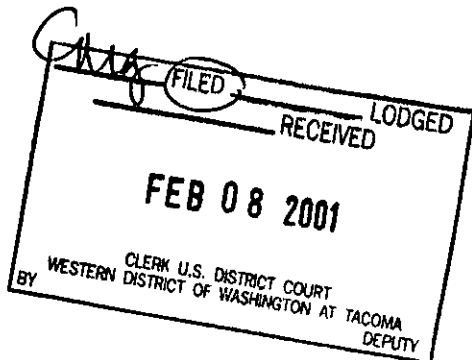
SHELLEY M. KERSLAKE

SUBSCRIBED and SWORN to before me this _____ day of February, 2001.



Printed Name: Molly D. Kelley
NOTARY PUBLIC in and for the State of
Washington, residing at Tacoma
My commission expires: 10-25-02

HONORABLE FRANKLIN D. BURGESS



UNITED STATES DISTRICT COURT
 WESTERN DISTRICT OF WASHINGTON
 AT TACOMA

JOSEPH J. KIRBY and DEBORAH A.
 KIRBY, husband and wife,

Plaintiffs,

v.

THE CITY OF TACOMA, a municipal
 corporation; RAY CORPUZ and "JANE
 DOE" CORPUZ, husband and wife; PHILIP
 ARREOLA and "JANE DOE" ARREOLA,
 husband and wife; WILLIAM WOODARD
 and CATHERINE WOODARD, husband and
 wife; RAYMOND ROBERTS and "JANE
 DOE" ROBERTS, husband and wife; DAVID
 BRAME and "JANE DOE" BRAME, husband
 and wife; and JAMES HAIRSTON and
 "JANE DOE" HAIRSTON, husband and wife,

Defendants.

No. C00-5332 FDB

DEFENDANTS' MOTION TO
 CONTINUE TRIAL DATE AND
 ADJUST SCHEDULING ORDER

NOTE FOR HEARING:
 February 23, 2001

COMES NOW the defendants, by and through their attorney of record,
 Assistant City Attorney, Shelley M. Kerslake, and moves the court for an order
 granting Defendants' Motion to Continue Trial Date and Adjust Scheduling
 Order in the above-referenced matter and re-issuance of an appropriate case

DEF
 DAT
 f:\en

Tacoma City Attorney
 Civil Division
 747 Market Street, Room 1120
 Tacoma, Washington 98402-3767
 (253) 591-5885/FAX 591-5755


22

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

schedule. This motion is brought pursuant to Local Rule CR 7 and is based on
the foregoing motion and Affidavit of Shelley M. Kerslake in Support of
Defendants' Motion to Continue Trial Date and Adjust Scheduling Order.

DATED this 8 day of February, 2001.

ROBIN S. JENKINSON, City Attorney
ELIZABETH A. PAULI, Ch. Asst. City Atty.

By: 
SHELLEY M. KERSLAKE
WSB# 21820
Assistant City Attorney
Of Attorneys for Defendants

HONORABLE FRANKLIN D. BURGESS

FILED _____ LODGED _____
 RECEIVED _____
FEB 08 2001
 CLERK U.S. DISTRICT COURT
 WESTERN DISTRICT OF WASHINGTON AT TACOMA
 BY _____ DEPUTY

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JOSEPH J. KIRBY and DEBORAH A.
KIRBY, husband and wife,

Plaintiffs,

v.

THE CITY OF TACOMA, a municipal
corporation; RAY CORPUZ and "JANE
DOE" CORPUZ, husband and wife; PHILIP
ARREOLA and "JANE DOE" ARREOLA,
husband and wife; WILLIAM WOODARD
and CATHERINE WOODARD, husband and
wife; RAYMOND ROBERTS and "JANE
DOE" ROBERTS, husband and wife; DAVID
BRAME and "JANE DOE" BRAME, husband
and wife; and JAMES HAIRSTON and
"JANE DOE" HAIRSTON, husband and wife,

Defendants.

No. C00-5332 FDB

NOTICE OF DEFENDANTS'
MOTION TO CONTINUE TRIAL
DATE AND ADJUST
SCHEDULING ORDER

NOTE FOR HEARING:
February 23, 2001

TO THE CLERK OF THE COURT AND ALL PARTIES LISTED BELOW:

Please take notice that defendants, City of Tacoma, Ray Corpuz,
Philip Arreola, William Woodard, Catherine Woodard, Raymond Roberts,
David Brame and James Hairston, respectfully request that Defendants'

NOTICE OF DEFENDANTS' MOTION TO CONTINUE
TRIAL DATE AND ADJUST SCHEDULING ORDER - 1
f:\emps\smk\99-059\Trial Continue-notice.doc

ORIGINAL


Tacoma City Attorney
Civil Division
747 Market Street, Room 1120
Tacoma, Washington 98402-3767
(253) 591-5885/FAX 591-5755

Motion to Continue Trial Date and Adjust Scheduling Order, be set for Friday,
February 23, 2001.

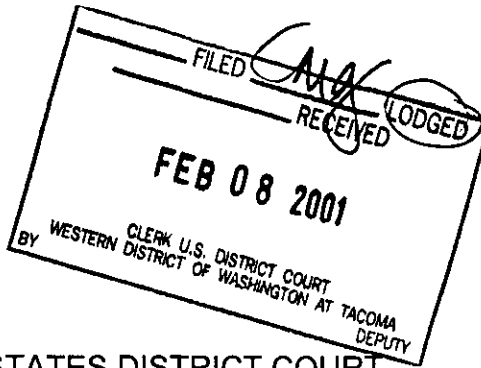
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

DATED this 8 day of February, 2001.

ROBIN S. JENKINSON, City Attorney
ELIZABETH A. PAULI, Ch. Asst. City Atty.

By: 
SHELLEY M. KERSLAKE
WSBA# 21820
Attorney for Defendants

HONORABLE FRANKLIN D. BURGESS



UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JOSEPH J. KIRBY and DEBORAH A.
KIRBY, husband and wife,

Plaintiffs,

v.

THE CITY OF TACOMA, a municipal
corporation; RAY CORPUZ and "JANE
DOE" CORPUZ, husband and wife; PHILIP
ARREOLA and "JANE DOE" ARREOLA,
husband and wife; WILLIAM WOODARD
and CATHERINE WOODARD, husband and
wife; RAYMOND ROBERTS and "JANE
DOE" ROBERTS, husband and wife; DAVID
BRAME and "JANE DOE" BRAME, husband
and wife; and JAMES HAIRSTON and
"JANE DOE" HAIRSTON, husband and wife,

Defendants.

No. C00-5332 FDB

[PROPOSED]

ORDER GRANTING
DEFENDANTS' MOTION TO
CONTINUE TRIAL DATE AND
ADJUST SCHEDULING ORDER

NOTE FOR HEARING:
February 23, 2001

THIS MATTER having come on regularly to be heard before the undersigned judge of the above-entitled court upon the motion of defendants, City of Tacoma, Ray Corpuz, Philip Arreola, William Woodard, Catherine Woodard, Raymond Roberts, David Brame and James Hairston, for an order continuing the trial date and adjusting the scheduling order in this matter, the defendants, represented by and through Shelley M. Kerslake, Assistant City

ORDER GRANTING DEFENDANTS' MOTION
TO CONTINUE TRIAL DATE - 1
f:\emps\smk\99-059\Trial Continue-order.doc

Tacoma City Attorney
Civil Division
747 Market Street, Room 1120
Tacoma, Washington 98402-3767
(253) 591-5885/FAX 591-5755

1 Attorney, plaintiff represented by John L. Messina, and the court having
2 considered the records and file herein, in particular the *Defendants' Motion to*
3 *Continue Trial Date and Adjust Scheduling Order and Affidavit of Shelley M.*
4 *Kerslake in Support of Defendants' Motion*, therefore, it is hereby

5 ORDERED, ADJUDGED and DECREED that the Defendants' Motion to
6 Continue Trial Date and Adjust Scheduling Order is hereby granted; and it is
7 further

8 ORDERED, ADJUDGED and DECREED that the new trial date in this
9 matter is _____; and it is further

10 ORDERED, ADJUDGED and DECREED that a new scheduling order
11 will be processed in accordance with the new trial date.

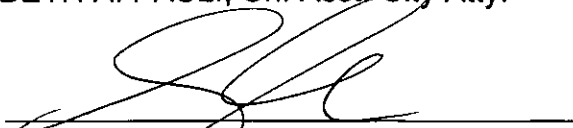
12 DATED this ____ day of February, 2001.

13
14 _____
15 HONORABLE FRANKLIN D. BURGESS

16 Presented by:

17 ROBIN S. JENKINSON, City Attorney
18 ELIZABETH A. PAULI, Ch. Asst. City Atty.

19 By:

20 
21 SHELLEY M. KERSLAKE
22 WSBA# 21820
23 Assistant City Attorney
24 Of Attorneys for Defendants
25
26

HONORABLE FRANKLIN D. BURGESS

LMU
 FILED
 RECEIVED
 LODGED
 FEB 07 2001
 CLERK U.S. DISTRICT COURT
 WESTERN DISTRICT OF WASHINGTON
 BY
 UNITED STATES DISTRICT COURT
 WESTERN DISTRICT OF WASHINGTON
 AT TACOMA

JOSEPH J. KIRBY and DEBORAH A. KIRBY, husband and wife,

Plaintiffs,

v.

THE CITY OF TACOMA, a municipal corporation; RAY CORPUZ and "JANE DOE" CORPUZ, husband and wife; PHILIP ARREOLA and "JANE DOE" ARREOLA, husband and wife; WILLIAM WOODARD and CATHERINE WOODARD, husband and wife; RAYMOND ROBERTS and "JANE DOE" ROBERTS, husband and wife; DAVID BRAME and "JANE DOE" BRAME, husband and wife; and JAMES HAIRSTON and "JANE DOE" HAIRSTON, husband and wife,

Defendants.

No. C00-5332 FDB

AFFIDAVIT OF SHELLEY M. KERSLAKE IN SUPPORT OF DEFENDANTS' MOTION FOR A PROTECTIVE ORDER

NOTE FOR HEARING:
 February 23, 2001

STATE OF WASHINGTON)
) ss.
 COUNTY OF PIERCE)

SHELLEY M. KERSLAKE, being first duly sworn, under oath, deposes and states:

1. That I am the attorney for the defendants in the above-referenced matter and makes this affidavit based on personal knowledge.

A
 f:

Tacoma City Attorney
 Civil Division
 747 Market Street, Room 1120
 Tacoma, Washington 98402-3767
 (253) 591-5885/FAX 591-5755

JAL
21

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

2. That on January 24, 2001, in an attempt to resolve this issue without court intervention, I sent a letter to plaintiff's counsel addressing the issue of a stipulated protective order. (See attached letter dated January 24, 2001, with proposed stipulated order, at Tab 1.)

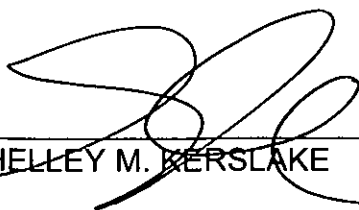
3. That on January 30, 2001, plaintiff's counsel declined to agree to the proposed stipulated protective order. (See attached letter dated January 29, 2001 at Tab 2.)

4. That on January 31, 2001, I sent another letter clarifying our position (See attached letter dated January 31, 2001 at Tab 3.)

5. That on February 2, 2001, my assistant received a telephone call from Mr. Messina's assistant, indicating that they would not agree to the protective order; therefore, creating a need for the defendants to file this motion.

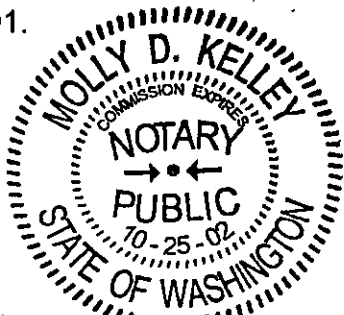
6. That attached hereto at Tab 4, are true and correct copies of deposition excerpts of Charles Meinema.


FURTHER YOUR AFFIANT SAYETH NAUGHT.



SHELLEY M. KERSLAKE

SUBSCRIBED and SWORN to before me this 7th day of February, 2001.




Printed Name: Molly D. Kelley
NOTARY PUBLIC in and for the State of
Washington, residing at Tacoma
My commission expires: 10/25/02

/



City of Tacoma
Office of the City Attorney

January 24, 2001

John L. Messina
MESSINA BULZOMI
5316 Orchard Street West
Tacoma, WA 98467

Re: Kirby, et. al. v. City of Tacoma, et. al.
United States District Court Cause No. C00-5332FDB

Dear Mr. Messina:

At the deposition of Captain Charles Meinema, you inquired into criminal allegations logged against Assistant Chief David Brame. This line of inquiry is neither relevant nor admissible. Although you did not inquire into the nature of the allegation, I am sure the topic will come up in future depositions, especially that of Assistant Chief Brame. The only purpose of this area of questioning is to annoy and embarrass Assistant Chief Brame, and as such, I would like to propose a protective order be entered to limit the scope of inquiry.

Please review the proposed stipulated order and sign the same if it meets with your approval. If you do not agree, please let me know as soon as possible, and I will motion the court pursuant to FRCP 26(c).

Thank you for your attention to this matter.

Very truly yours,



SHELLEY M. KERSLAKE
Assistant City Attorney

SMK/jhy

f:\emps\smk\99-059\Messina-ltr2.doc

HONORABLE FRANKLIN D. BURGESS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JOSEPH J. KIRBY and DEBORAH A.
KIRBY, husband and wife,

Plaintiffs,

v.

THE CITY OF TACOMA, a municipal
corporation; RAY CORPUZ and "JANE
DOE" CORPUZ, husband and wife; PHILIP
ARREOLA and "JANE DOE" ARREOLA,
husband and wife; WILLIAM WOODARD
and CATHERINE WOODARD, husband and
wife; RAYMOND ROBERTS and "JANE
DOE" ROBERTS, husband and wife; DAVID
BRAME and "JANE DOE" BRAME, husband
and wife; and JAMES HAIRSTON and
"JANE DOE" HAIRSTON, husband and wife,

Defendants.

No. C00-5332 FDB

STIPULATION AND
PROTECTIVE ORDER

STIPULATION

COMES NOW the defendants by and through their attorney, Shelley M.
Kerslake, and the plaintiff, by and through his attorney, John L. Messina, and
stipulate that a protective order will be entered by the court in this matter.

This order is required to protect information sought by the plaintiff which if disclosed, or inquired about, will annoy and embarrass a named party, and has no relevance to this case, nor is calculated to lead to any admissible evidence.

MESSINA BULZOMI

ROBIN S. JENKINSON, City Attorney
ELIZABETH A. PAULI, Ch. Asst. City Atty.

By: _____
JOHN L. MESSINA
WSBA# 4440
Attorney for Plaintiffs

By: _____
SHELLEY M. KERSLAKE
WSBA# 21820
Attorney for Defendants

ORDER

Based upon the foregoing stipulation, the court hereby enters an order precluding further inquiry, mentioning in front of a jury or further discovery into criminal allegations raised against Assistant Chief David Brame, which were neither sustained, nor charged in a criminal court.

Furthermore, any information received to date on this subject will be restricted from public dissemination by any party to this action.

DATED this _____ day of _____, 2001.

HONORABLE FRANKLIN D. BURGESS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

Presented by:

ROBIN S. JENKINSON, City Attorney
ELIZABETH A. PAULI, Ch. Asst. City Atty.

By:

SHELLEY M. KERSLAKE
WSBA# 21820
Assistant City Attorney
Attorney for Defendants

Approved as to form; Notice of
Presentment Waived:

MESSINA BULZOMI

By:

JOHN L. MESSINA
WSBA# 4440
Attorney for Plaintiff

2

Stephen L. Bulzomi
 John R. Christensen
 John L. Messina
 Cynthia M. Morgan
 Jeffrey H. Sadler

RECEIVED MESSINA • BULZOMI

ATTORNEYS AT LAW

JAN 30 2001

5316 Orchard Street West
 Tacoma, WA 98467-3633

MessinaLaw@aol.com

TACOMA CITY ATTORNEY
 CIVIL DIVISION

January 29, 2001

SHELLEY M KERSLAKE, ESQ
 OFFICE OF THE CITY ATTORNEY
 747 MARKET ST, RM 1120
 TACOMA WA 98402-3767

Re: Brame Protective Order

Dear Ms. Kerslake:

I will not agree to the proposed protective order, unless I am advised as to the nature of the criminal allegations, any investigation conducted and the results of the investigation. At this point the inquiry seems justified, given the department's double standards and disparate treatment of different officers. Thank you.

Sincerely yours,



John L. Messina

/jl

3



City of Tacoma
Office of the City Attorney

January 31, 2001

John L. Messina
MESSINA BULZOMI
5316 Orchard Street West
Tacoma, WA 98467

Re: Kirby, et. al. v. City of Tacoma, et. al.
United States District Court Cause No. C00-5332FDB

Dear Mr. Messina:

I am in receipt of your January 29, 2001 correspondence regarding the proposed protective order. It is unnecessary to advise you as to the nature of the allegations that were made against Assistant Chief Brame. Your client's complaint does not allege that he was disciplined for allegations of criminal activity, while other similarly situated members of the department were not. Thus, your inquiry into this area has no relevance to your client's case, and only serves the purpose of harassing and embarrassing Assistant Chief Brame. Please let me know if you are still unwilling to agree to the protective order.

I look forward to hearing from you.

Very truly yours,

A handwritten signature in black ink, appearing to be "S. Kerlake", written over the typed name.

SHELLEY M. KERSLAKE
Assistant City Attorney

SMK/jhy

f:\emps\smk\99-059\Messina-ltr5.doc

4

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

JOSEPH J. KIRBY and DEBORAH)
A. KIRBY, husband and wife,)
)
Plaintiffs,)

vs.

No. C00-5332FDB

THE CITY OF TACOMA, a)
municipal corporation; RAY)
CORPUZ and "JANE DOE" CORPUZ,)
husband and wife; PHILIP)
ARREOLA and "JANE DOE")
ARREOLA, husband and wife;)
WILLIAM WOODARD and CATHERINE)
WOODARD, husband and wife;)
RAYMOND ROBERTS and "JANE DOE")
ROBERTS, husband and wife;)
DAVID BRAME and "JANE DOE")
BRAME, husband and wife; and)
JAMES HAIRSTON and "JANE DOE")
HAIRSTON, husband and wife,)
)
Defendants.)

C O P Y

RECEIVED

JAN 31 2001

**TACOMA CITY ATTORNEY
CIVIL DIVISION**

DEPOSITION OF CHARLES MEINEMA
Thursday, January 18, 2001

APPEARANCES

For Plaintiffs: JOHN L. MESSINA
Messina Bulzomi
Attorneys at Law
5316 Orchard Street West
Tacoma, Washington 98467-3633

For Defendants: SHELLEY M. KERSLAKE
Assistant City Attorney
747 Market Street, Room 1120
Tacoma, Washington 98402

Reported by: Fay J. Holme, CSR-RPR
License No. HOLMEFJ374P6

1 We often investigate someone internally, and if
 2 it's considered criminal, we've had officers
 3 transferred to criminal jurisdiction, but we don't do
 4 criminal investigations in-house for the most part.
 5 Not in IA anyway, if you're talking about that kind of
 6 investigation.

7 Q Okay. I just wondered if any of those defendants had
 8 ever been investigated for criminal matters by any
 9 agency you know of.

10 A Yes.

11 Q Who would that be?

12 A Chief Brame was investigated many years ago for an
 13 allegation that, had it been substantiated, would have
 14 been a criminal matter.

15 Q I take it, then, the outcome was that there was no
 16 evidence of criminal activity?

17 A I wasn't involved directly in the investigation, but as
 18 far as I know, there was no formal criminal
 19 investigation, nor was the complaint substantiated
 20 in-house to the degree of discipline against Chief
 21 Brame.

22 Q Who was the lieutenant that did the investigation?

23 A That would have been then Lieutenant David Olsen.

24 Q Do you recall if you ever discussed Olsen's opinions
 25 regarding this investigation?

1 A Yes, I did.

2 Q What were Olsen's opinions?

3 A Olsen's opinions were that the allegations were
4 sustained, but that because of the witness -- length of
5 time between allegation, investigation, and witness
6 reluctance, et cetera, et cetera, they couldn't be
7 proven.

8 Q Okay. The matter was dropped then?

9 A Yes.

10 Q Okay. Are you aware of any incidents where Chief
11 Hairston has removed records of formal discipline from
12 officer personnel files?

13 A Yes, I am.

14 Q Who were the officers?

15 A I believe it would be Officer Andrew Hankins and
16 Officer Zachary Smalls.

17 Q Okay. Were those minority officers?

18 A I'm sorry?

19 Q Were they minority officers?

20 A Yes.

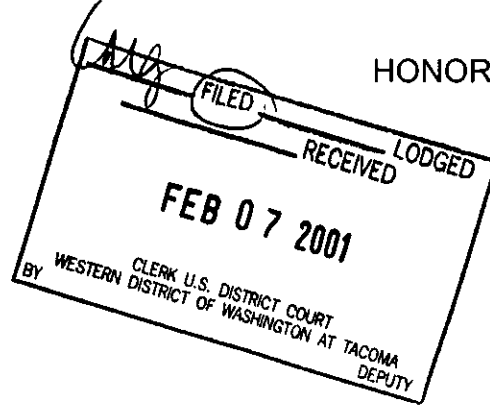
21 Q Okay. African-Americans?

22 A Yes.

23 Q Who originally administered the discipline to them?

24 A It came out of the Operations Bureau, I would believe.
25 The formal person that handed them the form would have

HONORABLE FRANKLIN D. BURGESS



1
2
3
4
5
6
7
8
9

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

10
11
12

JOSEPH J. KIRBY and DEBORAH A.
KIRBY, husband and wife,

13
14
15

Plaintiffs,

16
17

v.

18
19
20

THE CITY OF TACOMA, a municipal
corporation; RAY CORPUZ and "JANE
DOE" CORPUZ, husband and wife; PHILIP
ARREOLA and "JANE DOE" ARREOLA,
husband and wife; WILLIAM WOODARD
and CATHERINE WOODARD, husband and
wife; RAYMOND ROBERTS and "JANE
DOE" ROBERTS, husband and wife; DAVID
BRAME and "JANE DOE" BRAME, husband
and wife; and JAMES HAIRSTON and
"JANE DOE" HAIRSTON, husband and wife,

21
22

Defendants.

No. C00-5332 FDB

MEMORANDUM IN SUPPORT OF
DEFENDANTS' MOTION FOR A
PROTECTIVE ORDER

NOTE FOR HEARING:
February 23, 2001

23
24
25
26

I. FACTS SUPPORTING ISSUANCE OF A PROTECTIVE ORDER

Plaintiff has sued the City of Tacoma and the individually named
defendants for claims that arise out of his employment with the Tacoma Police
Department. His claims include allegations of race discrimination, hostile work

MEMC
MOTIC
f:\emp:

Tacoma City Attorney
Civil Division
747 Market Street, Room 1120
Tacoma, Washington 98402-3767
(253) 591-5885/FAX 591-5755

20

1 environment, age discrimination, violation of his rights for engaging in union
2 activity and negligent hiring. (See Plaintiff's Amended Complaint.)

3 In the deposition of Charles Meinema, plaintiff's attorney asked the
4 deponent whether any one of the named defendants have been investigated on
5 criminal charges. (See attached excerpts of deposition transcript at Tab 4.)

6 This line of questioning has no relevance to plaintiff's causes of action, will not
7 lead to any admissible evidence and is intended solely to embarrass and annoy
8 one of the named defendants. The City has attempted to resolve this issue
9 with plaintiff's counsel without court assistance, but has had no success. (See
10 attached correspondence at Tabs 1 and 3.)

11
12 The facts that are sought to be protected by the defendants are as
13 follows: In 1987, then Patrol Police Officer David Brame, went on a date with a
14 woman, and had consensual sex. Fifteen months after that date, she
15 complained to Tacoma Police Internal Affairs that she had been "date raped."
16 The allegation was investigated by Internal Affairs. After a full investigation, it
17 was determined by the Chief of Police that the Internal Affairs complaint was
18 not sustained. No criminal charges were ever brought, nor was it investigated
19 as a criminal matter.
20

21 **II. THIS INCIDENT IS NOT RELEVANT, ADMISSIBLE NOR LIKELY TO**
22 **LEAD TO THE DISCOVERY OF ADMISSIBLE EVIDENCE, AND A**
23 **PROTECTIVE ORDER SHOULD BE ENTERED**

24 The district court enjoys broad discretion in controlling discovery. Little
25 v. City of Seattle, 863, F.2d 681, 685 (9th Cir. 1988). A district court may limit
26

discovery "to protect a party or person from annoyance, embarrassment...."

1
2 Fed.R.Civ.P. 26(c).

3 The incident at issue, that allegedly occurred over a decade ago, is
4 completely irrelevant to the plaintiff's claims, has no possible bearing on the
5 issues presented in this case and is inadmissible. This is fatal to plaintiff's
6 claim that he is entitled to discover this information. See Grinnel Corp. v.
7 Hachett, 70 FRD 326 (D.C. RI 1976); Johnson Foils, Inc. v. Hych Corp., 61
8 FRD 405 (D.C. NY 1973). The information sought must have evidential value.
9 Johnson v. Nyack Hosp., 169 FDR 550 (S.D. NY 1996); Johnson v. Morthan,
10 164 FRD 571 (N.D. FLA 1996); Blum v. Schlegel, 150 FRD 38, (W.D. NY
11 1993). Plaintiff's complaint does not allege that he was disciplined for
12 allegations of criminal activity while other members of the Department were not;
13 thus, this information has no evidentiary value and should be restricted from
14 discovery.
15


16 The *only* reason for this line of inquiry is to annoy, harass and
17 embarrass a named party. David Brame is now an Assistant Chief with the
18 Tacoma Police Department, and his reputation and good name are essential to
19 the performance of his duties as a leader. This is an inappropriate use of the
20 discovery process, and should not be condoned. It is clear from the information
21 plaintiff has to date, that the allegation of criminal activity was not sustained,
22 and is therefore inadmissible for any purpose. (See Tab 4.) Nonetheless, as
23 plaintiff's letter in response to the City's proposed protective order indicates,
24
25
26

1 they are seeking to engage in the quintessential "fishing expedition" which can
2 only be for the purpose of harassing and embarrassing Assistant Chief Brame.
3 The court in its discretion may issue orders for protection of parties in taking
4 depositions. In re: Penn Central Securities Litigation, 347 F. Supp. 1347 (D.C.
5 PA 1972). Thus, the defendants respectfully request the court enter a
6 protective order prohibiting plaintiff's further inquiry into this matter pursuant to
7 CR 26(c)(4). In addition, defendants would respectfully request that this motion
8 be sealed in the court file to avoid public access to this sensitive information.
9

10 DATED this 7 day of February, 2001.

11 ROBIN S. JENKINSON, City Attorney
12 ELIZABETH A. PAULI, Ch. Asst. City Atty.

13
14 By:


15 SHELLEY M. KERSLAKE
16 WSBA# 21820
17 Attorney for Defendants
18
19
20
21
22
23
24
25
26

FILED
RECEIVED
LODGED
FEB 07 2001
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT TACOMA
DEPUTY

HONORABLE FRANKLIN D. BURGESS

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JOSEPH J. KIRBY and DEBORAH A.
KIRBY, husband and wife,

Plaintiffs,

v.

THE CITY OF TACOMA, a municipal
corporation; RAY CORPUZ and "JANE
DOE" CORPUZ, husband and wife; PHILIP
ARREOLA and "JANE DOE" ARREOLA,
husband and wife; WILLIAM WOODARD
and CATHERINE WOODARD, husband and
wife; RAYMOND ROBERTS and "JANE
DOE" ROBERTS, husband and wife; DAVID
BRAME and "JANE DOE" BRAME, husband
and wife; and JAMES HAIRSTON and
"JANE DOE" HAIRSTON, husband and wife,

Defendants.

No. C00-5332 FDB

DEFENDANTS' MOTION FOR A
PROTECTIVE ORDER

NOTE FOR HEARING:
February 23, 2001

COMES NOW the defendants, City of Tacoma, Ray Corpuz, Philip
Arreola, William Woodard, Catherine Woodard, Raymond Roberts, David
Brame and James Hairston, by and through their undersigned attorney, Shelley
M. Kerlake, Assistant City Attorney for the City of Tacoma, and moves this

DEF
A P
f:er

AL

Tacoma City Attorney
Civil Division
747 Market Street, Room 1120
Tacoma, Washington 98402-3767
(253) 591-5885/FAX 591-5755


19

1 Court pursuant to FRCP 26(c) and Local Rule CR 26(c) for an Order Granting
2 Defendants' Motion for a Protective Order. This motion is based upon the
3 above-referenced court rules and is supported by the Memorandum in Support
4 of Defendants' Motion for a Protective Order and Affidavit of Shelley M.
5 Kerslake in Support of Defendants' Motion for a Protective Order.

6 DATED this 7 day of February, 2001.

7 ROBIN S. JENKINSON, City Attorney
8 ELIZABETH A. PAULI, Ch. Asst. City Atty.

9
10
11 By:



12 SHELLEY M. KERSLAKE
13 WSBA# 21820
14 Attorney for Defendants
15
16
17
18
19
20
21
22
23
24
25
26

HONORABLE FRANKLIN D. BURGESS

FILED RECEIVED LODGED
FEB 07 2001
CLERK U.S. DISTRICT COURT
BY WESTERN DISTRICT OF WASHINGTON AT TACOMA DEPUTY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JOSEPH J. KIRBY and DEBORAH A.
KIRBY, husband and wife,

Plaintiffs,

v.

THE CITY OF TACOMA, a municipal
corporation; RAY CORPUZ and "JANE
DOE" CORPUZ, husband and wife; PHILIP
ARREOLA and "JANE DOE" ARREOLA,
husband and wife; WILLIAM WOODARD
and CATHERINE WOODARD, husband and
wife; RAYMOND ROBERTS and "JANE
DOE" ROBERTS, husband and wife; DAVID
BRAME and "JANE DOE" BRAME, husband
and wife; and JAMES HAIRSTON and
"JANE DOE" HAIRSTON, husband and wife,

Defendants.

No. C00-5332 FDB

NOTICE OF DEFENDANTS'
MOTION FOR A PROTECTIVE
ORDER

NOTE FOR HEARING:
February 23, 2001

TO THE CLERK OF THE COURT AND ALL PARTIES LISTED BELOW:

Please take notice that defendants, City of Tacoma, Ray Corpuz,
Philip Arreola, William Woodard, Catherine Woodard, Raymond Roberts,

NOTICE OF MOTION FOR
A PROTECTIVE ORDER - 1
f:\emps\smk\99-059\Protective Order-notice.doc

ORIGINAL

Tacoma City Attorney
Civil Division
747 Market Street, Room 1120
Tacoma, Washington 98402-3767
(253) 591-5885/FAX 591-5755

David Brame and James Hairston, respectfully request that Defendants' Motion for a Protective Order, be set for Friday, February 23, 2001.

DATED this 7 day of February, 2001.

ROBIN S. JENKINSON, City Attorney
ELIZABETH A. PAULI, Ch. Asst. City Atty.

By:



SHELLEY M. KERSLAKE
WSBA# 21820
Attorney for Defendants

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

HONORABLE FRANKLIN D. BURGESS

FILED *[Signature]* LOGGED
 RECEIVED
FEB 07 2001
 CLERK U.S. DISTRICT COURT
 BY WESTERN DISTRICT OF WASHINGTON AT TACOMA DEPUTY

2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

UNITED STATES DISTRICT COURT
 WESTERN DISTRICT OF WASHINGTON
 AT TACOMA

JOSEPH J. KIRBY and DEBORAH A.
 KIRBY, husband and wife,

Plaintiffs,

v.

THE CITY OF TACOMA, a municipal
 corporation; RAY CORPUZ and "JANE
 DOE" CORPUZ, husband and wife; PHILIP
 ARREOLA and "JANE DOE" ARREOLA,
 husband and wife; WILLIAM WOODARD
 and CATHERINE WOODARD, husband and
 wife; RAYMOND ROBERTS and "JANE
 DOE" ROBERTS, husband and wife; DAVID
 BRAME and "JANE DOE" BRAME, husband
 and wife; and JAMES HAIRSTON and
 "JANE DOE" HAIRSTON, husband and wife,

Defendants.

No. C00-5332 FDB

[PROPOSED]

PROTECTIVE ORDER

THIS MATTER having come on regularly to be heard before the
 undersigned judge of the above-entitled court upon the motion of defendants,

for a protective order pursuant to FRCP 26(c) and Local Rule CR 26(c).

1
2 Defendants represented by and through Shelley M. Kerslake, Assistant City
3 Attorney, plaintiff represented by John L. Messina, and the court having
4 considered the records and file herein, in particular the following documents:

- 5 1. Defendants' Motion for a Protective Order;
- 6 2. Memorandum in Support of Defendants' Motion for a Protective
7 Order;
- 8 3. Affidavit of Shelley M. Kerslake in Support of Defendants' Motion
9 for a Protective Order;
- 10 4.
- 11 5.
- 12 6.

13
14 plus all attachments and exhibits thereto; and being fully advised in the
15 premises, it is hereby

16 ORDERED, ADJUDGED and DECREED that Defendants' Motion for a
17 Protective Order is hereby GRANTED, precluding further inquiry, mentioning in
18 front of a jury or further discovery into criminal allegations raised against
19 Assistant Chief David Brame, which were neither sustained, nor charged in a
20 criminal court ; and it is further

21
22 ORDERED, ADJUDGED and DECREED that any information received
23 to date on this subject will be restricted from public dissemination by any party
24 to this action; and it is further

ORDERED, ADJUDGED and DECREED that this motion will be sealed
by the court.

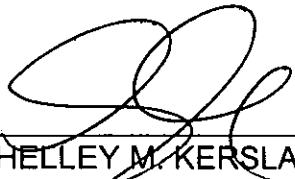
DATED this _____ day of February, 2001.

HONORABLE FRANKLIN D. BURGESS

Presented by:

ROBIN S. JENKINSON, City Attorney
ELIZABETH A. PAULI, Ch. Asst. City Atty.

By:



SHELLEY M. KERSLAKE
WSBA# 21820
Assistant City Attorney
Attorney for Defendants

Approved as to form; Notice of
Presentment Waived:

MESSINA BULZOMI

By:

JOHN L. MESSINA
WSBA# 4440
Attorney for Plaintiff

ENTERED
ON DOCKET

FEB 07 2001

BY DEPUTY *CMG*

CMG FILED
LODGED
RECEIVED
FEB 07 2001
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT TACOMA
BY DEPUTY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JOSEPH A. KIRBY and DEBORAH A.
KIRBY, husband and wife,

Plaintiff,

v.

THE CITY OF TACOMA, et al.,

Defendant.

Case No. C00-5332 FDB

ORDER MODIFYING DISCOVERY
DEADLINE

The parties submit a stipulated motion requesting an extension to the discovery deadline established by the court's scheduling order of October 16, 2000. The parties suggest that the deadline be moved to April 30, 2001. The proposed extension is not compatible with the deadlines that the court must meet in order for this case to proceed to trial as scheduled.

THEREFORE IT IS HEREBY ORDERED:

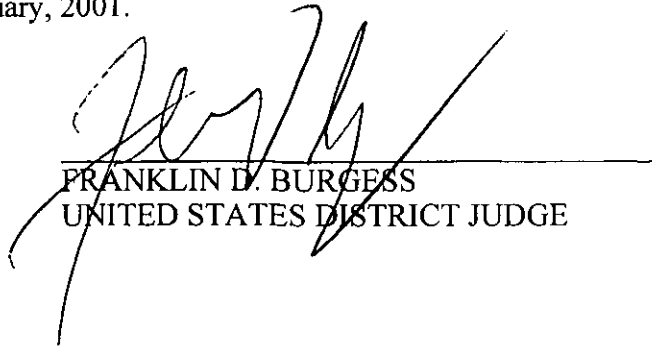
The motion to extend the discovery deadline is granted up to March 30, 2001. All other deadlines in the court's scheduling order shall remain the same. The attention of the parties is particularly called to the dispositive motion deadline of March 30, 2001 and the mediation deadline of March 21, 2001.

ORDER - 1

18

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

DATED this 7 day of February, 2001.



FRANKLIN D. BURGESS
UNITED STATES DISTRICT JUDGE

car

United States District Court
for the
Western District of Washington
February 7, 2001

* * MAILING CERTIFICATE OF CLERK * *

Re: 3:00-cv-05332

True and correct copies of the attached were mailed by the clerk to the following:

John L Messina, Esq.
MESSINA LAW FIRM
5316 ORCHARD ST W
TACOMA, WA 98467-3633
FAX 1-253-475-7886

Shelley M Kerlake, Esq.
TACOMA CITY ATTORNEY'S OFFICE
STE 1120
747 MARKET ST
TACOMA, WA 98402-3767
253-591-5885

Judge Burgess

RECEIVED

FEB 02 2001

TACOMA CITY ATTORNEY
CIVIL DIVISION

FILED
FEB 01 2001
INA LAW FIRM
4/22/2003 14344 00131

HONORABLE FRANKLIN D. BURGESS

FILED *Chap*
RECEIVED
FEB 05 2001
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT TACOMA
DEPUTY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JOSEPH J. KIRBY and DEBORAH A.
KIRBY, husband and wife,

Plaintiffs,

v.

THE CITY OF TACOMA, a municipal
corporation; RAY CORPUZ and "JANE
DOE" CORPUZ, husband and wife; PHILIP
ARREOLA and "JANE DOE" ARREOLA,
husband and wife; WILLIAM WOODARD
and CATHERINE WOODARD, husband and
wife; RAYMOND ROBERTS and "JANE
DOE" ROBERTS, husband and wife; DAVID
BRAME and "JANE DOE" BRAME, husband
and wife; and JAMES HAIRSTON and
"JANE DOE" HAIRSTON, husband and wife,

Defendants.

No. C00-5332 FDB

STIPULATED MOTION FOR
ORDER TO EXTEND DISCOVERY
CUTOFF DATE

COMES NOW the defendants, by and through their attorney of record,
Shelley M. Kerslake, Assistant City Attorney, and plaintiffs, by and through their
attorney of record, John L. Messina; and, and jointly move for an order
extending the discovery cutoff date in the above-captioned matter from March

STIPULATED MOTION FOR ORDER
EXTENDING DISCOVERY CUTOFF - 1
f:\emps\smk\99-059\Discovery Extend-stip.doc

ORIGINAL


Tacoma City Attorney
Civil Division
747 Market Street, Room 1120
Tacoma, Washington 98402-3767
(253) 591-5885/FAX 591-5755


30, 2001 to April 30, 2001. This continuance is required due to the need for further discovery. Both the plaintiff and defendants have agreed to the extension of the discovery cutoff date. Both parties also agree that there will be no need to change the trial date, currently set for July 9, 2001.

DATED this 1 day of Feb, 2001.

MESSINA BULZOMI

ROBIN S. JENKINSON, City Attorney
ELIZABETH A. PAULI, Ch. Asst. City Atty.

By: 
JOHN L. MESSINA
WSBA# 4440
Attorney for Plaintiff

By: 
SHELLEY M. KERSLAKE
WSBA# 21820
Attorney for Defendants

ORDER

The above-stipulated motion to extend discovery cutoff date, and having come on regularly for hearing before the above-entitled Court upon the stipulation of the parties, and the Court being fully advised in the premises; now, therefore, it is

ORDERED that the discovery cutoff date currently scheduled for March 30, 2001, be stricken, and that the new discovery cutoff date be changed to April 30, 2001.


DATED this _____ day of _____, 2001.

JUDGE FRANKLIN D. BURGESS

Presented by:

ROBIN S. JENKINSON, City Attorney
ELIZABETH A. PAULI, Ch. Asst. City Atty.

By:



SHELLEY M. KERSLAKE
WSBA# 21820
Attorney for Defendants

Approved as to form; Notice of
Presentment Waived:

MESSINA BULZOMI

By:



JOHN L. MESSINA
WSBA# 4440
Attorney for Plaintiff

HONORABLE FRANKLIN D. BURGESS

FILED RECEIVED LODGED
FEB 02 2001
CLERK U.S. DISTRICT COURT
BY WESTERN DISTRICT OF WASHINGTON AT TACOMA DEPUTY

RECEIVED
FEB 02 2001
MESSINA LAW FIRM

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JOSEPH J. KIRBY and DEBORAH A.
KIRBY, husband and wife,

Plaintiffs,

v.

THE CITY OF TACOMA, a municipal
corporation; RAY CORPUZ and "JANE
DOE" CORPUZ, husband and wife; PHILIP
ARREOLA and "JANE DOE" ARREOLA,
husband and wife; WILLIAM WOODARD
and CATHERINE WOODARD, husband and
wife; RAYMOND ROBERTS and "JANE
DOE" ROBERTS, husband and wife; DAVID
BRAME and "JANE DOE" BRAME, husband
and wife; and JAMES HAIRSTON and
"JANE DOE" HAIRSTON, husband and wife,

Defendants.

No. C00-5332 FDB

AFFIDAVIT OF SHELLEY M.
KERSLAKE IN SUPPORT OF
DEFENDANTS' MOTION FOR
PARTIAL SUMMARY JUDGMENT
OF PLAINTIFF'S CLAIM OF
RETALIATION UNDER RCW 49.60

NOTE FOR HEARING:
March 2, 2001

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

SHELLEY M. KERSLAKE, being first duly sworn, under oath, deposes

and states:

AFFI
f:\em

Tacoma City Attorney
Civil Division
747 Market Street, Room 1120
Tacoma, Washington 98402-3767
(253) 591-5885/FAX 591-5755

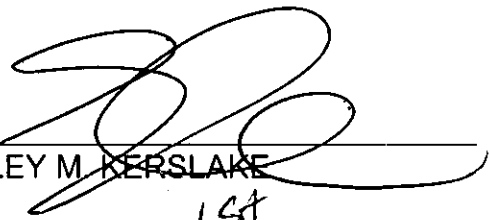
17

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

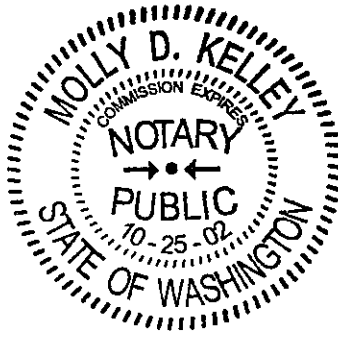
That she is the attorney for the defendants in the above-referenced matter and makes this affidavit based on personal knowledge.


1. That attached hereto and marked as Exhibit "1" is a true and accurate copy of excerpts of Defendants' First Interrogatories to Plaintiff and Requests for Production and Answers Thereto.

FURTHER YOUR AFFIANT SAYETH NAUGHT.


SHELLEY M. KERSLAKE

SUBSCRIBED and SWORN to before me this 1st day of February, 2001.




Printed Name: Molly D. Kelley
NOTARY PUBLIC in and for the State of Washington, residing at Tacoma
My commission expires: 10/25/02

1

RECEIVED
MAR 08 2000
TACOMA CIVIL DIVISION
VIA FAX 2:15

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

JOSEPH J. KIRBY and DEBORAH A. KIRBY, husband and wife,

Plaintiffs,

v.

THE CITY OF TACOMA, a municipal corporation; RAY CORPUZ and "JANE DOE" CORPUZ, husband and wife; PHILIP ARREOLA and "JANE DOE" ARREOLA, husband and wife; WILLIAM WOODARD and CATHERINE WOODARD, husband and wife; RAYMOND ROBERTS and "JANE DOE" ROBERTS, husband and wife; DAVID BRAME and "JANE DOE" BRAME, husband and wife; and JAMES HAIRSTON and "JANE DOE" HAIRSTON, husband and wife,

Defendants.

No. 99-2-13911-4

DEFENDANTS' FIRST INTERROGATORIES TO PLAINTIFF AND REQUESTS FOR PRODUCTION

AND ANSWERS THERETO

CERTIFICATION
I hereby certify that on 3/7/00 I deposited in the mails of the United States of America and/or placed with Legal Messengers and/or faxed a copy of the document to which this certificate is attached, for delivery to all counsel of record.
V. De Franco
Messina Law Firm

TO : JOSEPH J. KIRBY and DEBORAH A. KIRBY, plaintiffs;
AND TO : JEFFREY SADLER, their attorney.

INTERROGATORY INSTRUCTIONS

A. Interrogatories. You are required to answer the following interrogatories separately and fully, under oath, within 30 days of receipt thereof, in accordance with CR 26, 33, and 34. These interrogatories are continuing in nature so as to require the filing of supplementary answers to the extent called for by CR 26(e). Your answers should include any non-privileged information and documents in the possession of your employees and agents, including your attorneys, consultants and any persons who have acted or are now acting on your behalf.

In compliance with CR 26(i), a telephone conference is scheduled on March 3, 2000 at 9:00 a.m. This conference will be stricken upon the timely receipt of answers to interrogatories and responses to requests

conversation. I provided the compelled statement on 15 July 1998, approximately 1 hour after being ordered to do so. On 30 July 1998, Assistant Chief Woodard advised me in the presence of Cpt. Paul Mielbrecht that he intended to discipline me for asserting my privacy rights as well as my RCW protected union activities. Further, he stated that had I not complied with his orders, he would have recommended the termination of my employment.

(5) That Assistant Chief William Woodard retaliated against me for my union activities when he provided false information in an attempt to prejudice a fair and impartial fitness for duty examination I participated in on 9 September 1998. Further, that Assistant Chief William Woodard released a copy of an unadjudicated internal report of disciplinary findings and recommendations to Dr. Gary Hendricksen relative to the 9 September 1998 fitness for duty exam. These documents were internal working papers and their release in their existing form violated my due process rights as the matters contained therein were under review by Chief Philip Areola and had not been adjudicated law existing management-labor contracts.

The Tacoma Police Department, through agents William Woodard and Chief Arreola, and the City of Tacoma, through Agent Ray Corpuz, demonstrated a well documented pattern of harassment and intimidation for my union advocacy of members of Local #6. Further defendants have engaged in a malicious, ongoing effort to sanction me for my union activities. I believe defendants have violated my conceptional guarantees of privacy, provisions of the Bill of Rights and the Civil Rights Act as well as the RCW prohibiting retaliation against collective bargaining unit members.

Plaintiffs reserve the right to supplement as discovery progresses.

INTERROGATORY NO. 5: Please state, with particularity, all facts upon which you base your allegation that you were retaliated against for exercising your rights under RCW 49.60. Include the following in your response:

- (a) What opposition activity were you engaged in;
- (b) The inclusive dates you were involved in this activity;
- (c) What adverse employment action do you claim was taken against you as a result of this activity; and
- (d) Facts which you believe demonstrate that the protected activity was a factor in the employment action.

ANSWER:

- (a) Advocacy of individual members of Tacoma Police Union Local #6 as well as for union-wide issues involving union positions and controversies with Chief of Police Philip Arreola.

(b) As an elected Executive Board officer of Tacoma Police Union #6, from 4 March 1997 to 18 August 1998, during which time period I was involved on a daily basis in representation and advocacy for members of Local #6.

(c) (1) I was investigated for alleged misconduct on several occasions. The investigations were not in accordance with the existing Labor-Management Contract. The investigations were not closed out in a timely fashion but held over me resulting in increased stress and anxiety.

(2) My electronic mail was seized without a search warrant pursuant to one of these investigations which was "administrative" in nature and not a criminal investigation. This was a violation of the Department's MRP 2.09.01 (XI-F) - Search of Locker or Storage Space - "absent an employee's consent or exigent circumstances, assigned storage space shall not be searched relative to an internal investigation without a search warrant having first been issued."

(3) I was compelled under threat of termination to divulge the contents of a private conversation I had in the privacy of my own home, off duty with another member of Local #6 while acting in an advocacy relationship by William Woodard. This is a violation of my civil rights and privacy.

(4) I was subsequently disciplined for my initial refusal to provide this information by Chief James Hairston in violation of RCW 49.60.

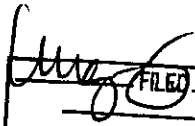
(5) I was compelled under threat of termination to submit to taped statements in spite of RCW prohibitions and contrary legal opinions.

(6) I was passed over for the Civil Service position of Police Captain twice, in spite of my standing of #1 on the Civil Service Captain's List in large measure, I believe, for my union advocacy and my assertion of rights and privileges under Department MRP 2.09.001 (Complaints and Discipline) which states in Section XIB: Exercise of Rights: Administrative Appeal: "Employees may not be subjected to formal discipline, denied promotion, or threatened with such treatment, because of the exercise of the rights granted under this MRP."

(d) Philip Arreola directly threatened retaliatory action against me as a result of exercising my rights as a recognized member of the Executive Board of Tacoma Police Union Local #6 when I asked advocacy questions involving the length of disciplinary investigations at a general staff meeting of 16 September 1997.

Plaintiffs reserve the right to supplement upon further discovery.

HONORABLE FRANKLIN D. BURGESS


 FILED RECEIVED LODGED
FEB 02 2001
 CLERK U.S. DISTRICT COURT
 WESTERN DISTRICT OF WASHINGTON AT TACOMA
 BY DEPUTY

RECEIVED
FEB 02 2001
 MESSINA LAW FIRM

UNITED STATES DISTRICT COURT
 WESTERN DISTRICT OF WASHINGTON
 AT TACOMA

JOSEPH J. KIRBY and DEBORAH A.
 KIRBY, husband and wife,

Plaintiffs,

v.

THE CITY OF TACOMA, a municipal
 corporation; RAY CORPUZ and "JANE
 DOE" CORPUZ, husband and wife; PHILIP
 ARREOLA and "JANE DOE" ARREOLA,
 husband and wife; WILLIAM WOODARD
 and CATHERINE WOODARD, husband and
 wife; RAYMOND ROBERTS and "JANE
 DOE" ROBERTS, husband and wife; DAVID
 BRAME and "JANE DOE" BRAME, husband
 and wife; and JAMES HAIRSTON and
 "JANE DOE" HAIRSTON, husband and wife,

Defendants.

No. C00-5332 FDB

MEMORANDUM IN SUPPORT OF
 DEFENDANTS' MOTION FOR
 PARTIAL SUMMARY JUDGMENT
 OF PLAINTIFF'S CLAIM OF
 RETALIATION UNDER RCW 49.60

NOTE FOR HEARING:
 March 2, 2001

FACTUAL BACKGROUND

Plaintiff is employed by the Tacoma Police Department as a police
 lieutenant. He has filed suit alleging many causes of action against the City
 and several named defendants. For one of his causes of action, plaintiff's

MEI
 JUC
 f:er

Tacoma City Attorney
 Civil Division
 747 Market Street, Room 1120
 Tacoma, Washington 98402-3767
 (253) 591-5885/FAX 591-5755

16

1 amended complaint alleges that he was "retaliated against for exercising his
 2 rights under RCW 49.60." (Complaint, p. 5, lines 12-14). When asked to
 3 explain the basis for this cause of action in interrogatories, plaintiff answered
 4 that he was retaliated against for engaging in protected union activity. (See
 5 Exhibit 1, excerpts of Plaintiff's Answer to Interrogatories.) Plaintiff has failed to
 6 state a cognizable claim under RCW 49.60.

7 STANDARD ON MOTION FOR SUMMARY JUDGMENT

8 Pursuant to Rule 56(c) of the Federal Rules of Civil Procedure, summary
 9 judgment shall be granted if "the pleadings, depositions, answers to
 10 interrogatories, and omissions on file, together with affidavits, if any, show that
 11 there is no genuine issue as to any material fact and that the moving party is
 12 entitled to judgment as a matter of law." One of the principal purposes of the
 13 rule is to dispose of factually and legally unsupported claims or defenses.
 14 Celotex Corp. v. Catrett, 477 U.S. 317, 325, 106 S.Ct. 2548, 2553, 91 L.Ed.2d
 15 265 (1986).
 16

17 In considering a motion for summary judgment, the court must examine
 18 all of the evidence in the light most favorable to the nonmoving party. United
 19 States v. Diebold, Inc., 369 U.S. 654, 655, 82 S.Ct. 993, 8 L.Ed.2d 176 (1962).
 20 A moving party who does not bear the burden of proof at trial may discharge his
 21 burden of showing that there is no genuine issue of material fact by
 22 demonstrating that "there is an absence of evidence to support the nonmoving
 23 party's case." Celotex, 477 U.S. at 325, 106 S.Ct. at 2554. The moving party
 24
 25
 26

1 is not required to produce evidence showing the absence of a genuine issue of
2 material fact, nor must the moving party support its motion with evidence
3 negating the nonmoving party's claims. Lujan v. National Wildlife Fed'n, 497
4 U.S. 871, 885, 110 S.Ct. 3177, 3187, 111 L.Ed.2d 695 (1990); United
5 Steelworkers v. Phelps Dodge Corp., 865 F.2d 1539, 1542 (9th Cir.), cert.
6 denied 493 U.S. 809, 110 S.Ct. 51, 107 L.Ed.2d 20 (1989). Instead, "the
7 motion may, and should, be granted so long as whatever is before the district
8 court demonstrates that the standard for the entry of judgment, as set forth in
9 Rule 56(c) is satisfied." Lujan, 497 U.S. at 885, 110 S.Ct. at 3187 (quoting
10 Celotex, 477 U.S. at 323, 106 S.Ct. at 2553).
11

12 As in every case where a party moves for summary judgment under Rule
13 56, the moving party's burden is met "by showing -- that is, pointing out ... that
14 there is an absence of evidence to support the nonmoving party's case."
15 Celotex, 477 U.S. at 322-23, 106 S.Ct. at 2552. The question is not whether
16 there is literally no evidence, but "whether there is any upon which a jury can
17 properly proceed to find a verdict for the party producing it, upon whom the
18 [burden] of proof is imposed." Anderson v. Liberty Lobby, Inc., 47 U.S. 242,
19 252, 106 S.Ct. 2505, 2512, 91 L.Ed.2d 202 (1986). This is so because, in a
20 summary judgment motion, the "existence of a scintilla of evidence in support of
21 the plaintiff's position will be insufficient; there must be evidence on which a jury
22 could reasonably find for the plaintiff." (emphasis added) Anderson, 477 U.S.
23 at 252, 106 S.Ct. at 2512.
24
25
26

DISCUSSION

1
2
3 Plaintiff has plead a claim of retaliation pursuant to RCW 49.60. RCW
49.60.180, in pertinent part, states:

4 **Unfair practice of employers.** It is an unfair
5 practice for any employer:

6 (3) To discriminate against any person in
7 compensation or in other terms or conditions of
8 employment because of *age, sex, marital status,*
9 *race, creed, color, national origin, or the presence of*
10 *any sensory, mental or physical disability...*(emphasis
11 added).

12 The plain language of the statute does not contain union activity as one
13 of the enumerated protections.

14 Furthermore, RCW 49.60.210 states in relevant part:

15 (1) It is an unfair practice for any employer...
16 to discharge, expel or otherwise discriminate against
17 any person because he or she has opposed any
18 practices forbidden by this chapter...

19 Again, engaging in union activity is not protected under Chapter RCW
20 49.60, thus, this section is inapplicable.


21 No facts have been alleged by the plaintiff that entitle him to relief for
22 retaliation under RCW 49.60 for engaging in union activity. Plaintiff has
23 demonstrated through his allegations that there is an insuperable bar to relief.
24 The allegations he makes are simply not covered by the statute. Thus, there is
25 no evidence on which a jury could find for the plaintiff on his claim, and the
26 claim should be dismissed. Anderson v. Liberty Lobby, Inc., supra. Based on
the foregoing, defendants respectfully request that the court grant its motion,

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

as no set of facts in support of the plaintiff's claim entitle him to relief for
engaging in union activity under RCW 49.60.

DATED this 1 day of February, 2001.

ROBIN S. JENKINSON, City Attorney
ELIZABETH A. PAULI, Ch. Asst. City Atty.

By: 

SHELLEY M. KERSLAKE
WSBA# 21820
Attorney for Defendants

HONORABLE FRANKLIN D. BURGESS

FILED
 RECEIVED
 LODGED
 FEB 02 2001
 CLERK U.S. DISTRICT COURT
 WESTERN DISTRICT OF WASHINGTON AT TACOMA
 DEPUTY
 RECEIVED
 FEB 02 2001
 MESSINA LAW FIRM

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JOSEPH J. KIRBY and DEBORAH A.
KIRBY, husband and wife,

Plaintiffs,

v.

THE CITY OF TACOMA, a municipal corporation; RAY CORPUZ and "JANE DOE" CORPUZ, husband and wife; PHILIP ARREOLA and "JANE DOE" ARREOLA, husband and wife; WILLIAM WOODARD and CATHERINE WOODARD, husband and wife; RAYMOND ROBERTS and "JANE DOE" ROBERTS, husband and wife; DAVID BRAME and "JANE DOE" BRAME, husband and wife; and JAMES HAIRSTON and "JANE DOE" HAIRSTON, husband and wife,

Defendants.

No. C00-5332 FDB

DEFENDANTS' MOTION FOR
PARTIAL SUMMARY JUDGMENT
OF PLAINTIFF'S CLAIM OF
RETALIATION UNDER RCW 49.60

NOTE FOR HEARING:
March 2, 2001

COMES NOW the defendants, City of Tacoma, Ray Corpuz, Philip Arreola, William Woodard, Catherine Woodard, Raymond Roberts, David Brame and James Hairston, by and through their undersigned attorney, Shelley M. Kerslake, Assistant City Attorney for the City of Tacoma, and moves this

NAL

Tacoma City Attorney
Civil Division
747 Market Street, Room 1120
Tacoma, Washington 98402-3767
(253) 591-5885/FAX 591-5755


15

Court pursuant to FRCP 7 and FRCP 56 for an order granting Defendants'
Motion for Summary Judgment of Plaintiff's Claim of Retaliation Under RCW
49.60. This motion is based upon the above-referenced court rules and is
supported by the Memorandum in Support of Defendants' Motion for Partial
Summary Judgment of Plaintiff's Claim of Retaliation Under RCW 49.60.

DATED this 1 day of February, 2001.

ROBIN S. JENKINSON, City Attorney
ELIZABETH A. PAULI, Ch. Asst. City Atty.

By:


SHELLEY M. KERSLAKE
WSBA# 21820
Attorney for Defendants

HONORABLE FRANKLIN D. BURGESS

RECEIVED
FEB 02 2001
MESSINA LAW FIRM

FILED RECEIVED LOGGED
FEB 02 2001
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT TACOMA
DEPUTY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JOSEPH J. KIRBY and DEBORAH A.
KIRBY, husband and wife,

Plaintiffs,

v.

THE CITY OF TACOMA, a municipal
corporation; RAY CORPUZ and "JANE
DOE" CORPUZ, husband and wife; PHILIP
ARREOLA and "JANE DOE" ARREOLA,
husband and wife; WILLIAM WOODARD
and CATHERINE WOODARD, husband and
wife; RAYMOND ROBERTS and "JANE
DOE" ROBERTS, husband and wife; DAVID
BRAME and "JANE DOE" BRAME, husband
and wife; and JAMES HAIRSTON and
"JANE DOE" HAIRSTON, husband and wife,

Defendants.

No. C00-5332 FDB

NOTICE OF DEFENDANTS'
MOTION FOR PARTIAL
SUMMARY JUDGMENT OF
PLAINTIFF'S CLAIM OF
RETALIATION UNDER RCW 49.60

NOTE FOR HEARING:
March 2, 2001

TO THE CLERK OF THE COURT AND ALL PARTIES LISTED BELOW:

Please take notice that defendants, City of Tacoma, Ray Corpuz,
Philip Arreola, William Woodard, Catherine Woodard, Raymond Roberts,
David Brame and James Hairston, respectfully request that Defendants'

NOTICE OF MOTION FOR SUMMARY
JUDGMENT RE: RETALIATION - 1
f:\emps\smk\99-059\SJ-Retaliation-notice.doc

ORIGINAL

Tacoma City Attorney
Civil Division
747 Market Street, Room 1120
Tacoma, Washington 98402-3767
(253) 591-5885/FAX 591-5755

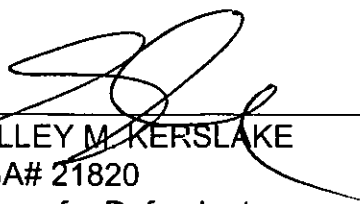
Motion for Partial Summary Judgment of Plaintiff's Claim of Retaliation Under

RCW 49.60, be set for Friday, March 2, 2001.

DATED this 1 day of February, 2001.

ROBIN S. JENKINSON, City Attorney
ELIZABETH A. PAULI, Ch. Asst. City Atty.

By:



SHELLEY M. KERSLAKE
WSBA# 21820
Attorney for Defendants

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

FILED **AM** RECEIVED **LODGED**
FEB 02 2001
 CLERK U.S. DISTRICT COURT
 WESTERN DISTRICT OF WASHINGTON AT TACOMA

RECEIVED
FEB 02 2001
 MESSINA LAW FIRM

UNITED STATES DISTRICT COURT
 WESTERN DISTRICT OF WASHINGTON
 AT TACOMA

JOSEPH J. KIRBY and DEBORAH A.
 KIRBY, husband and wife,

No. C00-5332 FDB

Plaintiffs,

[PROPOSED]

v.

ORDER GRANTING
 DEFENDANTS' MOTION FOR
 PARTIAL SUMMARY JUDGMENT
 OF PLAINTIFF'S CLAIM OF
 RETALIATION UNDER RCW 49.60

THE CITY OF TACOMA, a municipal
 corporation; RAY CORPUZ and "JANE
 DOE" CORPUZ, husband and wife; PHILIP
 ARREOLA and "JANE DOE" ARREOLA,
 husband and wife; WILLIAM WOODARD
 and CATHERINE WOODARD, husband and
 wife; RAYMOND ROBERTS and "JANE
 DOE" ROBERTS, husband and wife; DAVID
 BRAME and "JANE DOE" BRAME, husband
 and wife; and JAMES HAIRSTON and
 "JANE DOE" HAIRSTON, husband and wife,

NOTE FOR HEARING:
 March 2, 2001

Defendants.

THIS MATTER having come on regularly to be heard before the
 undersigned judge of the above-entitled court upon the motion of defendants,
 City of Tacoma, Ray Corpuz, Philip Arreola, William Woodard, Catherine
 Woodard, Raymond Roberts, David Brame and James Hairston, for an order
 granting summary judgment on plaintiff's claim of retaliation under RCW 49.60
 against the defendants. Defendants represented by and through Shelley M.
 Kerslake, Assistant City Attorney, plaintiff represented by John L. Messina, and
 the court having considered the records and file herein, in particular the
 following documents:

ORDER GRANTING MOTION FOR SUMMARY
 JUDGMENT RE: RETALIATION - 1
 f:\emps\smk\99-059\SJ-Retaliation-order.doc

Tacoma City Attorney
 Civil Division
 747 Market Street, Room 1120
 Tacoma, Washington 98402-3767
 (253) 591-5885/FAX 591-5755

1. Defendants' Motion for Partial Summary Judgment of Plaintiff's Claims of Retaliation Under RCW 49.60;

2. Memorandum in Support of Defendants' Motion for Partial Summary Judgment of Plaintiff's Claims of Retaliation Under RCW 49.60;

3.

4.

plus all attachments and exhibits thereto; and being fully advised in the premises, it is hereby

ORDERED, ADJUDGED and DECREED that Defendants' Motion for Partial Summary Judgment of Plaintiff's Claim of Retaliation Under RCW 49.60 is hereby GRANTED; and it is further

ORDERED, ADJUDGED and DECREED that plaintiff's claim of retaliation under RCW 49.60 against defendants is DISMISSED in its entirety.

DATED this ____ day of February, 2001.

FRANKLIN D. BURGESS
UNITED STATES DISTRICT JUDGE

Presented by:

ROBIN S. JENKINSON, City Attorney
ELIZABETH A. PAULI, Ch. Asst. City Atty.

By:

SHELLEY M. KERSLAKE
WSBA# 21820
Attorney for Defendants

HONORABLE FRANKLIN D. BURGESS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

RECEIVED
JAN 30 2001
MESSINA LAW FIRM

JOSEPH J. KIRBY and DEBORAH A.
KIRBY, husband and wife,

No. C00-5332 FDB

Plaintiffs,

NOTICE OF UNAVAILABILITY

v.

THE CITY OF TACOMA, a municipal
corporation; RAY CORPUZ and "JANE
DOE" CORPUZ, husband and wife; PHILIP
ARREOLA and "JANE DOE" ARREOLA,
husband and wife; WILLIAM WOODARD
and CATHERINE WOODARD, husband and
wife; RAYMOND ROBERTS and "JANE
DOE" ROBERTS, husband and wife; DAVID
BRAME and "JANE DOE" BRAME, husband
and wife; and JAMES HAIRSTON and
"JANE DOE" HAIRSTON, husband and wife,

Defendants.

FILED
RECEIVED
LODGED
JAN 31 2001
BY WESTERN CLERK U.S. DISTRICT COURT
DISTRICT OF WASHINGTON AT TACOMA
DEPUTY

TO : THE CLERK OF THE COURT

AND TO : All counsel

PLEASE TAKE NOTICE that the undersigned attorney of record, Shelley

M. Kerslake, Assistant City Attorney, will be out of the office from March 1,

N:
f:

Tacoma City Attorney
Civil Division
747 Market Street, Room 1120
Tacoma, Washington 98402-3767
(253) 591-5885/FAX 591-5755

14


1 2001 through March 16, 2001. During the aforementioned absence, said
2 attorney shall not be available for any hearings, trials, motions, or any other
3 required court appearances, and shall additionally be unavailable to actively
4 respond to any proposals or motions that may be filed within said period of
5 absence. The undersigned will request terms or other sanctions should any
6 matters requiring her attention or attendance be scheduled during this time.

7 The undersigned further requests that the Clerk of the Court transmit this
8 information whenever any motion or other matter is set within the time period
9 stated above, to inform the court hearing the matter of the filing of this notice.
10

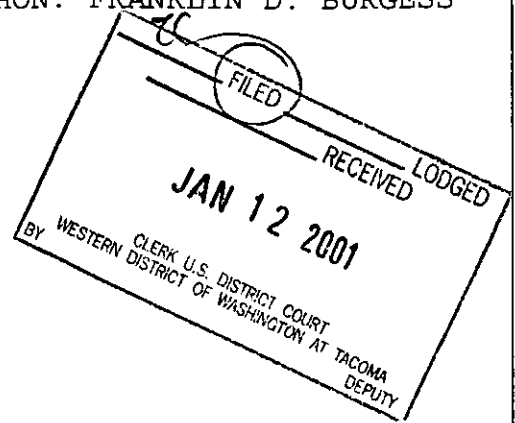
11 RESPECTFULLY SUBMITTED this 29 day of January, 2001.

12 ROBIN S. JENKINSON, City Attorney
13 ELIZABETH A. PAULI, Ch. Asst. City Atty.

14
15 By:


16 SHELLEY M. KERSLAKE
17 WSBA# 21820
18 Assistant City Attorney
19 Attorneys for Defendants
20
21
22
23
24
25
26

HON. FRANKLIN D. BURGESS



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

JOSEPH J. KIRBY and DEBORAH A.)
KIRBY, husband and wife,)
)
Plaintiffs,)

No. C00-5332FDB

vs.)

PLAINTIFFS' DISCLOSURE
OF REBUTTAL WITNESSES

THE CITY OF TACOMA, a municipal)
corporation; RAY CORPUZ and)
"JANE DOE" CORPUZ, husband and)
wife; PHILIP ARREOLA and "JANE)
DOE" ARREOLA, husband and)
wife; WILLIAM WOODARD and)
CATHERINE WOODARD, husband and)
wife; RAYMOND ROBERTS and "JANE)
DOE" ROBERTS, husband and wife;)
DAVID BRAME and "JANE DOE")
BRAME, husband and wife; and)
JAMES HAIRSTON and "JANE DOE")
HAIRSTON, husband and wife,)
)
Defendants.)

Plaintiffs reserve the right to call any witnesses
disclosed by either party, in rebuttal. Plaintiffs also
reserve the right to call any witnesses identified in

MESSINA • BULZONI

5316 Orchard St. W.
Tacoma, WA 98467-3633
(253) 472-6000

1 subsequent discovery or investigation as rebuttal witnesses.

2 DATED this 10 day of January 2001.

3 MESSINA BULZOMI

4 By [Signature]
5 JOHN L. MESSINA 4440
6 Attorneys for Plaintiffs

7 CERTIFICATE OF SERVICE

8 I, VICKIE A. LO FRANCO, certify that on this day I caused
9 to be served by ABC Legal Messenger copies of the document to
10 which this certificate is attached on counsel of record as
11 follows:

12 Shelley M. Kerslake
13 Tacoma City Attorney
14 Civil Division
15 747 Market St., Rm. 1120
16 Tacoma, WA 98402-3767

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

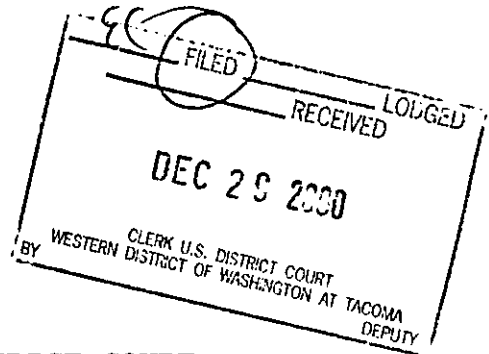
19 [Signature]
20 VICKIE A. LO FRANCO
21 Legal Assistant

22 1-11, 2001
23 Tacoma, Washington

24
25

MESSINA • BULZOMI
5316 Orchard St. W.
Tacoma, WA 98467-3633
(253) 472-6000

HON. FRANKLIN D. BURGESS



IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

JOSEPH J. KIRBY and DEBORAH A.)
KIRBY, husband and wife,)
Plaintiffs,)

No. C00-5332FDB

vs.)

PLAINTIFFS' DISCLOSURE
OF EXPERT WITNESSES

THE CITY OF TACOMA, a municipal)
corporation; RAY CORPUZ and)
"JANE DOE" CORPUZ, husband and)
wife; PHILIP ARREOLA and "JANE)
DOE" ARREOLA, husband and)
wife; WILLIAM WOODARD and)
CATHERINE WOODARD, husband and)
wife; RAYMOND ROBERTS and "JANE)
DOE" ROBERTS, husband and wife;)
DAVID BRAME and "JANE DOE")
BRAME, husband and wife; and)
JAMES HAIRSTON and "JANE DOE")
HAIRSTON, husband and wife,)
Defendants.)

In compliance with Local Rule CR 26(a)(2)(B), plaintiffs submit the following:

- 1. D. P. Van Blaricom
839 91st Lane NE
Bellevue, WA 98004
425-453-0082

MESSINA • BULZOMI
5316 Orchard St. W.
Tacoma, WA 98467-3638
(253) 472-6000

Copy of cover sheet by Clerk
NO BENCH COPY PROVIDED

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1
2 Mr. Van Blaricom is a Police Practices expert. A copy of
3 his curriculum vitae is attached. He will testify as an expert
4 witness regarding his knowledge of Police Department procedures
5 regarding promotions, admonishments, retaliatory activity
6 towards union members, and other issues related to the
7 discriminatory treatment of plaintiff by the Tacoma Police
8 Department and its actors, agents and employees. Further, Mr.
9 Van Blaricom will testify to other department procedures
10 including, but not limited to, an opinion on the specific
11 treatment of plaintiff.

12
13 Mr. Van Blaricom bases his opinions on his experience as
14 well as specific review of the depositions, interrogatories,
15 and requests for production elicited, and to be elicited,
16 through the discovery process. At this time, Mr. Van Blaricom
17 has not prepared any exhibits intended to be used at trial, but
18 should the need arise, plaintiffs will promptly supplement this
19 disclosure. Mr. Van Blaricom's billing rates are as follows:
20 \$ 225.00 per hour
21 \$2,250.00 per day
22 \$1,000.00 minimum for deposition (0-4 hours, then hourly)

23 Plaintiffs reserve the right to supplement Mr. Van
24 Blaricom's opinions as they are refined and developed.

25
26 2. Philip G. Lindsay, M.D.
27 1101 Madison Street, Suite 1260
28 Seattle, WA 98104

29 Doctor Lindsay is a physician specializing in Internal
30 Medicine and Psychiatry. A copy of Doctor Lindsay's curriculum
31 vitae is attached. Doctor Lindsay has the education,
32 experience and knowledge to testify regarding his evaluation
33 and treatment of Joseph Kirby as it relates to the events in
34 this incident.

35 Dr. Lindsay's testimony is based upon his experience and
36 expertise in psychiatry and his treatment and care of Mr.
37 Kirby. Dr. Lindsay's billing rate is currently unknown to the
38 plaintiffs. Plaintiffs will supplement upon discovery of his
39 rate.

40 Plaintiffs reserve the right to supplement Dr. Lindsay's
41 opinions as they are refined and developed.

42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100

MESSINA • BULZOMI

5316 Orchard St. W.
Tacoma, WA 98467-3633
(253) 472-6000

1 3. Douglas Robinson, M.D.
2 Montlake Professional Building
3 2200 24th Avenue East
4 Seattle, WA 98112

5 Doctor Robinson is a physician. He has the education,
6 training and experience to testify regarding his independent
7 medical examination of plaintiff on or around 5/24/99.

8 Plaintiffs will supplement his curriculum vitae upon
9 request by the defendants as it is plaintiffs' understanding
10 that the medical examinations were conducted for and on behalf
11 of the defendant Tacoma Police Department. In addition, Dr.
12 Robinson's billing rates are known to the defendant.

13 4. Dr. Berryman Edwards
14 address to be provided

15 Dr. Edwards is a physician. He has the education,
16 training and experience to testify regarding his independent
17 medical examination of Joseph Kirby on December 12/2/99 and
18 12/9/99.

19 Plaintiffs will supplement his curriculum vitae upon
20 request by the defendants as it is plaintiffs' understanding
21 that the medical examinations were conducted for and on behalf
22 of the defendant Tacoma Police Department. In addition, Dr.
23 Edwards' billing rates are known to the defendant.

24 5. Jerome Rad, M.D.
25 Allenmore Medical Center
South 19th & Union, Ste A206
Tacoma, WA

Doctor Rad is a physician. He has the education,
training and experience to testify regarding his treatment of
Joseph Kirby and the effect the events of this incident have
had on his health.

Plaintiffs will supplement his curriculum vitae upon
receipt. Dr. Rad's billing rates are currently unknown to the
plaintiffs, but will be supplemented upon discovery.

6. Gary L. Hendricksen, M.D.
Allenmore Hospital
1901 S. Union Ave.
Tacoma, WA 98411

MESSINA • BULZOMI

5316 Orchard St. W.
Tacoma, WA 98467-3633
(253) 472-6000

1 Doctor Hendricksen is a physician specializing in
 2 occupational medicine. He has the education, training and
 3 experience to testify regarding his findings as a result of his
 4 examination of Joseph Kirby for the City of Tacoma.

5 Plaintiffs will supplement his curriculum vitae upon
 6 receipt. Dr. Rad's billing rates are currently unknown to the
 7 plaintiffs, but will be supplemented upon discovery.

8 RESERVATION OF RIGHTS

9 These plaintiffs reserve the right to call, at trial, any
 10 and all lay witnesses and expert witnesses disclosed or
 11 identified by any party to this action. Plaintiffs further
 12 reserve the right to call at trial any and all other parties to
 13 this action, whether or not disclosed or identified by any
 14 other party as a lay or expert witness, including all witnesses
 15 discovered through ongoing discovery. These plaintiffs reserve
 16 the right to elicit expert testimony from any and all witnesses
 17 to the extent permitted by the applicable rules of evidence.

18 DATED this 29th day of December 2000.

19 MESSINA BULZOMI

20 By 
 21 JEFFREY H. SADLER 27136
 22 Attorneys for Plaintiffs

23 CERTIFICATE OF SERVICE

24 I, VICKIE A. LO FRANCO, certify that on this day I caused
 25 to be served by ABC Legal Messenger copies of the document to
 which this certificate is attached on counsel of record as
 follows:

Shelley M. Kerslake
 Tacoma City Attorney
 Civil Division
 747 Market St., Rm. 1120
 Tacoma, WA 98402-3767

I declare under penalty of perjury of the laws of the

MESSINA • BULZOMI

5316 Orchard St. W.
 Tacoma, WA 98467-3633
 (253) 472-6000

1 State of Washington that the foregoing is true and correct.

2 Vickie A. Lo Franco
3 VICKIE A. LO FRANCO
Legal Assistant

4 December 29, 2000
5 Tacoma, Washington

6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MESSINA • BULZOMI

5316 Orchard St. W.
Tacoma, WA 98467-3633
(253) 472-6000

Kieby

PHILIP GAYLORD LINDSAY, M.D.
INTERNAL MEDICINE & PSYCHIATRY

CURRICULUM VITAE

Business Address: 1101 Madison Street
Suite 1260
Seattle, Washington 98104

Business Telephone: (206) 622-5454 **Fax:** (206) 622-5501

Tax Identification #: 91-0891186

Special Areas of Interest: Administrative Disability Evaluations
Affective disorders
Attention Deficit Hyperactivity Disorder
Chronic pain syndromes
Consultation-liaison psychiatry
Dissociative disorders including dissociative identity disorder
Forensic psychiatry
Head injury sequelae
Medical-Psychiatric disorders
Posttraumatic stress disorder
Psychopharmacology
Stress-related disorders and stress management

Date of Birth: January 21, 1937

Place of Birth: Olympia, Washington

Citizenship: United States

Marital Status: Married, Five Children

High School: Auburn Academy, Auburn, Washington, Graduated 1955

College: Walla Walla College, Walla Walla, Washington, B.S. Zoology, 1959

Medical School: Loma Linda University, Loma Linda, California, M.D., 1963

Internship: Los Angeles County General Hospital, Straight Medicine, 1963-1964

Residencies: University of Iowa Hospitals, Internal Medicine Residency, 1964-1966
University of Oklahoma Medical Center, Internal Medicine Residency, 1969

PHILIP GAYLORD LINDSAY, M.D.*Curriculum Vitae - Page 2*

University of Oklahoma Medical Center, Psychiatry Residency, 1968-1969
 University of Washington Hospitals, Psychiatry Residency, 1969-1971

Honors & Awards:

Balfour Award, Outstanding Student, Auburn Academy, 1955
 Alpha Omega Alpha Honor Medical Society, Loma Linda University, 1963
 Psychosomatics Best Paper Award, Second Prize, for **Pain, Depression and Antidepressants**, Psychosomatics 22:7, 571-3, 576-7, 1981.

Licensure:

Washington State, February, 1970

Board Certification:

National Board of Medical Examiners Part III, 1964
 American Board of Internal Medicine, 1973
 American Board of Psychiatry and Neurology (Psychiatry), 1975

Faculty Positions:

University of Oklahoma Medical Center, Department of Internal Medicine,
 Clinical Assistant in Medicine, 1966-1968
 University of Washington, Department of Psychiatry and Behavioral
 Sciences, Clinical Assistant
 University of Washington, Department of Psychiatry and Behavioral
 Sciences, Assistant Clinical Professor, 1971-Present

Hospital Positions:

Harborview Medical Center, Chief Resident in Psychiatry, 1971
 Valley General Hospital, Chairman of Psychiatry Service, 1971-1974
 Valley General Hospital, Medical Director, Psychiatry Inpatient Service,
 1973-1974
 Valley General Hospital, Chairman, Internal Medicine Department, 1974
 Providence Medical Center, Chairman, Department of Psychiatry, 1992-
 1994

**Hospital Staff
 Appointments:**

Swedish Hospital Medical Center, 1976 - present
 Providence Medical Center, 1976 - present

**Administrative
 Responsibilities:**

President, Loma Linda University Chapter, Student American Medical
 Association, 1959-1963
 Founder, Medi-Staff, University of Washington House Staff Association,
 Medical Service Organization, 1970
 President, House Staff Association, University of Washington Affiliated
 Hospitals, 1970-1971

**Hospital Administrative
 Responsibilities:**

Founder, Psychiatry Inpatient Service (1WB), Valley General Hospital,
 1973
 Founder, Psychiatry Inpatient Service (2N), Providence Medical Center,
 1977
 Chairman, Long Range Planning Committee, Psychiatry Department,
 Providence Medical Center, 1981
 Chairman, Private Practice Committee, Washington State Medical

Association, 1991-1992
Chairman, Department of Psychiatry, Providence Medical Center, Seattle,
Washington, 1992-1994

Military Service: Captain, United States Air Force, Tinker AFB, 1966-1968

Medical Practice: Private practice Internal Medicine and Psychiatry, Seattle, Washington,
1971-Present

Professional Memberships: King County Medical Society
Washington State Medical Association
American Medical Association
Washington State Psychiatric Association
American Psychiatric Association

Major Invited Papers, Seminars, Lectures and Conferences:

- 11-18-74 Children's Orthopedic Hospital, Seattle, Washington, **Psychiatric manifestations of medical illness.**
- 6-15-76 Medical Grand Rounds, Providence Medical Center, Seattle, Washington, **The psychiatric manifestations of medical disorders.**
- 4-1-78 North Pacific Society of Neurology and Psychiatry, Rosario, Washington, **Biofeedback, stress and stressors.**
- 1-3-79 Medical Grand Rounds, Providence Medical Center, Seattle, Washington, **Biofeedback: A review of mechanisms and applications.**
- 8-28-79 Medical Residents Teaching Conference, Swedish Hospital Medical Center, Seattle, Washington, **Delirium: Diagnosis and management.**
- 10-4-79 Medical Grand Rounds, Providence Medical Center, Seattle, Washington, **Anxiety, stress management and anxiolytics.**
- 5-1-80 Chairman, National Conference on Stress, Providence Medical Center, Seattle, Washington.
- 5-1-80 National Conference on Stress, Providence Medical Center, Seattle, Washington, **Stress, stress management and biofeedback.**
- 10-6-80 Medical Grand Rounds, Swedish Hospital Medical Center, Seattle, Washington, **Enkephalinergic mechanisms in pain pathways.**
- 1-27-81 Medical Grand Rounds, Swedish Hospital Medical Center, Seattle, Washington, **Depression update.**
- 1-28-81 Program Chairman, Psychiatry Section, North Pacific Society of Neurology and Psychiatry, Seattle, Washington.
- 3-24-81 Medical Grand Rounds, Providence Medical Center, Seattle, Washington, **Diagnosis by nail: The systemic onychopathies.**
- 4-21-81 Medical Residents Teaching Conference, Providence Medical Center, Seattle, Washington, **The systemic onychopathies.**
- 12-2-81 Program Chairman, Ciba Symposium, **The management of depression in primary care practice.**
- 12-2-81 Ciba Symposium, Seattle, Washington, **The management of depression in**

PHILIP GAYLORD LINDSAY, M.D.*Curriculum Vitae - Page 4*

- primary care practice.
- 1-12-82 Valley General Hospital, Renton, Washington, **The management of anxiety, depression and delirium.**
- Annually, 1982 through 1987. Psychiatry Residents Didactic Program, University of Washington, Seattle, Washington, **The psychiatric manifestations of medical disorders: Somatopsychics.**
- 5-15-82 Mason Clinic Symposium, Mason Clinic, Seattle, Washington, **"Clinical pharmacology for the practitioner," second generation antidepressants.**
- 10-11-82 Ciba, Detroit, Michigan, **Colloquium on pain and depression.**
- 10-26-82 Swedish Hospital Medical Center, Seattle, Washington, **Grief and depression.**
- 11-9-82 Stevens Memorial Hospital, Seattle, Washington, **Psychotropic medication: Recent developments.**
- 2-9-83 Medical Residents Teaching Conference, Providence Medical Center, Seattle, Washington, **The difficult patient.**
- 3-2-83 Co-Chairman, National conference on antidepressants in pain and depression, Seattle, Washington.
- 3-2-83 Ciba Regional Conference on Pain and Depression, Nampa, Idaho, **The presentation of pain and depression and Antidepressants, pain-depression, and endorphins.**
- 3-24-83 North Pacific Society of Neurology and Psychiatry, Salishan, Oregon, **Somatization disorder, the dysphorioses and enkephalins.**
- 4-20-83 Department of Psychiatry, Good Samaritan Hospital, Portland, Oregon, **Pain-depression, antidepressants, and enkephalins.**
- 9-21-83 Providence Medical Center, Portland, Oregon, **Antidepressants in pain-depression.**
- 10-11-83 Providence Medical Center, Seattle, Washington, **Enkephalins, pain and depression.**
- 2-10-84 Primary Care Conference, Sun Valley, Idaho, **Antidepressant responsive syndromes: Panic disorder, chronic pain and depression.**
- 12-5-84 through 12-29-84 Providence Medical Center, Seattle, Washington, **Medical aspects of psychiatric illness.**
- 3-9-85 Virginia Mason Hospital, Seattle, Washington, **The violent patient and the role of psychiatry.**
- 4-18-85 Washington State Psychological Association, **Multiple personality: Current research.**
- 1-9-86 Providence Medical Center, Seattle, Washington, **Antidepressant trials as they affect length of stay.**
- 1-22-86 St. Joseph Hospital, Tacoma, Washington, **Pain, depression and antidepressants. Depression: The mask and masquerade, Antidepressant responsive syndromes, and Antidepressants: The choice and use.**
- 6-12-86 through 6-13-86 Seattle Primary Care Conference, Seattle, Washington, **Antidepressant responsive syndromes and Antidepressants: The choice and use.**

- 10-23-86 Pacific Northwest Medical Education Institute, Inc., **Antidepressant responsive syndromes.**
- 11-14-86 Providence Medical Center, Seattle, Washington, Grand Rounds, **Delirium: Diagnosis and management.**
- 2-16-87 Primary Care Conference, Sun Valley, Idaho, **Delirium: Recognition and management.**
- 2-17-87 Primary Care Conference, Sun Valley, Idaho, **Pain, depression and antidepressants.**
- 9-17-87 Canadian Academy of Family Practice, Saskatchewan Branch, Saskatoon, **Antidepressants in chronic pain.**
- 9-18-87 Ciba Symposium, Toronto, Ontario, **Antidepressants in chronic pain.**
- 11-19-88 Ciba Symposium, Vancouver, Toronto, London, Ontario, **Antidepressants in chronic pain.**
- 3-15-89 Ciba Symposium, Calgary, Alberta, Edmonton, Saskatchewan, **Antidepressants in chronic pain.**
- 3-28-89 Humana Hospital, Tacoma, Washington, **Antidepressant-responsive syndromes.**
- 10-24-89 The International Society for the Study of Multiple Personality and Disassociation, Chicago, Illinois, **The phenomenology of multiple personality disorder in 172 cases.**
- 1-30-90 Providence Medical Center, Everett, Washington, **Insomnia.**
- 3-9-90 Mead Johnson, Tacoma, Washington, **Differential diagnosis of anxiety and depression, how to treat it.**
- 6-90 Ciba Symposium, Toronto, **Antidepressants, pain, and depression.**
- 8-24-90 Washington State Trial Lawyers Association, **New developments in psychiatry.**
- 10-26-90 Washington State Psychological Association, workshop, **Dissociation: Theory, diagnosis, treatment.**
- 11-21-90 Multicare's Department of Continuing Medical Education, Department of Geriatrics and Tacoma Family Medicine, **Geriatric sleep disorders.**
- 2-27-91 Overlake Hospital, Bellevue, Washington, Grand Rounds, **Insomnia.**
- 5-2-91 Roosevelt Medical Center, Seattle, Washington, **Recognizing and treatment of anxiety in family practice.**
- 10-1-91 East Bremerton Doctors Clinic, Bremerton, Washington, **Insomnia, disease or symptom? : Understanding the BZ receptor.**
- 11-26-91 Providence Medical Center, Seattle, Washington, **Antidepressant-responsive syndromes.**
- 2-11-92 Washington Osteopathic Medical association, Tukwila, Washington, **An overview of sleeping disorders.**
- 2-23-92 American Orthopaedic Foot and Ankle Society, Washington, D.C., **Systemic secrets revealed by the nails.**
- 2-28-92 Washington State Trial Lawyers Association, Seattle, Washington, **Psychological Damages: What a mental health professional can add to your case.**
- 10-14-92 Swedish Medical Center, Seattle, Washington, **Managing everyday stress.**

PHILIP GAYLORD LINDSAY, M.D.*Curriculum Vitae* - Page 6

- 4-21-93 Kent Medical Center, Kent, Washington, **Management of co-morbid anxiety and depression.**
- 12-10-93 Attorney General's Conference, Seattle, Washington, **Injury: Depression and pain sequelae.**
- 2-1-94 Harborview Medical Center Clinician's Conference, Seattle, Washington, **Multiple personality disorder.**
- 6-23-94 Respiratory Care Center 9th Annual Symposium, Seattle, Washington, **Management of depression in the patient with asthma.**
- 11-22-94 Providence Medical Center, Seattle, Washington, **Comparing the new antidepressants.**
- 2-03-95 Providence Medical Center, **Managing depression**, Conference Chairman.
- 5-12-95 Seattle Pacific University, **Medication and medical issues regarding multiple personality disorder.**
- 6-30-95 Attorney General's Conference, Seattle, Washington, **Alcohol and substance abuse.**
- 9-28-95 Bristol-Myers Squibb, New Orleans, Louisiana, **First use case conference, case leader.**
- 1-17-96 Virginia Mason Sports Medicine, Seattle, Washington, **The differential diagnosis of nail syndromes.**
- 3-21-96 Providence Medical Center, Seattle, Washington, **Adult attention-deficit hyperactivity disorder.**
- 3-28-96 Wyeth-Ayerst, Tacoma, Washington, **Recognizing and treating depression in the elderly.**
- 5-16-96 Northwest Eye Associates, Seattle, Washington, **The psychiatric side-effects of ophthalmic beta blockers.**
- 10-16-96 Washington Geriatrics Society, Seattle, Washington, **Optimizing antidepressant algorithms.**
- 11-14-96 Eli Lilly and Company, Seattle, Washington, **Optimizing antidepressant algorithms.**
- 10-7-97 Highline Community Mental Health, Seattle, Washington, **Optimizing antidepressant treatment.**

Films & Videotapes:

- 1973 **Manic-depressive illness** - Harborview Medical Center, Seattle, Washington
- 1-20-83 **Pain, depression and antidepressants** - Ciba-Geigy, New York, New York

Publications-Papers:

- The half-and-half nail.** P.G. Lindsay, M.D., Arch Int Med, 119:583, 1967.
- The depression-pain syndrome and its response to antidepressants.**
P.G. Lindsay, M.D., Margo Wyckoff, Ph.D., Psychosomatics, 22:7, 1981.
- Maprotiline in pain-depression.** P.G. Lindsay, M.D., R.B. Olsen, M.D., Jour Clin Psy 46:6, 1985.

PHILIP GAYLORD LINDSAY, M.D.

Curriculum Vitae - Page 7

Psychosis and water intoxication as presenting symptoms of pulmonary carcinoma. B.L. Grant, M.D., P.G. Lindsay, M.D., *Psychosomatics*, 27:10, 732-733, 1986.

Publications-Book Reviews: **Medical-Psychiatric Practice**, Reviewed *JAMA*, 1988.
Clinical Perspective on Multiple Personality Disorder, *American Journal of Clinical Hypnosis*, January 1994.
The Psychiatric Care of the Medical Patient, *JAMA*, June 8, 1994.
Psychiatric Diagnosis, *JAMA*, February 5, 1997.
Caring for Depression, *JAMA*, May 7, 1997.

Medical Journal Reviewer Responsibilities: Paper Reviewer, *Archives of Internal Medicine*, 1966
 Paper Reviewer, *Psychosomatics*, 1981
 Book Reviewer, *JAMA*, 1992-1993
 Book Reviewer, *American Journal of Clinical Hypnosis*, 1993

Board Examiner Responsibilities: Examiner, American Board of Neurology and Psychiatry, 1982

Grants: Ciba-Geigy 1982, Research studying efficacy of maprotiline in pain-depression syndrome.

National Speakers Bureau Appointments and Faculty Positions: Ciba-Geigy (Canada)
 Ciba-Geigy (U.S. and Canada)
 Mead-Johnson
 Burroughs Wellcome
 Wyeth-Ayerst
 Bristol Myers Squibb Company

Forensic Consultations Summary: Number of Cases: 341 (as of August 1997)
 Number of Consulting Attorneys: 235

Distribution of Forensic Cases:	Personal Injury	197
	Medical Malpractice Defense	64
	Competency	17
	Negligence	13
	Criminal	17
	Sexual Harassment	7
	Other (including custody, visitation, guardianship, discrimination, harassment, wrongful death or release, duty to warn)	30

Detailed list of forensic consultations available upon request.

PHILIP GAYLORD LINDSAY, M.D.
Internal Medicine & Psychiatry

FORENSIC CONSULTATIONS

PHILIP GAYLORD LINDSAY, M.D.

Forensic Consultations - Page 2

September, 1984	<i>Larson v. Tseng</i> Robert Freedman, Defense Attorney Malpractice Independent Medical Examination, Record Review, Deposition	June, 1985	<i>State of Washington v. Monroe</i> Mary L. Shearer, Defense Attorney Competency Independent Medical Exam. Record Review
November, 1984	<i>Joiner v. Harrison Memorial Hospital, et al.</i> Donna Moniz, Defense Attorney Malpractice Record Review, Deposition	July, 1985	<i>Robinson v. University of Washington</i> Sheryl Willert, Defense Attorney Malpractice Independent Medical Examination
December, 1984	<i>Noonan v. State of Washington</i> Vernon Harkins, Plaintiff Attorney Negligence Record Review, Deposition	August, 1985	<i>Murphy v. Brown</i> Jeffrey Hale, Defense Attorney Malpractice Independent Medical Examination, Record Review, Deposition
January, 1985	<i>Serredell v. Wirth</i> Michael Bond, Defense Attorney Malpractice Record Review	August, 1985	<i>McKee v. Shanahan, et al.</i> Philip J. VanDerhoef, Defense Attorney Malpractice Record Review
March, 1985	<i>State of Washington v. William Roger Jones</i> John Austin, Public Defender Competency Independent Medical Examination	September, 1985	<i>Carpenter v. Overlake Hospital, et al.</i> Mary McIntyre-Cecil, Defense Attorney Malpractice Record Review
April, 1985	<i>State v. William Clay Mullins</i> Brett Colacurcio, Defense Attorney Competency Deposition	September, 1985	<i>Anderson v. State of Washington</i> Jay C. Kinney, Plaintiff Attorney Industrial Injury Independent Medical Examination, Record Review
April, 1985	<i>McPhee v. Kerl</i> Don Davis, Plaintiff Attorney Personal Injury Independent Medical Examination, Record Review	October, 1985	<i>Palmquist v. Aversa et al.</i> Robert Freedman, Defense Attorney Malpractice Record Review
April, 1985	<i>Herron v. Arro Metal Fabricators & Feenaughy Equipment Sales</i> Paul Cane, Defense Attorney Personal Injury Independent Medical Examination, Record Review, Deposition	October, 1985	<i>Titus v. Parker</i> Susan Sothmann, Defense Attorney Negligence Record Review
May, 1985	<i>Kalk v. City of Renton</i> Ronald Erickson, Plaintiff Attorney Personal Injury Independent Medical Examination, Record Review, Deposition	November, 1985	<i>Sparlin v. Sicotte, et al.</i> Craig McIvor, Defense Attorney Malpractice Record Review
May, 1985	<i>Celenano v. Celenano</i> Andrea Gilbert, Plaintiff Attorney Child Custody Independent Medical Examination, Record Review, Deposition	November, 1985	<i>Dietz v. Johnson</i> George Kargianis & Anthony Dougherty, Plaintiff Attorneys Personal Injury Independent Medical Examination, Record Review, Deposition
		December, 1985	<i>Wright v. Overlake Hospital, et al.</i> Jeffrey Smith, Defense Attorney Malpractice Record Review

PHILIP GAYLORD LINDSAY, M.D.

Forensic Consultations - Page 3

January, 1986	<i>Trojanowicz v. Locke</i> John Walsh, Plaintiff Attorney Personal Injury Record Review, Deposition	March, 1986	<i>Polley v. Ciba-Gelgy</i> Francis E. Smith, Jr., Defense Attorney Malpractice Record Review
January, 1986	<i>Kerns v. Sanford, et al.</i> David Schoeggel, Defense Attorney Personal Injury Independent Medical Examination, Record Review, Deposition	April, 1986	<i>Overton v. Nank</i> Lee, Smart, Cook, Martin & Patterson, Defense Attorneys Malpractice Record Review
February, 1986	<i>State of Washington v. Van Court</i> Vicki Siegler-Stein, Defense Attorney Insanity Record Review	April, 1986	<i>Robinson v. Richardson</i> Meg Jones Shelton, Plaintiff Attorney Personal Injury, Negligence Record Review
February, 1986	<i>Greathouse v. Littlejohn</i> John P. Cook, Defense Attorney Malpractice Independent Medical Examination, Record Review, Deposition	May, 1986	<i>Barzar v. City of Tacoma</i> John Kennedy, Defense Attorney Personal Injury Record Review, Deposition
February, 1986	<i>Jacobs v. Calvary Cemetery, et al.</i> William Phillips, Defense Attorney Personal Injury Record Review	May, 1986	<i>State v. Benjamin Denham</i> Robert Meyes, Defense Competency Independent Medical Examination, Record Review
February, 1986	<i>Salant v. Raskin</i> Robert Freedman, Defense Attorney Malpractice Independent Medical Examination, Record Review, Deposition	June, 1986	<i>Dearing v. Sellen Construction</i> George Kargianis, Plaintiff Attorney Personal Injury Independent Medical Examination, Record Review
February, 1986	<i>Ilous v. Ross et al.</i> Robert Freedman, Defense Attorney Malpractice Record Review	June, 1986	<i>Moy v. Pemco Insurance Companies</i> Howard Ratner, Plaintiff Attorney Personal Injury Independent Medical Examination, Deposition Record Review
March, 1986	<i>Unsin (Shoemaker) v. St. Joseph Hospital, et al.</i> Robert Reinhard, Plaintiff Attorney Malpractice Record Review	June, 1986	<i>Lucas v. Gilman, et al.</i> John Schedler, Defense Attorney Malpractice Independent Medical Examination, Record Review, Deposition
March, 1986	<i>Smith v. State of Washington</i> Vernon Harkins, Plaintiff Attorney Negligence Record Review, Deposition	July, 1986	<i>Moe v. Bell</i> Barry Schneiderman, Plaintiff Attorney Personal Injury Independent Medical Examination, Record Review, Deposition
March, 1986	<i>Beckett v. Friedinger</i> Lee, Smart, Cook, Martin & Patterson, Defense Attorneys Malpractice Record Review	July, 1986	<i>Frare v. Twin City Metal</i> Joel Cunningham, Defense Attorney Personal Injury Record Review
March, 1986	<i>Martin v. Griffith</i> Kenneth Fielding, Plaintiff Attorney Malpractice Record Review, Deposition, Court Testimony		

PHILIP GAYLORD LINDSAY, M.D.

Forensic Consultations - Page 4

July, 1986	<i>State of Washington v. Sorvik</i> Vicki Siegler-Stein, Defense Attorney Competency Independent Medical Examination	September, 1986	<i>Oster v. State of Washington</i> Robert C. Dickerson, II, Plaintiff Attorney Personal Injury, Negligence Record Review, Deposition
July, 1986	<i>Baylis v. Klein</i> Donald E. Kelley, Plaintiff Attorney Malpractice Record Review, Deposition	September, 1986	<i>Departments of Health & Human Services/ Health Care Financing Administration v. Hilltop Inn</i> Dan Porter, Plaintiff Attorney Malpractice Record Review
July, 1986	<i>Tester v. King County & Harborview</i> Sheryl Willert, Defense Attorney Negligence Record Review	October, 1986	<i>State v. Robert George Tori</i> Jim Heard, Plaintiff Attorney Competence Independent Medical Examination
July, 1986	<i>Mass v. Clark et al.</i> Robert Dickerson, II, Plaintiff Attorney Personal Injury Independent Medical Examination, Record Review, Deposition, Court Testimony	October, 1986	<i>Gilmore v. State of Washington, et al.</i> Steven Sitcov, Plaintiff Attorney Negligence Record Review
July, 1986	<i>Hanson v. Biback</i> David Tewell, Plaintiff Attorney Malpractice Independent Medical Examination, Record Review	October, 1986	<i>Keefer v. Grange Insurance Association</i> Jim Davis, Defense Attorney Personal Injury Independent Medical Examination, Record Review
August, 1986	<i>Permenter v. Jones</i> Don Leht, Defense Attorney Personal Injury Independent Medical Examination, Record Review	October, 1986	<i>Peters v. Rose</i> Anthony Dougherty, Plaintiff Attorney Personal Injury Independent Medical Examination
August, 1986	<i>Binkley v. City of Tacoma</i> G. S. Karavilis, Defense Attorney Personal Injury Independent Medical Examination, Record Review, Deposition	October, 1986	<i>McClellan & Frank v. M/V Golden Alaska</i> Walter Z. Steinman, Plaintiff Attorney Personal Injury Independent Medical Examinations
September, 1986	<i>Giraldes v. State of Washington</i> Rebecca Lacy, Plaintiff Attorney Worker's Compensation Evaluation Independent Medical Examination, Record Review	November, 1986	<i>Tocco v. Talley Industries et al.</i> Charles Kimbrough, Plaintiff Attorney Personal Injury Independent Medical Examination, Record Review, Deposition
September, 1986	<i>Winder v. Apex Marine</i> David Goldberg, Plaintiff Attorney Personal Injury Independent Medical Examination	November, 1986	<i>Calvanese v. Providence Medical Center</i> Adckanbi Steve Jager, Defense Attorney Personal Injury Deposition
September, 1986	<i>Peterson v. Timberland Opportunities</i> Jim Heard, Plaintiff Attorney Personal Injury Independent Medical Examination, Record Review, Deposition	December, 1986	<i>Crawford v. Phelps</i> Reed Schifferman, Defense Attorney Malpractice Record Review
		December, 1986	<i>O'Keefe v. United Airlines</i> John Warner, Defense Attorney Personal Injury Independent Medical Examination, Record Review

PHILIP GAYLORD LINDSAY, M.D.

Forensic Consultations - Page 5

January, 1987	<i>Lucas v. Gilman</i> John Schedler, Defense Attorney Malpractice Independent Medical Examination, Record Review	May, 1987	<i>Robins v. Cosco</i> Dennis J. LaPorte, Defense Attorney Negligence, Wrongful Death Review, Deposition, Record Review Deposition
January, 1987	<i>Adams v. Allen, et al.</i> Robert C. Tenney, Defense Attorney Malpractice Record Review	June, 1987	<i>Gallipo v. Yakima Valley Medical Center</i> Steven Pruzan, Plaintiff Attorney Malpractice Record Review, Deposition
January, 1987	<i>Pehrson-Oliver v. USA</i> Michael McKasy, Plaintiff Attorney Personal Injury Record Review	June, 1987	<i>Barker & Austin v. Hyde</i> Meg Jones Shelton, Defense Attorney Personal Injury Independent Medical Examinations, Record Review
January, 1987	<i>John Veenendaal v. Rainier National Bank</i> Steve Sirianni, Plaintiff Attorney Personal Injury Independent Medical Examination	June 1987	<i>Greer Smith v. State of Washington</i> Vernon Harkins, Plaintiff Attorney Negligence Independent Medical Examination, Record Review, Deposition, Court Testimony
February, 1987	<i>Butler v. Community Bible Chapel et al.</i> Jeff Campiche, Plaintiff Attorney Personal Injury Independent Medical Examinations, Record Review	July, 1987	<i>Rose v. King County, et al.</i> Sheryl Willert, Defense Attorney Personal Injury Independent Medical Examination, Record Review
March, 1987	<i>Rancic v. Zielke</i> Charles Reed, Defense Attorney Malpractice Independent Medical Examination, Record Review, Deposition, Court Testimony	July, 1987	<i>Murphy v. Skagit Systems</i> Francis Floyd, Defense Attorney Personal Injury Independent Medical Examination, Record Review
March, 1987	<i>Brown v. Crown Cork & Seal Company, Inc.</i> David Antal, Defense Attorney Personal Injury Independent Medical Examination	July, 1987	<i>Edle v. Edie</i> LcAnn McDonald, Defense Attorney Personal Injury Independent Medical Examination, Record Review, Deposition
March, 1987	<i>Lovato v. Blue</i> Patricia Wagner, Plaintiff Attorney Malpractice Record Review	August, 1987	<i>Barnes & Wilkens v. Pierce County Transit</i> John Kennedy, Plaintiff Attorney Personal Injury Record Review
April, 1987	<i>Varney v. Hoyt</i> Thurman W. Lowans, Plaintiff Attorney Personal Injury, Negligence Independent Medical Examination	August, 1987	<i>Fuster v. City of Seattle</i> John Walsh, Plaintiff Attorney Wrongful Death Independent Medical Examination, Record Review, Court Testimony
April, 1987	<i>Flobert v. Jackson</i> William H. Robertson, Defense Attorney Malpractice Record Review	August, 1987	<i>State of Texas vs. Shuham</i> Cecil Bain, Defense Attorney Competency Independent Medical Examination
May, 1987	<i>Jorgensen v. Tucker, et al.</i> Matthew Peach, Plaintiff Attorney Fraud Independent Medical Examination, Record Review		

PHILIP GAYLORD LINDSAY, M.D.

Forensic Consultations - Page 6

September, 1987	<i>State of Washington v. David Marecle</i> Thomas A. Copland, Defense Attorney Competency Independent Medical Examination	February 1988	<i>Evans v. C.R. Bard, Inc.</i> Gail Lundgren, Defense Attorney Malpractice Record Review
September, 1987	<i>State of Washington v. Bradshaw</i> James Heard, Defense Attorney Competency Independent Medical Examination, Record Review	March, 1988	<i>Penner v. Pemco</i> T. Hughlon McDowell, Plaintiff Attorney Personal Injury Record Review
September, 1987	<i>Ferretti v. Portland Health Centers</i> Kathie F. Steele, Plaintiff Attorney Negligence Record Review, Court Testimony	March, 1988	<i>Bulter v. Barnett & Community Chapel</i> Jeff Campiche, Plaintiff Attorney Personal Injury Independent Medical Examination, Record
October, 1987	<i>Kelly v. Johnson</i> John F. Kennedy, Defense Attorney Malpractice Independent Medical Examination, Record Review, Deposition	April, 1988	<i>Mohan v. Early</i> Corinn Bahn, Defense Attorney Malpractice Record Review, Deposition, Court Testimony
November, 1987	<i>Martin v. Steepleton</i> Richard Lowell, Defense Attorney Personal Injury Independent Medical Examination, Record Review, Deposition	April, 1988	<i>Hulbert v. Turner</i> George Thornton, Defense Attorney Personal Injury Independent Medical Examination, Record Review, Deposition
November 1987	<i>Steel v. Haines</i> George Kargianis, Plaintiff Attorney Malpractice Independent Medical Examination, Record Review	April, 1988	<i>State of Washington v. Volkman</i> Scott Candoo, Defense Attorney Competency Independent Medical Examination, Record Review
December 1987	<i>Childers v. Group Health Cooperative</i> Kerry Mitchell, Risk Management, Defense Attorney Malpractice Record Review	April 1988	<i>Bennett; Bowden v. Hardy</i> Linda Foreman, Defense Attorney Age Discrimination Independent Medical Examination, Record Review
January, 1988	<i>Wetzel v. Sisters of Providence</i> Nadine Rowland, Actna Insurance Company Malpractice Record Review, Conference Review, Deposition	April 1988	<i>Thorstrom v. Shelton School District, et al.</i> Meg Jones Shelton, Defense Attorney Sexual Harassment Independent Medical Examination, Record Review
February 1988	<i>Ellsworth v. Hedequist</i> Fay Freedman, Plaintiff Attorney Malpractice Independent Medical Examination, Record Review, Deposition	May, 1988	<i>State of Washington v. Brown</i> Steve Johnson, Defense Attorney Competency Independent Medical Examination, Record Review
February 1988	<i>State v. Brian Peak</i> Stephen Olson, Defense Attorney Competency Independent Medical Examination, Record Review	June, 1988	<i>Enrique Calderon v. Freels & Devins</i> Warren Dewar, Defense Attorney Personal Injury Record Review

PHILIP GAYLORD LINDSAY, M.D.

Forensic Consultations - Page 7

June 1988	<i>Drennon v. I.B.E.W. Local 76</i> John F. Kennedy, Defense Attorney Personal Injury Independent Medical Examination, Record Review	October, 1988	<i>Lowenthal & Fredericks v. Overfield</i> O. W. Hollowell, Plaintiff Attorney Personal Injury Deposition
July, 1988	<i>Brown v. Group W Cable</i> J.E. Thonn, Defense Attorney Personal Injury Record Review	October 1988	<i>Robert Pendergrass v. Bao Diuh Tran</i> Ralph Alfieri, Plaintiff Attorney Personal Injury Independent Medical Examination, Record Review
August, 1988	<i>Poole & Warner v. Pierce County District Court</i> Richard Wooster, Defense Attorney Personal Injury Independent Medical Examination, Record Review, Deposition	October 1988	<i>Keyock v. Keyock</i> James Schermer, Plaintiff Attorney Child Custody Record Review
August 1988	<i>State v. James L. Thompson</i> James A. Heard, Plaintiff Attorney Competency Independent Medical Examination, Record Review	November 1988	<i>Poole and Warner v. Pierce County District Probation</i> Jeffrey Grant, Defense Attorney Personal Injury Independent Medical Examination, Records Review, Deposition
September, 1988	<i>Serredell v. Wirth</i> Michael J. Bond, Defense Attorney Malpractice Independent Medical Examination, Record Review, Deposition, Court Testimony	January 1989	<i>Johnston v. Johnston</i> Michael McKasy, Plaintiff Attorney Visitation Independent Medical Examination, Record Review
September, 1988	<i>Gabrielson v. McDonald</i> Daniel Hannula, Plaintiff Attorney Personal Injury Independent Medical Examination, Record Review	January 1989	<i>Decker v. Sheehy</i> D.K. Yoshida, Plaintiff Attorney Personal Injury Records Review
September, 1988	<i>Garcia v. Providence Medical Center</i> John P. Walsh, Plaintiff Attorney Medical Negligence Independent Medical Examination, Record Review, Deposition	February 1989	Lori and Michael Hartman David Ashbaugh, Plaintiff Attorney Personal Injury Independent Medical Examination
September, 1988	<i>Rohrscheib v. Group Health</i> Nancy Hart, Defense Attorney Medical Negligence Record Review	February 1989	<i>Den Ouden v. Professional Review Organization of Washington</i> Josephine Vestal, Defense Attorney Race & Sex Discrimination Independent Medical Examination
September, 1988	<i>Rich and Jacky v. Greater Lakes Mental Health</i> Michael McKasy, Plaintiff Attorney Negligence Deposition, Records Review	April 1989	<i>Karyl Smith v. McNally</i> Margaret Morgan, Plaintiff Attorney Personal Injury Independent Medical Examination, Deposition, Records Review
October, 1988	<i>Peters v. Rose</i> George Kargianis, Plaintiff Attorney Personal Injury Independent Medical Examination, Record Review, Deposition	May 1989	<i>Porter v. City of Seattle</i> Ralph Alfieri, Plaintiff Attorney Personal Injury Independent Medical Examination, Record Review

PHILIP GAYLORD LINDSAY, M.D.

Forensic Consultations - Page 8

May 1989	<i>Walker v. State of Washington</i> Vernon Harkins, Plaintiff Attorney Wrongful Release Deposition, Records Review	January 1990	<i>Tracy v. Streater/Litton Industries</i> Curtis Gilmore, Defense Attorney Disability Independent Medical Examination, Record Review
June 1989	<i>Diane Sandbeck v. Demaine</i> David Antal, Plaintiff Attorney Personal Injury Independent Medical Examination, Records Review	February 1990	<i>State v. Tommy H. Metcalf</i> Hal Sheets, Defense Attorney Competency Independent Medical Examination, Record Review
July 1989	<i>Cambell v. Melissa Associates</i> David Martin, Plaintiff Attorney Personal Injury Records Review	February 1990	<i>Banks v. Stavig</i> J. Stephen Funk, Plaintiff Attorney Malpractice Independent Medical Examination, Record Review, Deposition
August 1989	<i>Ingalls v. Sargur, M.D.</i> Stephen Bulzomi, Plaintiff Attorney Malpractice Independent Medical Examination, Record Review	February 1990	<i>Williams v. Texaco</i> Eugene R. Nielson, Defense Attorney Age Discrimination Independent Medical Examination, Record Review
September 1989	<i>Cary v. City of Seattle</i> Anne Bremmer, Plaintiff Attorney Personal Injury Independent Medical Examination, Record Review, Deposition	February 1990	<i>Hood v. Albertson's Inc.</i> Robert Brousseau, Defense Attorney Personal Injury Independent Medical Examination, Record Review
September 1989	<i>Hanson v. Strange</i> Ronald McAdams and F.G. Fancher, Plaintiff Attorneys Personal Injury, Malpractice Records Review	February 1990	<i>Johnson v. Moores and Palmer M.D.s</i> Ron Erickson, Plaintiff Attorney Malpractice Deposition, Records Review
October 1989	<i>Ford v. Chaplin, M.D.</i> Robert Hoon, Defense Attorney Malpractice Record Review	February 1990	<i>Mary O'Keefe v. United Airlines</i> David Rappoport, Plaintiff Attorney Personal Injury Deposition, Records Review
November 1989	<i>Rutherford v. Liberty Northwest Insurance Co.</i> John Walsh, Plaintiff Attorney Independent Medical Examination, Record Review, Deposition	March 1990	<i>Curtis Lindsley v. Belazer Poultry Farms, Inc.</i> Mark Barber, Plaintiff Attorney Personal Injury Independent Medical Examination, Record Review
December 1989	<i>Wilhoit v. Burlington Northern Railroad</i> Philip Arnold, Plaintiff Attorney Personal Injury Independent Medical Examination, Record Review, Deposition, Court Testimony	April 1990	<i>State v. Robert T. Brown</i> Eleanor Fine, Defense Attorney Competency Independent Medical Examination
December 1989	<i>Fontaine v. Nelson</i> Kenneth McEwan, Defense Attorney Personal Injury Independent Medical Examination, Record Review, Deposition	April 1990	<i>Piper v. Walker, et ux. et al.</i> Frank Chmelik, Defense Attorney Personal Injury Record Review

PHILIP GAYLORD LINDSAY, M.D.

Forensic Consultations - Page 9

April 1990	<i>Tullar v. Brown</i> Philip Arnold, Plaintiff Attorney Malpractice Independent Medical Examination, Record Review, Court Testimony	September 1990	<i>Moon v. Ogle</i> Michael H. Runyan, Plaintiff Attorney Malpractice Independent Medical Examination, Record Review
May 1990	<i>Vaughn v. Sisters of Providence</i> John Treptow, Defense Attorney Malpractice Record Review, Deposition, Court Testimony	September 1990	<i>Heaton v. Honeycutt</i> Wendy Hunt, Plaintiff Attorney Personal Injury Records Review
May 1990	<i>Hoffbuhr v. Bayside Waste Hauling & Transfer</i> Jerry Thonn, Defense Attorney Personal Injury Independent Medical Examination, Record Review, Deposition	September 1990	<i>McKee v. Shanahan</i> Richard Meyer, Plaintiff Attorney Personal Injury Records Review
May 1990	<i>Hanson v. Strange</i> John Schedler, Defense Attorney Malpractice Deposition, Records Review	September 1990	<i>Charlotte Dougherty v. Mazatlan Restaurant</i> Susan Rae Sampson, Defense Attorney Personal Injury Independent Medical Examination, Records Review
June 1990	<i>Hanni v. Sisters of Providence</i> Doug Yoshida, Defense Attorney Malpractice Independent Medical Examination, Record Review, Deposition, Court Testimony	September 1990	<i>Rich v. Greater Lakes Mental Health</i> <i>Greater Lakes v. Thomas and Rose Colon</i> Michael McKasy, Plaintiff Attorney Duty to Warn Deposition, Records Review
July 1990	<i>Cheri Fisher v. City of Buckley, et al.</i> John Francis Kennedy, Defense Attorney Personal Injury Independent Medical Examination, Record Review	September 1990	<i>Medearis v. Hockett</i> Eugene Moen, Plaintiff Attorney Personal Injury Deposition, Records Review
August 1990	<i>State v. Antoinette Tighe</i> Michael D. Smith, Defense Attorney Competence Independent Medical Examination, Record Review, Court Testimony	November 1990	<i>Nichols v. Great American Insurance Company</i> I. Richard Lassman, Defense Attorney Personal Injury Records Review
August 1990	<i>Blair v. Heinmiller</i> Pamela Andres, Plaintiff Attorney Personal Injury Independent Medical Examination, Records Review	December 1990	<i>Shreeve v. City of Bremerton</i> John Kennedy, Defense Attorney Personal Injury Independent Medical Examination, Records Review
August 1990	<i>Howard Campbell v. Howard and Barbara Marton</i> Jeffrey Grant, Defense Attorney Personal Injury Independent Medical Examination, Deposition Records Review	December 1990	<i>Gostelln v. City of Bremerton</i> John Kennedy, Defense Attorney Personal Injury Independent Medical Examination, Records Review
August 1990	<i>Fisher v. City of Buckley, et al.</i> Burgess, Kennedy and Fitzer, Defense Attorneys Personal Injury Independent Medical Examination, Records Review	December 1990	<i>Hacker v. Cochran Electric</i> Joseph Just, Plaintiff Attorney Personal Injury Independent Medical Examination, Records Review

September 1992	<i>Bierbaum v. City of Tacoma</i> John Kennedy, Plaintiff Attorney Personal Injury Independent Medical Examination, Records Review	April 1993	Vonnie Johnson Elizabeth Martin, Plaintiff Attorney Personal Injury Records Review
October 1992	<i>State of Washington v. Bargman</i> Monte Hester, Defense Attorney Personal Injury Independent Medical Examination, Records Review, Deposition, Court Testimony	April 1993	<i>Nikula v. St. Peter's Hospital</i> William Mays, Defense Attorney Malpractice Records Review
October 1992	James Scott Linda Kelley Ebersson, Plaintiff Attorney Guardianship Records Review	April 1993	Mary McDonald Michelle Palthorp, Plaintiff Attorney Personal Injury Independent Medical Examination, Records Review
November 1992	<i>State of Washington v. Dalton</i> Monte Hester, Defense Attorney Homicide Independent Medical Examination, Records Review, Deposition, Court Testimony	April 1993	<i>Segalla v. Burlington Northern Railroad</i> George Kargianis, Plaintiff Attorney Personal Injury Independent Medical Examination, Records Review
December 1992	<i>Jessup v. Fred Meyer, Inc.</i> Eugene Moen, Plaintiff Attorney Personal Injury Independent Medical Examination, Records Review, Deposition	April 1993	<i>Paya v. Macready, et al.</i> Tom Chambers, Plaintiff Attorney Personal Injury Independent Medical Examination, Records Review
December 1992	<i>Salley v. Epstein</i> Jane Gilbersen, Plaintiff Attorney Personal Injury Records Review	May 1993	<i>State of Washington v. Thorpe</i> Larry Nichols, Defense Attorney Homicide, 25 Counts of Attempted Homicide Independent Medical Examination, Records Review, Court Testimony
January 1993	<i>Brudnock v. Tambrands, Inc.</i> Charles Brown, Plaintiff Attorney Personal Injury Independent Medical Examination, Records Review	May 1993	<i>Mateau v. Hagen</i> James Brown, Plaintiff Attorney Personal Injury Independent Medical Examination, Records Review, Deposition
January 1993	<i>Conklin v. Burlington Northern Railroad</i> George Kargianis, Plaintiff Attorney Personal Injury Independent Medical Examination, Records Review	May 1993	Margaret Young George Kargianis, Plaintiff Attorney Personal Injury Independent Medical Examination, Records Review
January 1993	<i>Randall v. Tronson, et al.</i> Eugene Moen, Plaintiff Attorney Personal Injury Independent Medical Examination, Records Review	June 1993	Donald Gordon Jeffrey Donchez, Plaintiff Attorney Personal Injury Records Review
March 1993	<i>Rice v. Seattle Police Department</i> Bruce Wolff, Plaintiff Attorney Personal Injury Independent Medical Examination, Records Review	June 1993	<i>Drewett v. Rainier School</i> George Kargianis, Plaintiff Attorney Personal Injury Records Review

June 1993	<i>VanGelder v. McGuire & Charter North Hospital</i> Tim Petumenos, Plaintiff Attorney Personal Injury Independent Medical Examination, Records Review	November 1993	<i>Hill v. Green</i> Tyna Ek, Defense Attorney Personal Injury Independent Medical Examination, Records Review
July 1993	Lori Carncross George Kargianis, Plaintiff Attorney Personal Injury Records Review	November 1993	<i>Hunter v. All Alaskan Seafoods</i> Steve Fury, Plaintiff Attorney Personal Injury Independent Medical Examination, Records Review
July 1993	<i>Knutson v. Abbott Laboratories</i> Eugene Moen, Plaintiff Attorney Personal Injury Independent Medical Examination, Records Review	December 1993	<i>Fleming v. Kent School District</i> Scott Wakefield, Plaintiff Attorney Personal Injury Records Review, Arbitration Hearing Testimony
August 1993	<i>Zakalik v. Vanstead</i> Jeff Donchez, Plaintiff Attorney Personal Injury Independent Medical Examination, Records Review	January 1994	<i>Dontos v. State Farm</i> Thomas Dalglish, Plaintiff Attorney Personal Injury Records Review, Court Testimony
September 1993	<i>de Vink v. de Vink</i> Bob Hamilton, Defense Attorney Child Custody Records Review	January 1994	<i>Brebner v. Burlington Northern Railroad</i> George Kargianis, Plaintiff Attorney Personal Injury Independent Medical Examination, Records Review
September 1993	<i>Morelli v. Johnston</i> Vern Harkins, Plaintiff Attorney Personal Injury Records Review, Deposition	March 1994	<i>Wheeler v. DeVincent</i> John Kennedy, Defense Attorney Malpractice Independent Medical Examination, Records Review
September 1993	<i>Jamerson v. Vandiver</i> Gordon Woodley, Plaintiff Attorney Malpractice Records Review, Court Testimony	March 1994	<i>Crogon v. Arctic Alaska Fisheries Corp.</i> George Luhrs, Plaintiff Attorney Personal Injury Independent Medical Examination, Records Review
October 1993	<i>Exxon Valdez Litigation</i> Mary Lou Scrafine, Defense Attorney Personal Injury Independent Medical Examination, Records Review	April 1994	<i>Brown v. Stocking and Wilson</i> Walter Krueger, Plaintiff Attorney Personal Injury Independent Medical Examination, Records Review
November 1993	Keith Simon Jane Seavecki, Plaintiff Attorney Wrongful Death Records Review	April 1994	<i>Herman v. National Maintenance Contractors</i> Gene Moen, Plaintiff Attorney Personal Injury Independent Medical Examination, Records Review
November 1993	<i>Totten v. Community Alcohol and Drug Services</i> John Kennedy, Defense Attorney Personal Injury Independent Medical Examination, Records Review	April 1994	<i>Blandon v. Jones</i> Thomas Dalglish, Plaintiff Attorney Personal Injury Independent Medical Examination, Records Review

May 1994	<i>McBride v. McBride</i> John Kennedy, Defense Attorney Malpractice Independent Medical Examination, Records Review	September 1994	<i>Kroon, et al. v. Marlow, et al.</i> John Kennedy, Defense Attorney Malpractice Independent Medical Examination, Records Review
May 1994	<i>Welsch v. Camelot Society</i> John Kennedy, Defense Attorney Sexual Harassment Independent Medical Examination, Records Review	October 1994	<i>Britt v. Rice</i> Monica Fernandez, Defense Attorney Medical Negligence Independent Medical Examination
June 1994	<i>Brandenburg v. Robinette and Gynecology Fertility Clinic of Puget Sound</i> Gene Moen, Plaintiff Attorney Malpractice Independent Medical Examination, Records Review	October 1994	<i>Laul v. Battelle Memorial Institute</i> Chris Mertens, Plaintiff Attorney Personal Injury Independent Medical Examination, Deposition
June 1994	<i>State of Washington v. Petersen</i> Kyron Huigens, Defense Attorney 2 Counts of Attempted Homicide Records Review	November 1994	Karen Dean Gene Moen, Plaintiff Attorney Personal Injury Independent Medical Examination, Records Review
June 1994	<i>Ellez v. Port of Seattle</i> Robert Duggan, Plaintiff Attorney Personal Injury Records Review	November 1994	<i>Johnson v. Burlington Northern Railroad</i> Bill Waechter, Plaintiff Attorney Personal Injury Independent Medical Examination
June 1994	<i>Biktjorn v. Tempo-Twenty, Inc.</i> Douglas Fryer, Plaintiff Attorney Personal Injury Records Review, Deposition	November 1994	<i>Childs v. DeVincent</i> John Kennedy, Defense Attorney Malpractice Independent Medical Examination, Records Review
June 1994	<i>Clearman v. State Farm Insurance & Pemco Insurance</i> Tom Chambers, Plaintiff Attorney Personal Injury Records Review, Deposition	December 1994	<i>Ritchie v. U.S. West Direct et al.</i> Teresa Gillespie, Defense Attorney Sexual Harassment Records Review
August 1994	<i>Heinberg v. Sewell</i> James Rogers, Plaintiff Attorney Personal Injury Records Review	December 1994	<i>Foulkes v. Puget Sound Power & Light Co.</i> Jeff Thomas, Defense Attorney Personal Injury Independent Medical Examination, Records Review
September 1994	<i>Gomez, et al. v. ITT Educational Services, Inc.</i> Jeff Campiche, Plaintiff Attorney Personal Injury Independent Medical Examination, Deposition	December 1994	<i>Flores v. Eagle Hardware and Garden</i> David Duce, Plaintiff Attorney Personal Injury Independent Medical Examination
September 1994	<i>Hewitt v. Hewitt, Hewitt, Hewitt, Wagen</i> Jane Vetto, Defense Attorney Personal Injury Independent Medical Examination	January 1995	<i>Pippens v. Phillips, et al.</i> Charles Reed, Defense Attorney Personal Injury Record Review
		January 1995	<i>State of Washington v. Johnson</i> Terry Mulligan, Defense Attorney Homicide Independent Medical Examination, Record Review

January 1995	<i>Green v. Arctic Alaska</i> James Beard, Plaintiff Attorney Personal Injury Independent Medical Examination, Record Review	May 1995	<i>Dexter v. J.M. Rafn Company</i> Eugene Moen, Plaintiff Attorney Personal Injury Independent Medical Examination, Records Review, Deposition
February 1995	<i>Norquist v. Adatia</i> Joan Mell, Plaintiff Attorney Malpractice Independent Medical Examination, Record Review	May 1995	<i>Narayana Achari, M.D.</i> Katharine Witter Brindley, Defense Attorney Sexual Misconduct Independent Medical Examination, Records Review, Deposition, Court Testimony
February 1995	<i>Buffington v. Harbor Properties, et al.</i> Ken McEwan, Defense Attorney Personal Injury Independent Medical Examination, Records Review	May 1995	<i>Schwiderski v. Peterson, Ph.D. et al.</i> John Serpe, Defense Attorney Malpractice Records Review
February 1995	<i>Wick v. Okanogan-Douglas County</i> Mike Watkins, Plaintiff Attorney Malpractice Record Review	May 1995	<i>Romero v. A.K.C.</i> George Luhrs, Plaintiff Attorney Personal Injury Independent Medical Examination, Records Review
March 1995	<i>Lawrence Tousignant</i> Steven Fury, Plaintiff Attorney Wrongful Death Record Review	May 1995	<i>Christofferson v. Miller, Borg, and Northwest Hospital</i> Reed McClure, Defense Attorney Malpractice Records Review
March 1995	<i>Turner v. Pemco</i> Scott Williamson, Defense Attorney Personal Injury Independent Medical Examination, Record Review	June 1995	<i>Shea v. Kenna and Christian</i> William Carlson, Plaintiff Attorney Personal Injury Independent Medical Examination, Records Review
April 1995	<i>State of Washington v. Blackwell</i> Terry Mulligan, Defense Attorney Homicide Record Review	July 1995	<i>John Jauregui</i> William Marler, Plaintiff Attorney Personal Injury Independent Medical Examination, Records Review
April 1995	<i>Connaughton v. Valley Forge Insurance</i> Bill Waechter, Plaintiff Attorney Personal Injury Independent Medical Examination, Record Review, Court Testimony	July 1995	<i>Lee v. Archer</i> Michael Tasker, Plaintiff Attorney Personal Injury Independent Medical Examination, Records Review, Deposition
April 1995	<i>Cynthia Huntley</i> David Middaugh, Plaintiff Attorney Personal Injury Records Review	July 1995	<i>State of Washington v. Holan</i> O.W. Hollowell, Defense Attorney Competency Independent Medical Examination, Records Review
April 1995	<i>Michaels v. Pierce County Fire District #9</i> Tony Dougherty, Plaintiff Attorney Personal Injury Independent Medical Examination, Records Review	July 1995	<i>State of Washington v. Thomas</i> Eric Lindell, Defense Attorney Homicide Independent Medical Examination, Records Review, Court Testimony

PHILIP GAYLORD LINDSAY, M.D.

Forensic Consultations - Page 16

August 1995	<i>Fleury v. Western State Hospital, et al.</i> Mardi Boss, Plaintiff Attorney Personal Injury Records Review	December 1995	<i>Wohlhaupter v. Lockhart, Ph.D.</i> Robert Zilke, Plaintiff Attorney Malpractice Independent Medical Examination, Records Review
August 1995	<i>Estate of Shirley Speidel</i> Darryl Mitsunaga, Defense Attorney Competency Records Review, Court Testimony	December 1995	<i>Sawyer v. Thurston County Community Center</i> David Sawyer, Plaintiff Attorney Malpractice Records Review
September 1995	<i>Irene Schultz</i> David Lybbert, Plaintiff Attorney Personal Injury Independent Medical Examination, Records Review	December 1995	<i>Scott v. Warner, et al.</i> Douglas Rasmussen, Defense Attorney Personal Injury Records Review
September 1995	<i>Burri v. Christianson, et al.</i> Wesley Duce, Plaintiff Attorney Personal Injury Independent Medical Examination, Records Review	December 1995	<i>Telleen v. Delucca and Brown</i> Charles Brown, Plaintiff Attorney Personal Injury Records Review, Deposition
September 1995	<i>Elverum v. Pitney Bowes</i> Joseph Stacey, Plaintiff Attorney Personal Injury Independent Medical Examination, Records Review, Deposition	January 1996	<i>Harmon v. Inland Property Company</i> Tim Whitters, Defense Attorney Personal Injury Independent Medical Examination, Records Review
September 1995	<i>Catherine Phillips</i> Peter Mootz, Plaintiff Attorney Personal Injury Independent Medical Examination, Record Review	January 1996	<i>Ho v. Kreule and Pacific Utility</i> Wesley Duce, Plaintiff Attorney Personal Injury Independent Medical Examination, Records Review
October 1995	<i>Crawford & Overlake Hospital Medical Center</i> Mary McIntyre, Defense Attorney Malpractice Independent Medical Examination, Records Review	January 1996	<i>State of Washington v. Campbell</i> Jack Haneman, Defense Attorney Homicide Independent Medical Examination
October 1995	<i>Don Rich</i> Jeff Schwab, Plaintiff Attorney Personal Injury Independent Medical Examination, Records Review, Deposition	January 1996	<i>Sherman v. South King County Narcotics Task Force, et al.</i> Zanetta Fontes, Defense Attorney Personal Injury Records Review
November 1995	<i>State of Washington v. Lee</i> Terry Mulligan, Defense Attorney Homicide Records Review	February 1996	<i>Joh v. McFarland</i> Eugene Moen, Plaintiff Attorney Personal Injury Records Review, Court Testimony
December 1995	<i>Kester v. Kesters</i> Mike Williamson, Plaintiff Attorney Personal Injury Independent Medical Examination, Records Review	February 1996	<i>Kelly v. Martin, et al.</i> Eugene Moen, Plaintiff Attorney Personal Injury Independent Medical Examination, Records Review, Court Testimony

March 1996	<i>Baker v. Jones</i> Paul Chemnick, Plaintiff Attorney Personal Injury Independent Medical Examination, Records Review	May 1996	<i>Bunkowski v. Baxter</i> Kari Adams, Defense Medical Negligence Records Review
April 1996	<i>Friedman v. Stewart, M.D.</i> John Graffe, Defense Attorney Medical Negligence Records Review	June 1996	<i>Ruth Kwake</i> Jeffrey Donchez, Plaintiff Attorney Personal Injury Independent Medical Examination,
April 1996	<i>White v. American Empire</i> Jeffrey Jernegan, Plaintiff Attorney Personal Injury Independent Medical Examination, Records Review	June 1996	<i>Oehlert v. Mukilleo School District #6</i> Robert Kornfeld, Plaintiff Attorney Personal Injury Records Review
April 1996	<i>Lal, et al. v. Johnson Controls, et al.</i> Guy Michelson, Plaintiff Attorney Personal Injury Independent Medical Examination, Records Review, Deposition	July 1996	<i>Williamson v. Seattle Farwest Service Corp., et al.</i> Michael Watkins, Plaintiff Attorney Personal Injury Independent Medical Examination, Records Review
April 1996	<i>McCord v. Davidson, et al.</i> Robert DiJulio, Plaintiff Attorney Personal Injury Independent Medical Examination, Records Review	July 1996	<i>Jewett v. Virginia Mason, et al.</i> Mark Burke, Plaintiff Attorney Personal Injury Independent Medical Examination, Records Review
April 1996	<i>Raynor v. City of Longview</i> John Kennedy, Defense Attorney Wrongful Death Independent Medical Examination, Records Review	September 1996	<i>Jeffery Lemarr</i> Eric Lindell, Plaintiff Attorney Personal Injury Independent Medical Examination
May 1996	<i>Perdichizzi v. Samadpour, et al.</i> Douglas Duncan, Plaintiff Attorney Sexual Harassment Independent Medical Examination	September 1996	<i>Derum v. Grays Harbor County, et al.</i> Linda Choy, Defense Attorney Personal Injury Records Review
May 1996	<i>McAllister v. Adams, M.D.</i> Sara Brown, Plaintiff Attorney Medical Negligence Records Review	September 1996	<i>Hiram Thomas</i> Joe Schwab, Plaintiff Attorney Personal Injury Independent Medical Examination, Records Review
May 1996	<i>Ogle v. Mead, King County</i> Gordon Anderson, Plaintiff Attorney Personal Injury Independent Medical Examination, Records Review, Deposition	October 1996	<i>Waters v. Ford</i> Howard Pruzan, Plaintiff Attorney Personal Injury Independent Medical Examination, Records Review
May 1996	<i>Torgan v. Torgan</i> Steven Olsen, Defense Attorney Marital Dissolution Independent Medical Examination, Records Review	October 1996	<i>Gammell v. State of Washington</i> Loretta Lamb, Defense Attorney Sexual Harassment Records Review, Court Testimony
		October 1996	<i>Whitaker v. U.S. Department of Commerce</i> Harold Green, Plaintiff Attorney Racial Discrimination Independent Medical Examination

November 1996	<i>Che Keung Ling</i> Tom Youngjohn Immigration Evaluation Independent Medical Examination	March 1997	<i>State of Washington v. Tardiff</i> John Farra, Defense Attorney Second Degree Homicide Due to Neglect Independent Medical Examination, Records Review
November 1996	<i>Honeymoon v. Mt. Hood Meadows</i> Douglas Schaller, Plaintiff Attorney Personal Injury Records Review	March 1997	<i>Marcille v. Valley Forge Insurance</i> Edward Harper, Plaintiff Attorney Personal Injury Independent Medical Examination, Records Review
November 1996	<i>Chandler v. Lispie</i> William Fite, Defense Attorney Personal Injury Independent Medical Examination, Records Review	April 1997	<i>Murthy v. State of Washington</i> Robert McKay, Defense Attorney Arson Independent Medical Examination, Records Review
December 1996	<i>Hahto v. City of Seattle and C.A.Y.A.</i> Marie Westermeier, Defense Attorney Sexual Harassment Records Review	May 1997	<i>Randolph Kostelecky</i> Joseph Koplín, Plaintiff Attorney Personal Injury Independent Medical Examination, Records Review
January 1997	<i>Albertson v. Providence Alaska Medical Center</i> John Treptow, Defense Attorney Wrongful Termination of Employment Records Review	May 1997	<i>Ziegler v. Microsoft Corporation</i> Ellen Kremer, Defense Attorney Wrongful Termination, Personal Injury Records Review
January 1997	<i>Zak Thatcher</i> Peter Moote, Plaintiff Attorney Sexual Harassment Independent Medical Examination, Records Review	June 1997	<i>Lawrence v. Tacoma Dome, et al.</i> Jeannie Gorman, Plaintiff Attorney Personal Injury Independent Medical Examination, Records Review
February 1997	<i>Sawyers v. Olympic Sales, Inc., et al.</i> James Beard, Plaintiff Attorney Personal Injury Independent Medical Examination, Records Review	July 1997	<i>Coe v. United Airlines</i> Gene Moen, Plaintiff Attorney Personal Injury Independent Medical Examination, Records Review
February 1997	<i>State of Washington v. Edwards</i> Kyle Imler, Defense Attorney Second Degree Homicide Due to Neglect Independent Medical Examination	July 1997	<i>Morrison v. Crary</i> Richard Lowell, Defense Attorney Personal Injury Independent Medical Examination, Records Review
February 1997	<i>Fichtler v. Ornburn and Silver Eagle</i> Tom Chambers, Plaintiff Attorney Personal Injury Independent Medical Examination, Records Review, Deposition	August 1997	<i>Henderson Riotta v. Marsh</i> Eric Lindell, Plaintiff Attorney Personal Injury Independent Medical Examination, Records Review
March 1997	<i>Leonard v. Blackwood, et al.</i> Robert Kornfeld, Plaintiff Attorney Personal Injury Independent Medical Examination, Records Review, Deposition	August 1997	<i>Cora Moore</i> David Lybbert, Plaintiff Attorney Personal Injury Independent Medical Examination, Records Review

D. P. VAN BLARICOM, INC.

MPA, FBI-NA, CHIEF OF POLICE (RET.)

POLICE PRACTICES EXPERT

835 - 91ST LANE N.E.

BELLEVUE, WASHINGTON 98004-4811

(425) 453-0082 FAX (425) 453-3263 E-Mail dvbinc@aol.com

SUMMARY OF QUALIFICATIONS:

- A. Retained as a police expert by both plaintiffs and defendants in over **850** lawsuits alleging police liability throughout the United States.
- B. Testified on numerous occasions in federal courts, state courts and arbitrations.
- C. Recognized as an expert on the issues of:
 1. **POLICE USE OF FORCE** (plaintiff's expert in the leading 9th Cir. case of Davis v. Mason County, WA 1991, a consultant to federal prosecution task force in United States v. Koon, et al. 1993 and a plaintiff's expert in Rodney King v. City of Los Angeles 1994, defendants' expert in 1st Cir. case of Roy v. City of Lewiston, ME 1994);
 2. **LESS-LETHAL ALTERNATIVES TO DEADLY FORCE IN BOTH EQUIPMENT AND TACTICS** (plaintiff's expert in the 9th Cir. case of Reed v. Hoy 1989 and ID S.Ct. case of Kessler v. Payette County and State of Idaho 1997);
 3. **POLICE K-9s AS USE OF FORCE** (quoted in Deadly Force: What We Know 1992);
 4. **CONTROL OF POLICE VEHICULAR PURSUIT and EMERGENCY DRIVING** (my policy was recommended by the Public Risk and Insurance Management Association of Washington, D.C. as being among the 4 best in the United States 1984, quoted by 2 CA Appellate Courts in Payne v. City of Perris 1993, Berman v. City of Daly City 1993, OR S.Ct. case of Lowrimore v. Marion County 1990 and MS S.Ct. case of Mosby v. Jeffries 1998);
 5. **POLICE ADMINISTRATION and POLICY;**
 6. **POLICE PRACTICES, PROCEDURES and STANDARDS of CARE** (plaintiff's expert in the 9th Cir. Case of Gulliford v. Pierce County);
 7. **SPECIAL DUTIES TO PROTECT and 911 RESPONSES** (plaintiffs' expert in WA S.Ct. cases of Bailey v. Town of Forks 1987 and Roy v. City of Everett 1992, AZ S.Ct. case Hutcherson v. City of Phoenix 1998, MT S.Ct. case of Nelson v. Driscoll 1999 and the leading 9th Cir. case of Wood v. Ostrander 1988);
 8. **DOMESTIC VIOLENCE** (quoted by the National Law Enforcement Policy Center in their model policy 1991);
 9. **CIVIL RIGHTS VIOLATIONS** (under 42 U.S.C. § 1983);

10. **IN-CUSTODY ASPHYXIA;**
11. **POLICE INTERNAL INVESTIGATION and DISCIPLINE;**
12. **DISCRIMINATORY POLICE EMPLOYMENT PRACTICES;**
13. **AMERICANS WITH DISABILITIES ACT** (discriminatory failure to provide access);
14. **POLICE COLLECTIVE BARGAINING;**
15. **FIREARMS** (USMC trained small arms repair MOS 2111); and
16. **PRIVATE SECURITY ISSUES** (plaintiff's expert in US WD WA Groom v. Safeway).

- D. Served 29 years in municipal policing with the last 11 as Chief of Police (until retirement and election to the City Council at the end of 1985) in Bellevue, Washington - the State's then fourth largest and fastest growing city.
- E. Directed development of a progressive police department and created several model programs, including: control of vehicular pursuits, alternatives to deadly force, fully integrated emergency response team operations, domestic violence reduction, affirmative action employment of minorities and women, comprehensive crime prevention, lateral recruitment of experienced officers, police canine operations, multi-city narcotics unit and others. Additionally, co-authored the Washington State Standards on Internal Discipline of Law Enforcement agencies.
- F. Served on many professional commissions and committees, including: Washington Criminal Justice Education & Training Center Steering Committee, Bellevue Community College Local Advisory Council and Chairman Law Enforcement Program Advisory Board, Washington Attorney General's Committee on Security and Privacy, consultant to U.S. Department of Justice Community Relations Service, consultant to the National Consultation on Safety and Force, intern with 94th Congress, Governor's appointee to Community Task Force for Corrections Development, Washington State Council on Crime & Delinquency's Adult Criminal Policy Committee and Ad Hoc Committee on Board of Prison Terms/Paroles, Youth Eastside Services Board of Trustees, Eastside Community Mental Health Center Advisory Board, King County Executive's appointee to E911 Task Force, U.S. Attorney's Law Enforcement Coordinating Committee, Governor's appointee to Select Committee for Police/Fire Pension Review, IACP's Education & Training Committee, IACP's Organized Crime Committee, Assessor Team Leader for 1 of 5 Pilot Projects of the Commission on Accreditation for Law Enforcement Agencies, Governor's appointee to the Emergency Commission on Prison Overcrowding, IACP book reviewer, Suburban Cities Association's Jail Advisory Committee, Governor's Advisory Group on Personal Harassment, Portland, Oregon Chief's Committee on Police Use of Force. Assisted the appointing authorities at various times in selecting Chiefs of Police for Cities of Longview, Everett, Bellingham, Richland, Bremerton, Kirkland, Redmond, Clyde Hill, Kent (1991), Bellevue (1996) a Sheriff of King County and the Security Administrator of Seattle City Light (all in the State of Washington), King County Regional Justice Center Citizens Site Advisory Committee, Solutions To Tragedies of Police Pursuits Advisory Board, Superintendent of Public Instruction's Washington State Safe Schools Advisory Committee, King County Civil Rights Commission.
- G. Hold a security clearance from the U. S. Government.

- H. Maintain an extensive and current library of standards, policies, procedures, references, depositions and information on other experts with subscription services to update professional and legal developments in my areas of expertise.

EDUCATION:

University of Washington - bachelor of arts degree with magna cum laude honors in 1973

Seattle University - master of public administration degree in 1976

University of Washington - certificate in forensics

Graduate of the FBI's National Academy and Law Enforcement Executive Development programs

Numerous and continuing professional training courses

TEACHING AND TRAINING EXPERIENCE:

Admitted as an adjunct faculty member at City University. Taught law enforcement courses at the Bellevue Police Academy, Washington Criminal Justice Education and Training Center, Bellevue Community College, Seattle University, Northwestern University's Traffic Institute and International City Management Association's Training Institute. Lectured on police-related issues before the University of Washington School of Law and Graduate School of Public Affairs, Simon Fraser University, American Civil Liberties Union, Washington State Bar, Seattle-King County Bar, Washington State Court Administrators, Washington Association of Legal Secretaries, American G. I. Forum, United States Justice Department Community Relations Service, National Institute of Law Enforcement and Criminal Justice, U. S. Attorney General's Task Force on Family Violence, Montana Department of Social and Rehabilitation Services, Washington Advisory Committee to the U.S. Commission on Civil Rights, American Society of Criminology, debated California Highway Patrol Commissioner on police pursuit before National Association of Police Planners and International Association of Police Planning and Research Officers in 1990, Labor Relations Information System, City of Bellevue's Management Certificate Training Program, lectured for Association of Trial Lawyers of America's Civil Rights Section and the National College of Advocacy on excessive force from the expert's perspective in 1994 and domestic violence litigation liability arising from failure of prevention and response in 1995, lectured on loss prevention civil liability to Nordstrom Washington/ Alaska Region in 1997. Additionally, served on the Law Enforcement Education Advisory Committee to the Washington State Board for Community College Education in developing their statewide curriculum and also achieved the first college accreditation of a Basic Law Enforcement Academy in the State of Washington.

PUBLICATIONS:

"Recruitment and Retention of Minority Race Persons as Police Officers" in September 1976 issue of The Police Chief magazine, "An Overview of Police Service Today" in the April 18th and May 2nd, 1978 issues of Law Enforcement News, "Kids Meet Cops Through Basketball Trading Card Program" in the July 9th, 1979 issue of Law Enforcement News, "A Police Chief's View of Deadly Force" in the

National Institute of Law Enforcement & Criminal Justice January 1979 booklet on Police Use of Deadly Force, "Career Development: The Next Step to Police Professionalism" in the November 1979 issue of The Police Chief magazine, "Crime Prevention Cuts Insurance Cost" in the August 1980 issue of Center City Report, "A Sensible Alternative to Those High-Speed Chases" in the November 25, 1980 issue of The Seattle Times, "Chiefs Should Chase Sane Pursuit Driving Guidelines" in the December 22, 1980 issue of Law Enforcement News, "Commercial Crime Prevention Can Earn Discounts" in the February 1981 issue of the FBI Law Enforcement Bulletin, "Enforcing Malicious Harassment Laws" in the January 1983 edition of Washington Council on Crime and Delinquency News, "Reducing Crime, Traffic Accidents - Bellevue Shows It Can Be Done" in the May 10, 1983 issue of The Seattle Times and the June 27, 1983 issue of Law Enforcement News, "Carrying A Gun - It Depends On You" in the February 3, 1985 issue of the Journal-American, "When To Use Deadly Force" in the Winter 1985 issue of the Washington Law Enforcement Executive Journal, "Domestic Violence - A New Approach to an Old Problem" in the June 1985 issue of The Police Chief magazine, "In Pursuit Of The Pursuers - Police Pursuit Liability" in the 1987 issue of The Expert Witness Reporter, "It's Time for Police To Re-Examine Their Role In Society" in the October 1, 1989 issue of The Seattle Times, "Shaking The Pillars of Police Tradition" in the October 31, 1989 issue of Law Enforcement News, "Training-The First Hundred Years" in Law Enforcement In Washington State: The First Hundred Years 1889-1989, "K-9 Use of Force: A Biting Example of Questionable Policy" in the July/August 1992 issue of Law Enforcement News, "Police Pursuit: Uncontrolled Deadly Force" in the February 28, 1993 issue of Law Enforcement News, Bulletin Alert on a "Hair-raising Comb" in the June 1994 issue of the FBI Law Enforcement Bulletin, "Excessive Force - The Expert's Perspective" in the Association of Trial Lawyers of America July 1994 Annual Convention Reference Materials Volume I, "Domestic Violence Litigation: Liability Arising from Failure of Prevention and Response" in the Association of Trial Lawyers of America July 1995 Annual Convention Reference Materials Volume I, "Shades of Blue: What White Police Officers Can - and Must - Learn from Minority Officers" in the January/February 1996 of the Police Executive Research Forum's Subject to Debate, "Doing Something About Excessive Force" in the January 15, 1998 issue of Law Enforcement News, "The Consistent Law Enforcement Expert" in the November/December 1998 issue of The Forensic Examiner, "To Pursue or Not to Pursue: THAT is the Question" in the November 1998 issue of Police, "Handling the Mentally Ill" in the March 2000 issue of Police.

NATIONAL TELEVISION APPEARANCES:

NBC Nightly News special report on the dangers of police vehicular pursuit.

NBC Today Show:

1. Personal protection against criminal attack;
2. Misuse of pepper spray to punish.

NBC "You Be The Judge" on the dangers of police vehicular pursuit.

NATIONAL RADIO APPEARANCE:

NPR "Cops and the Mentally Ill".

QUOTED IN MAJOR NEWSPAPERS:

USA Today, Wall Street Journal, The New York Times, Los Angeles Times, San Francisco Examiner, The Seattle Times, The Oregonian, Toronto Sun.

PROFESSIONAL MEMBERSHIPS:

International Association of Chiefs of Police (Life Member), Police Executive Research Forum, Americans for Effective Law Enforcement, FBI National Academy Associates, Washington Association of Sheriffs & Police Chiefs (Life Member), Police Marksman Association, Law Enforcement Alliance of America, Police Writers Club, American College of Forensic Examiners Executive Advisory Board and Continuing Education Committee of the American Board of Law Enforcement Experts, American Society of Law Enforcement Trainers, International Police Association.

OTHER ACTIVITIES AND ASSOCIATIONS:

Present -

Washington State Retired Deputy Sheriffs/Police Officers Association, Retired Bellevue Police Officers Association, Pioneer Association.

Past -

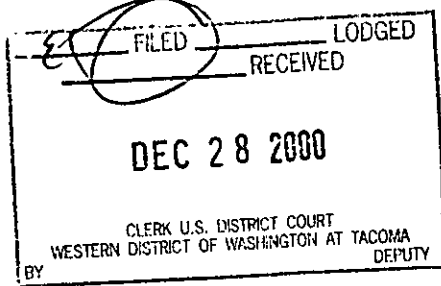
Salvation Army's Metropolitan Seattle Advisory Board, Seattle University Alumni Association Board of Governors, Journal-American Board of Contributors, Historical Society of Seattle and King County Board of Trustees, Secretary of State's Advisory Group on Charitable Solicitations, King County Landmarks Commissioner, Bellevue Downtown Park Review Committee, Co-Chairman of Bellevue Chamber of Commerce Legislative Committee, Search and Screening Committee for Selection of Bellevue Community College President, Washington State Civil Air Patrol Citizens Advisory Council, Statewide City Employees Retirement System elected Trustee, City of Bellevue Disability Board, Municipal Employees Benefit Trust Retirement Committee, City of Bellevue Liaison to the Washington State Legislature, Bellevue Rotary Club, Aircraft Owners and Pilots Association as an FAA licensed commercial airplane and glider pilot with ratings for single engine land and sea, multi-engine land and instrument operations, elected Bellevue City Councilmember (did not run for re-election), Chairman of the Emerald City Flight Festival, Chairman of Wings Over Washington Centennial Celebration, Bellevue Repertory Theater Advisory Board, Woodland Park Zoo Bond Oversight Committee, United Olympic Life Insurance Company Board of Directors, Lakes Club

Board of Governors, Columbia Tower Club Founder Member, Wing Luke Asian Museum Advisory Board, National Defense Executive Reserve Emeritus, Vice President and Planning Committee Chairman of the Museum of Flight Board of Trustees Executive Committee, Bellevue Convention Center Authority Vice Chairman and Chairman of the Construction, Human Resources and Art Advisory Committees - Note: structure was selected as the "Best New Building" by the Puget Sound Business Journal, Eastside Journal Editorial Board, Advance Bellevue Advisory Board.

AWARDS:

USMC Expert Rifleman 1953-1956, FBI "Possible Club" 1970 (of the 19,130 police officers who attended the FBI National Academy during the 50 years from when it started to the year of my retirement in 1985, I was 1 of only 165/.0086% who fired a perfect score on the PPC or TRC), Appreciation from the Drug Enforcement Administration 1977, Outstanding Community Service from Bellevue Jaycees 1979, Human Rights (Implementing Law and Order with Justice) from Baha'i Communities of Bellevue and Eastside 1980, Youth Service from the Chief Seattle Council of the Boy Scouts of America 1983, Program Innovation from the King County Domestic Violence Coalition 1983, Support and Service from Bellevue Cadet Squadron Auxiliary USAF 1984, Law Enforcement Appreciation from the Puget Sound Chapter of the American Society for Industrial Security (presented by the Governor of the State of Washington) 1984, Outstanding Volunteer Service from the Salvation Army 1984, Outstanding Service as a Public Official Citizenship Award from the Bellevue Kiwanis Club 1985, Appreciation from the United States Secret Service 1986, **Award for Public Service from The U.S. Department of Justice 1986**, Recognition for 30 Years of Public Service from the City of Bellevue 1986, Recognition and Commendation Resolution by the Municipality of Metropolitan Seattle 1988, Appreciation for Service from the Woodland Park Zoo Bond Oversight Committee 1990, Appreciation for Service from the King County Executive 1992, Appreciation for Personal Contribution to Developing Bellevue Convention Center from the City of Bellevue 1993, Outstanding Support of the Arts (jointly with wife) from the City of Bellevue Arts Commission 1993, ACFE Diplomate and Fellow: Board Certified Forensic Examiner 1995, Commendation for Outstanding Service from the City of Bellevue 1997.

HONORABLE FRANKLIN D. BURGESS



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JOSEPH J. KIRBY and DEBORAH A.
KIRBY, husband and wife,

Plaintiffs,

v.

THE CITY OF TACOMA, a municipal corporation; RAY CORPUZ and "JANE DOE" CORPUZ, husband and wife; PHILIP ARREOLA and "JANE DOE" ARREOLA, husband and wife; WILLIAM WOODARD and CATHERINE WOODARD, husband and wife; RAYMOND ROBERTS and "JANE DOE" ROBERTS, husband and wife; DAVID BRAME and "JANE DOE" BRAME, husband and wife; and JAMES HAIRSTON and "JANE DOE" HAIRSTON, husband and wife,

Defendants.

No. C00-5332 FDB

DEFENDANTS' DISCLOSURE OF
EXPERT WITNESSES

COME NOW the Defendants, by and through their undersigned attorneys, and by way of disclosure pursuant to FRCP 26(a)(2)(B) and LR 26 (a)(2)(C) submit the following:

DEFENDANTS' DISCLOSURE
OF EXPERT WITNESSES - 1

ORIGINAL

Tacoma City Attorney
Civil Division
747 Market Street, Room 1120
Tacoma, Washington 98402-3767
(253) 591-5885/FAX 591-5755

- 1 1. Gerald M. Rosen, Ph.D.
2 Eastlake Center, Suite 205
3 2825 Eastlake Avenue East
 Seattle, WA 98102

4 Dr. Rosen is expected to testify, if necessary, concerning his record
5 review and his independent examination/evaluation of the plaintiff, Joseph
6 Kirby.

7 Dr. Rosen is a licensed clinical psychologist in Washington State. He
8 maintains a private practice of clinical psychology in Seattle, Washington, and
9 is a Clinical Associate Professor with the Department of Psychiatry &
10 Behavioral Sciences, School of Medicine, and the Department of Psychology at
11 the University of Washington. His many publications and conference
12 presentations are provided in his curriculum vitae attached. Dr. Rosen has
13 conducted numerous critical incident and post-trauma debriefings, several of
14 which involved police officers, prison personnel and SWAT team members.
15

16 Dr. Rosen's knowledge and experience as a clinical psychologist has
17 been gained through his education at the University of Washington School
18 of Medicine, the University of Wisconsin, and the University of Pittsburg, and his
19 and his work experience as a professor at the University of Washington, the
20 Behavior Science Coordinator at Providence Family Medical Center in Seattle,
21 and as the Visiting Assistant Professor and Research Associate at the
22 University of Oregon Department of Psychology.
23
24
25
26

DEFENDANTS' DISCLOSURE
OF EXPERT WITNESSES - 2

Tacoma City Attorney
Civil Division
747 Market Street, Room 1120
Tacoma, Washington 98402-3767
(253) 591-5885/FAX 591-5755

1 All work activities, including consultation, research, review of records,
 2 testimony at trial or depositions, will be billed at the rate of \$275.00 per hour. If
 3 an independent examination is conducted, the fee will be \$2,500 in addition to
 4 record review and related preparation.

5 Dr. Rosen's opinions have yet to be formed concerning this case. This
 6 disclosure will be supplemented upon receipt of his opinion.

7 RESERVATION OF RIGHTS

8
 9 These defendants reserve the right to call, at trial, any and all lay
 10 witnesses and expert witnesses disclosed or identified by any party to this
 11 action. These defendants reserve the right to call at trial any and all other
 12 parties to this action, whether or not disclosed or identified by any other party
 13 as a lay or expert witness, including all witnesses discovered through on-going
 14 discovery procedures. These defendants reserve the right to elicit expert
 15 testimony from any and all witnesses to the extent permitted by the applicable
 16 rules of evidence.
 17

18 DATED this 29th day of December, 20000.

19 ROBIN S. JENKINSON, City Attorney
 20 ELIZABETH A. PAULI, Ch. Asst. City Atty.

21
 22 
 23 _____
 24 SHELLEY M. KERSLAKE, WSB #21820
 25 Assistant City Attorney
 26

DEFENDANTS' DISCLOSURE
 OF EXPERT WITNESSES - 3

Tacoma City Attorney
 Civil Division
 747 Market Street, Room 1120
 Tacoma, Washington 98402-3767
 (253) 591-5885/FAX 591-5755

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

h
FILED _____ LODGED _____
RECEIVED _____

OCT 25 2000

CLERK U.S. DISTRICT COURT
BY WESTERN DISTRICT OF WASHINGTON AT TACOMA DEPUTY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JOSEPH J. KIRBY and DEBORAH A.
KIRBY, husband and wife,

Plaintiffs,

v.

THE CITY OF TACOMA, a municipal
corporation; RAY CORPUZ and "JANE DOE"
CORPUZ, husband and wife; PHILIP
ARREOLA and "JANE DOE" ARREOLA,
husband and wife; WILLIAM WOODARD
and CATHARINE WOODARD, husband and
wife" RAYMOND ROBERTS and "JANE
DOE" ROBERTS, husband and wife; DAVID
BRAME and "JANE DOE" BRAME, husband
and wife, and JAMES HAIRSTON and "JANE
DOE" HAIRSTON, husband and wife,

Defendants.

Case No. C00-5332FDB

COURT'S PROPOSED
INSTRUCTIONS TO THE JURY

DATED OCT 25 2000

Franklin D. Burgess
FRANKLIN D. BURGESS
UNITED STATES DISTRICT JUDGE

10

INSTRUCTION NO. 1

1
2
3 Members of the jury, now that you have heard all the evidence it is my duty to instruct
4 you on the law which applies to this case. You will have a copy of these instructions in the jury
5 room. You will also have the exhibits received in evidence.

6 It is your duty to find the facts from the evidence in the case. To those facts you must
7 apply the law as given in the instructions. Each juror, like the judge, must follow the law
8 whether he or she agrees with it or not. And you must not be influenced by any personal likes
9 or dislikes, opinions, prejudices, or sympathy. This means that you must decide the case solely
10 on the evidence and according to the law. You will recall that you took an oath promising to do
11 that at the beginning of the trial.

12 In following these instructions, you must follow all of them and not single out some and
13 ignore others; they are all important. And you are not to read into these instructions or into
14 anything I may have said or done any suggestion as to what verdict you should return -- that is a
15 matter entirely for you to decide.
16
17
18
19
20
21
22
23
24
25
26
27
28

INSTRUCTION NO. 2

1
2
3 The evidence from which you are to decide what the facts are consists of (1) the sworn
4 testimony of witnesses, both on direct and cross-examination, regardless of who called the
5 witness; (2) the exhibits that have been received into evidence; and (3) any facts to which all
6 the lawyers have agreed.

7 You have heard testimony in the form of depositions. Testimony given in this manner
8 is entitled to the same consideration, and is to be judged by you as to credibility and weight, as
9 if the witness were testifying in person.

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

INSTRUCTION NO. 3

1
2
3 Certain things that happen during a trial do not constitute evidence. I will list them for
4 you:

5 1. Arguments and statements by lawyers are not evidence. The lawyers are not
6 witnesses. What they say in their opening statements, closing arguments and at other times is
7 intended to help you interpret the evidence, but it is not evidence. If the facts as you remember
8 them differ from the way the lawyers have stated them, your memory of them controls.

9 2. Questions and objections by lawyers are not evidence. Attorneys have a duty to
10 their clients to object when they believe a question is improper under the rules. You should not
11 be influenced by the objection or by the court's ruling on it.

12 3. Testimony that has been excluded or stricken, or that you have been instructed to
13 disregard, is not evidence and must not be considered. If testimony or exhibits have been
14 received only for a limited purpose, you must follow the limiting instructions I have given.

15 4. Anything you may have seen or heard when the court was not in session is not
16 evidence.
17
18
19
20
21
22
23
24
25
26
27
28

INSTRUCTION NO. 4

1
2
3
4
5 Evidence may be direct or circumstantial. Direct evidence is direct proof of a fact, such
6 as testimony by a witness about what the witness personally saw or heard or did. Circumstan-
7 tial evidence is proof of one or more facts from which you could find another fact. You should
8 consider both kinds of evidence. The law makes no distinction between the weight to be given
9 to either direct or circumstantial evidence. It is for you to decide how much weight to give to
10 any evidence.

11 In making that decision, you should consider all the proof in light of reason, common
12 sense, and experience.
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

INSTRUCTION NO. 5

1
2
3 In deciding what the facts are, you must decide which testimony to believe and which
4 testimony not to believe. You may disbelieve all or any part of any witness's testimony. In
5 making that decision, you may take into account a number of factors including these:

- 6 1. Was the witness able to see, or hear, or know the things about which that witness
7 testified?
8 2. How well was the witness able to recall and describe those things?
9 3. What was the witness's manner while testifying?
10 4. Did the witness have an interest in the outcome of this case or any bias or
11 prejudice concerning any party or any matter involved in the case?
12 5. How reasonable was the witness's testimony considered in light of the other
13 evidence?
14 6. Was the witness's testimony contradicted by what he or she has said or done at
15 another time, or by the testimony of other witnesses, or by other evidence?

16 In deciding whether or not to believe a witness, keep in mind that people sometimes
17 forget things. You need to consider therefore whether a contradiction is an innocent lapse of
18 memory or an intentional falsehood, and that may depend on whether it has to do with an
19 important fact or with only a small detail.

20 These are some of the factors you may consider in deciding whether to believe testi-
21 mony.

22 The weight of the evidence does not necessarily depend on the number of witnesses
23 testifying on one side or the other.
24
25
26
27
28

INSTRUCTION NO. 6

1
2
3 You have heard testimony from persons described as experts. Persons who, by
4 education and experience, have become expert in some field may state their opinions on matters
5 in that field and may also state their reasons for the opinions.

6 Expert opinion testimony should be judged like any other testimony. You may accept it
7 or reject it, and give it as much weight as you think it deserves, considering the witness's educa-
8 tion and experience, the reasons given for the opinion, and all the other evidence.

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

INSTRUCTION NO. 7 [IF APPLICABLE]

Certain charts and summaries have been shown to you or have been received into evidence to illustrate facts brought out in the testimony. Charts and summaries are only as good as the underlying evidence that supports them. You should therefore give them only such weight as you think the underlying evidence deserves.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

INSTRUCTION NO. 8 [IF APPLICABLE]

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

The fact that a party is a corporation should not affect your decision. All persons are equal before the law, and a corporation, whether large or small, is entitled to the same fair and conscientious consideration by you as any other person.

INSTRUCTION NO. 9

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

When it is said that a party has the burden of proof on any proposition, or that any proposition must be proved by a "preponderance" of the evidence, or the expression "if you find" is used, it means that you must be persuaded, considering all the evidence in the case, that the proposition is more probably true than not true.

INSTRUCTION NO. 10

1
2
3 Plaintiff brings this lawsuit against defendant to recover compensation for damages
4 allegedly sustained. Plaintiff asserts the following claims:

5
6 [Insert brief description of each claim.]
7

8 Plaintiff claims that one or more of these acts was a proximate cause of damage.
9 Defendant denies these claims and, further, denies the nature and extent of plaintiff's claimed
10 damages. By way of affirmative defense, defendant alleges that [insert].

11
12 [Insert summary of any counterclaims and cross-claims.]
13

14 The foregoing is merely a summary of the claims and defenses of the parties. You are
15 not to take the same as proof of the matter alleged unless admitted by the opposing party, and
16 you are to consider only those matters that are admitted or established by the evidence. These
17 claims and defenses have been outlined solely to aid you in understanding the issues.

18 Plaintiff is asserting several claims, each of which is entitled to your separate consider-
19 ation. You must decide as to each claim whether plaintiff is entitled to recover. The fact that
20 plaintiff may be entitled to recover on one claim does not mean that he is entitled to recover on
21 another. Similarly, the fact that plaintiff may not be entitled to recover on one claim does not
22 prevent him from recovering on another.
23
24
25
26
27
28

INSTRUCTION NO. 11

1
2
3 The plaintiff has the burden of proving each of the following propositions with respect
4 to his first claim:

5
6 [insert elements of claim].
7

8 If you find from your consideration of all of the evidence that the plaintiff has proved
9 each of these propositions, your verdict should be for the plaintiff on this claim. On the other
10 hand, if any of these propositions has not been proved, your verdict should be for the defendant
11 on this claim.

12
13 [Prepare a separate instruction for each claim, counterclaim, and cross-claim.]
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

INSTRUCTION NO. 12

1
2
3 It is the duty of the court to instruct you as to the measure of damages. By instructing
4 you on damages the court does not mean to suggest for which party your verdict should be ren-
5 dered.

6 If your verdict is for the plaintiff, you must then determine the amount of money
7 required to reasonably and fairly compensate the plaintiff for the total amount of damages.

8 If you find for the plaintiff, your verdict should include the following items:

9
10 [Insert appropriate items.]

11
12 The burden of proving damages rests with the plaintiff and it is for you to determine
13 whether any particular element has been proved by a preponderance of the evidence.

14 Your award must be based upon evidence and not upon speculation, guess or conjecture.

15 The law has not furnished us with any fixed standards by which to measure [insert
16 appropriate items]. With reference to these matters, you must be governed by your own
17 judgment, by the evidence in the case, and by these instructions.

18
19
20
21
22
23
24
25
26
27
28

INSTRUCTION NO. 13

1
2
3 When you retire, you should elect one member of the jury as your Presiding Juror. That
4 person will preside over the deliberations and speak for you here in court.

5 You will then discuss the case with your fellow jurors to reach agreement if you can do
6 so. Your verdict must be unanimous.

7 Each of you must decide the case for yourself, but you should do so only after you have
8 considered all the evidence, discussed it fully with the other jurors, and listened to the views of
9 your fellow jurors.

10 Do not be afraid to change your opinion if the discussion persuades you that you should.
11 But do not come to a decision simply because other jurors think it is right.

12 It is important that you attempt to reach a unanimous verdict but, of course, only if each
13 of you can do so after having made your own conscientious decision. Do not change an honest
14 belief about the weight and effect of the evidence simply to reach a verdict.

15
16
17
18
19
20
21
22
23
24
25
26
27
28

INSTRUCTION NO. 14

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

You may use notes taken during trial to assist your memory. Notes, however, should not be substituted for your memory, and you should not be overly influenced by the notes.

INSTRUCTION NO. 15

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

After you have reached a unanimous verdict, your Presiding Juror will fill in, date, and sign the verdict form or forms and advise the Court that you have reached a verdict.

INSTRUCTION NO. 16

1
2
3
4 If it becomes necessary during your deliberations to communicate with me, you may
5 send a note through the Bailiff, signed by your Presiding Juror, or by one or more members of
6 the jury.

7 No member of the jury should ever attempt to communicate with me except by a signed
8 writing; and I will only communicate with you concerning this case in open court or in writing.

9 If you send out a written question during deliberations, I will contact the parties and
10 have them return to the Courthouse. I will provide copies of your written question to the
11 parties, and consult with them before answering your question. This may take some time. You
12 may continue your deliberations while waiting for the answer to any question.

13 Remember, that you are not to tell anyone--including me--how the jury stands,
14 numerically or otherwise, until after you have reached a unanimous verdict or have been
15 discharged. Do not disclose any vote count in any note to the Court.
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

FRANKLIN D. BURGESS
UNITED STATES DISTRICT JUDGE
(253) 593-6307
Fax: (253) 593-6447

1717 PACIFIC AVENUE, ROOM 3124
TACOMA, WASHINGTON 98402

MEMORANDUM

To: Counsel of Record

From: Franklin D. Burgess, United States District Judge

Re: Joseph J. Kirby, et ux., v. City of Tacoma, et al., - C00-5332FDB

Subject: Civil Jury Instructions

Enclosed are the General Instructions to be used with your joint proposed jury instructions in the above-entitled civil case. It is not necessary to propose or to submit separate instructions unless you object to particular instructions. If appropriate, submit a proposed special verdict form.

Counsel are directed to meet and agree on the remaining instructions. Insofar as possible, counsel should utilize the Ninth Circuit Model Civil Jury Instructions. To the extent the parties cannot agree on any new proposed instruction, please indicate counsels' objection at the foot of the page on the Court's copy of the proposed instruction.

This procedure is intended to modify applications of Local Rule CR 51 relating to jury instructions. Except as set forth herein, please submit all proposed instructions using the format set forth in Local Rule CR 51(b). It is desirable to have the parties submit a disk containing the proposed jury instructions. The Court uses WP8. If you are in doubt whether the Court can use your particular format, please contact the Court.

FILED _____ LODGED _____
RECEIVED
OCT 16 2000
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT TACOMA
BY _____ DEPUTY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JOSEPH J. KIRBY and DEBORAH A.
KIRBY, husband and wife,

Plaintiffs,

v.

THE CITY OF TACOMA, a municipal
corporation; RAY CORPUZ and "JANE
DOE" CORPUZ, husband and wife; PHILIP
ARREOLA and "JANE DOE" ARREOLA,
husband and wife; WILLIAM WOODARD
and CATHERINE WOODARD, husband and
wife; RAYMOND ROBERTS and "JANE
DOE" ROBERTS, husband and wife;
DAVID BRAME and "JANE DOE"
BRAME, husband and wife; and JAMES
HAIRSTON and "JANE DOE" HAIRSTON,
husband and wife,

Defendants.

CASE NO. C00-5332FDB

MINUTE ORDER SCHEDULING
JURY TRIAL and PRETRIAL
DATES

NOW, on this 16th day of October 2000, the Court directs the Clerk to enter the following Minute Order:

The above-entitled case has been scheduled for jury trial at 9:00 a.m. on **July 9, 2001**, for ten (10) days, before THE HONORABLE FRANKLIN D. BURGESS. Counsel should follow the provisions of Rule 16 and 26 of the Federal Rules of Civil Procedure and local Rule W.D. Wash. CR16(b)&(c) and 26(a)(2)(A)(B) and (C). Pursuant to said rules, the following pre-trial schedule is hereby entered. **FILING DEADLINES ARE THE DATE FILING TO BE RECEIVED IN TACOMA.**

9

1 Disclosure of expert witnesses and their opinions by: **January 2, 2001**

2 Disclosure of rebuttal experts and their opinions by: **January 30, 2001**

3 Objection to the oppositions' experts by: **March 1, 2001**. Failure to file an objection shall
4 be deemed a waiver of any objection.

5 Discovery cut-off and filing date for amended pleadings is established as: **March 12, 2001**

6 All remaining motions, including DISPOSITIVE MOTIONS, shall be filed by: **March 30,
2001**

7 Filing of Trial Briefs, Motions In Limine, and lodging the Proposed Pre-Trial Order is: **June
7, 2001**

8 Proposed Jury Instructions shall be filed by: **June 7, 2001** Counsel are to confer and
9 indicate which Instructions are agreed. A Manual of Model Civil Jury Instructions For the
10 Ninth circuit is recommended for use as the format for proposed jury instructions. All
11 proposed instructions are to be on pleading paper. (Local Rule CR10(D)). File the original
12 set and one copy (serving opposing counsel) with each instruction numbered and cited;
provide an additional set for the Court that is unnumbered and uncited. (Local Rule CR51).
Counsel is requested to furnish the Court with a copy of their proposed Jury Instruction on
computer disc.

13 Pre-Trial Conference will be held on **June 15, 2001, at 2:30 p.m.** **COUNSEL WITH
14 PRINCIPAL RESPONSIBILITY FOR THIS CASE MUST ATTEND.** Counsel should
15 be prepared to discuss the presentation of deposition testimony in lieu of live testimony and
the use of any Stipulations. Proposed Voir Dire Questions are to be submitted at the pretrial
conference.


16 Counsel should report to Courtroom C.

17 **THIS CASE IS DESIGNATED FOR MEDIATION UNDER LOCAL RULE 39.1.**

18 Counsel shall complete the mediation process and file a letter of compliance by **March 21, 2001.**

19 All dates and action required by this Order are firm and shall not be changed without express
20 leave of the Court. Failure to comply in any respect with this Order may result in sanctions against
21 counsel. If this case is settled, please advise the undersigned immediately at (253) 593-6360. If this
22 case is not settled, it will go to trial on the date set or as soon thereafter as the Court is available.

23 The foregoing Minute Order entered by direction of the HONORABLE FRANKLIN D.
24 BURGESS, United States District Judge.

25
26 
27 B. Kay McDermott
28 Courtroom Deputy

km

United States District Court
for the
Western District of Washington
October 16, 2000

* * MAILING CERTIFICATE OF CLERK * *

Re: 3:00-cv-05332

True and correct copies of the attached were mailed by the clerk to the following:

John L Messina, Esq.
MESSINA LAW FIRM
5316 ORCHARD ST W
TACOMA, WA 98467-3633
FAX 1-253-475-7886

Shelley M Kerslake, Esq.
TACOMA CITY ATTORNEY'S OFFICE
STE 1120
747 MARKET ST
TACOMA, WA 98402-3767
253-591-5885

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATION

I hereby certify that on 9/18/10 I deposited
 in the mails of the United States of America and/or
 placed with Legal Messengers and/or faxed a copy of the
 document to which this certificate is attached, for
 delivery to all counsel of record

Vickie A. DeFranco
 Messina Law Firm

HON. FRANKLIN D. BURGESS

FILED
 SEP 19 2000
 RECEIVED
 LARGED

BY WESTERN CLERK U.S. DISTRICT COURT
 DISTRICT OF WASHINGTON TACOMA, WA

IN THE UNITED STATES DISTRICT COURT
 FOR THE WESTERN DISTRICT OF WASHINGTON

JOSEPH J. KIRBY and DEBORAH A.)
 KIRBY, husband and wife,)
)
 Plaintiffs,)
)
 vs.)
)
 THE CITY OF TACOMA, a municipal)
 corporation; RAY CORPUZ and)
 "JANE DOE" CORPUZ, husband and)
 wife; PHILIP ARREOLA and "JANE)
 DOE" ARREOLA, husband and)
 wife; WILLIAM WOODARD and)
 CATHERINE WOODARD, husband and)
 wife; RAYMOND ROBERTS and "JANE)
 DOE" ROBERTS, husband and wife;)
 DAVID BRAME and "JANE DOE")
 BRAME, husband and wife; and)
 JAMES HAIRSTON and "JANE DOE")
 HAIRSTON, husband and wife,)
)
 Defendants.)

No. C00-5332FDB
 JOINT STATUS REPORT

1. What is the statutory jurisdictional basis for this
 Court's jurisdiction?

- 28 U.S.C. §1331
- 42 U.S.C. §1983

MESSINA • BULZOMI
 5316 Orchard St. W.
 Tacoma, WA 98467-3633
 (253) 472-6000

8

1 28 U.S.C. §1367(a)

2 28 U.S.C. §1441(c)

3 2. Is there any other jurisdiction where this cause of
4 action might have been brought?

5 Plaintiffs filed suit in Pierce County Superior Court and
6 Defendants petitioned for removal to Federal Court upon amendment
7 of plaintiff's pleadings to add a federal cause of action.

8 3. What is the nature and complexity of the case?

9 Plaintiff, Joseph Kirby, alleges that during his employment
10 with the City of Tacoma Police Department from approximately
11 January, 1983, to the present that he was harassed and
12 discriminated against by employees of The City of Tacoma,
13 violating his civil rights and rights derived from protected
14 labor activities, and resulting in a hostile, unpleasant, and
15 unbearable work environment. Plaintiff has also pled causes of
16 action regarding negligent hiring and racial discrimination.
17 Plaintiff has a potential list of 108 lay witnesses including
18 four expert witnesses. Defendants dispute all allegations.

19 4. What is the status of the case including hearings,
20 motions, and discovery?

21 Discovery has been commenced, including interrogatories
22 between parties and initial depositions have occurred. Many more
23 depositions will be scheduled in the near future.

24

25

MESSINA • BULZOMI

5316 Orchard St. W.
Tacoma, WA 98467-3633
(253) 472-6000

1 5. Should this case or portions of it be referred to a
2 Special Master pursuant to Fed.R.Civ.P.53?

3 The parties believe there is no need to refer this case or
4 any portions of it to a Special Master.

5 6. Is this case appropriate for mediation under Local Rule
6 39.1?

7 Plaintiffs are agreeable. Defendants dispute plaintiff's
8 contention regarding liability and believe that this case is not
9 amenable to mediation at this time.

10 7. Do the parties agree to consent that a full-time
11 magistrate judge may conduct all proceedings?

12 Plaintiffs are agreeable. Defendants do not agree to have
13 this case conducted by a full-time magistrate.

14 8. On what date will the case be ready for trial,
15 considering Local Rule 16 deadlines?

16 Plaintiffs are available after 5/31/01.

17 Defendants anticipate this case will be ready for trial by
18 June 2001.

19 9. Is the trial to be jury or non-jury?

20 Jury

21 10. The number of trial days required?

22 Five to Ten days.

23

24

25

MESSINA • BULZOMI

5316 Orchard St. W.
Tacoma, WA 98467-3633
(253) 472-6000

1 11. The names, addresses and telephone numbers of trial
2 counsel?

3 Plaintiffs:

4 John L. Messina 4440
5 Jeffrey H. Sadler 27136
6 5316 Orchard Street West
7 Tacoma WA 98467
8 (253) 472-6000

9 Defendants:

10 Shelley M. Kerslake, WSB #21820
11 Tacoma City Attorney
12 Civil Division
13 747 Market Street, Room 1120
14 Tacoma, WA 98402-3767
15 (253) 591-5885

16 12. The dates on which trial counsel are unavailable and
17 any other complications to be considered in setting a trial date?

18 Plaintiffs: June 1-20, 2001

19 August 2001

20 October 2001

21 Defendants: September 17-28, 2001

22 October 2001

23 November 5-16, 2001

24 December 2001

25 13. Suggestions for shortening or simplifying trial.

26 Plaintiff suggests limitation of expert witnesses.
27 Defendants believe that bifurcation of liability and damage
28 issues would shorten and simplify the trial.

MESSINA • BULZOMI

5316 Orchard St. W.
Tacoma, WA 98467-3633
(253) 472-6000

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

14. Should the case be bifurcated, trying liability issues before damages issues, or bifurcated in any other way?

Plaintiff believes this case should not be bifurcated. Defendants believe that it should.

DATED this 18 day of September 2000.

MESSINA BULZOMI

By *John L. Messina*
JOHN L. MESSINA 4440
Attorneys for Plaintiff

TACOMA CITY ATTORNEY'S OFFICE

By *Shelley M. Kerlake*
SHELLEY M. KERSLAKE 21820
Attorneys for Defendant
per telephonic authority

MESSINA • BULZOMI

5316 Orchard St. W.
Tacoma, WA 98467-3633
(253) 472-6000

HON. FRANKLIN D. BURGESS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

<i>CMZ</i>	FILED	LODGED
		RECEIVED
AUG 16 2000		
CLERK U.S. DISTRICT COURT WESTERN DISTRICT OF WASHINGTON AT TACOMA		
BY		DEPUTY

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

JOSEPH J. KIRBY and DEBORAH A.)
KIRBY, husband and wife,)
Plaintiffs,)

No. C00-5332FDB

vs.)

DEMAND FOR JURY OF
TWELVE

THE CITY OF TACOMA, a municipal)
corporation; RAY CORPUZ and)
"JANE DOE" CORPUZ, husband and)
wife; PHILIP ARREOLA and "JANE)
DOE" ARREOLA, husband and)
wife; WILLIAM WOODARD and)
CATHERINE WOODARD, husband and)
wife; RAYMOND ROBERTS and "JANE)
DOE" ROBERTS, husband and wife;)
DAVID BRAME and "JANE DOE")
BRAME, husband and wife; and)
JAMES HAIRSTON and "JANE DOE")
HAIRSTON, husband and wife,)
Defendants.)

COME NOW the plaintiffs and hereby demand a trial of the

DEMAND FOR JURY.

MESSINA • BULZOMI

5316 Orchard St. W.
Tacoma, WA 98467-3633
(253) 472-6000

7

1 above-entitled cause of action by a jury of twelve persons.

2 DATED this 15 day of August 2000.

3 MESSINA BULZOMI

4 By *John L. Messina*
5 JOHN L. MESSINA 4440
6 Attorneys for Plaintiffs

7
8 CERTIFICATE OF SERVICE

9 I, VICKIE A. LO FRANCO, certify that on this day I caused
10 to be served by ABC Legal Messenger copies of the document to
11 which this certificate is attached on counsel of record as
12 follows:

13 Shelley M. Kerslake
14 Tacoma City Attorney
15 Civil Division
16 747 Market St., Rm. 1120
17 Tacoma, WA 98402-3767

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

20 *Vickie A. Lo Franco*
21 VICKIE A. LO FRANCO
22 Legal Assistant

23 August 15, 2000
24 Tacoma, Washington
25

MESSINA • BULZOMI
5316 Orchard St. W.
Tacoma, WA 98467-3633
(253) 472-6000

HONORABLE FRANKLIN D. BURGESS

FILED
JUN 15 2000
RECEIVED
LODGED
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT TACOMA
DEPUTY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JOSEPH J. KIRBY and DEBORAH A.
KIRBY, husband and wife,

Plaintiffs,

v.

THE CITY OF TACOMA, a municipal
corporation; RAY CORPUZ and "JANE
DOE" CORPUZ, husband and wife; PHILIP
ARREOLA and "JANE DOE" ARREOLA,
husband and wife; WILLIAM WOODARD
and CATHERINE WOODARD, husband and
wife; RAYMOND ROBERTS and "JANE
DOE" ROBERTS, husband and wife; DAVID
BRAME and "JANE DOE" BRAME, husband
and wife; and JAMES HAIRSTON and
"JANE DOE" HAIRSTON, husband and wife,

Defendants.

No. C00-5332 FDB

CERTIFICATION OF
SHELLEY M. KERSLAKE

STATE OF WASHINGTON)
)ss.
County of Pierce)

SHELLEY M. KERSLAKE, being first duly sworn upon oath, deposes

and says:

CERTIFICATION OF
SHELLEY M. KERSLAKE- 1

ORIGINAL

Tacoma City Attorney
Civil Division
747 Market Street, Room 1120
Tacoma, Washington 98402-3767
(253) 591-5885/FAX 591-5755

6

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

1 1. That I am the attorney representing the defendants in the above-
2 captioned cause of action;

3 2. That on June 6, 2000, I filed the Notice of Removal of Action from
4 State Court, together with copies of the Summons and Complaint for Personal
5 Injuries and Damages in Tort, Order Setting Case Schedule, Stipulation and
6 Order Amending Complaint, and Summons and Amended Complaint for
7 Personal Injuries and Damages in Tort.

8 3. That on June 14, 2000, my paralegal reviewed the court file in the
9 Pierce County Superior Court Clerk's Office to determine if any additional
10 records had been filed; and
11

12 4. That the attached copies of:


13
14 Track Assignment Request
15 Case Cover Sheet
16 Notice of Appearance
17 Acceptance of Service
18 Confirmation of Service
19 Defendant City of Tacoma's Answer and Affirmative Defenses
20 Notice of Unavailability
21 Notice of Appearance [for Defendant Arreola]
22 Declaration of Service
23 Plaintiffs' Motion to Amend Complaint
24 Note for Motion Docket
25 Confirmation of Joinder of Parties
26 Re-Note for Motion Docket
 Demand for Jury of Twelve
 Plaintiffs' Disclosure of Primary Witnesses

CERTIFICATION OF
SHELLEY M. KERSLAKE- 2

Tacoma City Attorney
Civil Division
747 Market Street, Room 1120
Tacoma, Washington 98402-3767
(253) 591-5885/FAX 591-5755

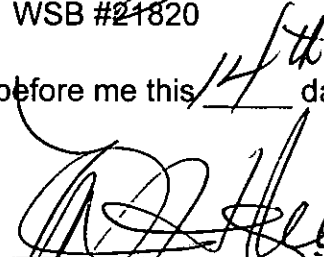
are the only additional records or proceedings that have been filed with the
Pierce County Superior Court Clerk other than those filed with the Notice of
Removal.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

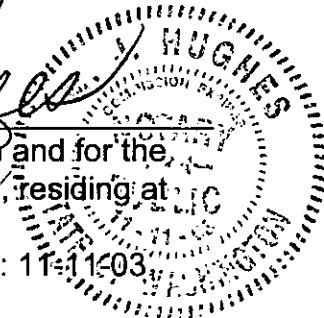


SHELLEY M. KERSLAKE
WSB #21820

SUBSCRIBED AND SWORN to before me this 14th day of June,
2000.



NOTARY PUBLIC in and for the
State of Washington, residing at
Tacoma
Commission expires: 11-11-03



CERTIFICATION OF
SHELLEY M. KERSLAKE- 3

Tacoma City Attorney
Civil Division
747 Market Street, Room 1120
Tacoma, Washington 98402-3767
(253) 591-5885/FAX 591-5755

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

FILED
IN COUNTY CLERK'S OFFICE

A.M. DEC 20 1999 P.M.

PIERCE COUNTY, WASHINGTON
TED RUTT, COUNTY CLERK
BY _____ DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

JOSEPH J. KIRBY and DEBORAH A.)
KIRBY, husband and wife,)

Plaintiffs,)

vs.)

THE CITY OF TACOMA, a municipal)
corporation; RAY CORPUZ and)
"JANE DOE" CORPUZ, husband and)
wife; PHILIP ARREOLA and "JANE)
DOE" ARREOLA, husband and)
wife; WILLIAM WOODARD and)
CATHERINE WOODARD, husband and)
wife; RAYMOND ROBERTS and "JANE)
DOE" ROBERTS, husband and wife;)
DAVID BRAME and "JANE DOE")
BRAME, husband and wife; and)
JAMES HAIRSTON and "JANE DOE")
HAIRSTON, husband and wife,)

Defendants.)

No. 99 2 13911 4

TRACK ASSIGNMENT REQUEST

DEC 21 1999

JOHN L. MESSINA 4440 Phone 472-6000 Fax 475-7886
5316 Orchard St. W., Tacoma, WA 98467

MESSINA • BULZOMI

5316 Orchard St. W.
Tacoma, WA 98467-3633
(253) 472-6000

TRACK ASSIGNMENT REQUEST.

1 JURY DEMAND ANTICIPATED Yes (x) No ()

2 CONSOLIDATION ANTICIPATED Yes () No (x)

3 ESTIMATED LENGTH OF TRIAL NUMBER OF DAYS 6

4 TRACK ASSIGNMENT REQUESTED: See PCLR 1(g)(2) through (5)

5 EXPEDITED [] STANDARD COMPLEX [] DISSOLUTION []

6 TRACK REQUESTS THAT DEVIATE FROM THE PRESUMED TRACK (SEE PCLR 1)
7 MUST BE EXPLAINED ON THE SPACE PROVIDED BELOW, OR WILL BE
8 REJECTED BY CLERK.

8 Employment Discrimination
9

10 I hereby certify that I have considered the general
11 guidelines for track assignment as contained herein and certify
12 that my requested track is in compliance therewith.

12 DATED: 12/6/99

John L. Messina
JOHN L. MESSINA 4440

13
14
15
16
17
18
19
20
21
22
23
24
25

MESSINA • BULZOMI
5316 Orchard St. W.
Tacoma, WA 98467-3633
(253) 472-6000

Case Title: KIRBY v. TAYLOR

Plaintiff: JOHN L. HESSIA Street Address: 5316 DECATUR ST

City: TACOMA State: WA Zip: 98407

Category that best describes this case for indexing purposes. (Non PCLR indicates no Track Assignment Request is required.)

- Review (ALR 2) Non PCLR
- (LCA 2) Non PCLR
- (2) Non PCLR
- COMMERCIAL**
- (COM 2) EXPEDITED
- Contract (COM 2) EXPEDITED
- (COL 2) EXPEDITED
- DISSOLUTION**
- (INV 3) DISSOLUTION
- (S 3) DISSOLUTION
- Children (DIC 3) DISSOLUTION
- Children (DIN 3) DISSOLUTION
- (FJU 3) Non PCLR
- (EP 3) DISSOLUTION
- Assignment (MWA 3) Non PCLR
- Partnership (MER 2) Non PCLR
- (3) Non PCLR
- (OSC 3) DISSOLUTION
- In county (RIC 3) Non PCLR
- Out of county (ROC 3) Non PCLR
- (2) Non PCLR
- (U 2) Non PCLR
- County (ABJ 2) Non PCLR
- (FJU 2) Non PCLR
- Non PCLR
- (TRJ 2) Non PCLR
- WARRANT PETITION**
- Binding Arbitration (MSC 2) Non PCLR
- (N 2) Non PCLR
- (MSC 2) Non PCLR
- (EOM 2) Non PCLR
- PCLR
- Non PCLR
- (MHA 2) Non PCLR
- Guardianship (MST 2) Non PCLR
- (PCC 2) Non PCLR
- Comm of Crime (SPC 2) Non PCLR
- Resulting from Crime (SPR 2) Non PCLR
- PCLR

- ADOPTION / PATERNITY**
- Adoption (ADP 5) Non PCLR
- Confidential Intermediary (MSC 5) Non PCLR
- Initial Pre-Placement Rpt (PPR 5) Non PCLR
- Modification (MOD 5) Non PCLR
- Paternity (PAT 5) Non PCLR
- Paternity/URES/UJFSA (PUR 5) Non PCLR
- Relinquishment (REL 5) Non PCLR
- Terminate of Parent-Child Relation (TER 5) Non PCLR
- PROBATE / GUARDIANSHIP**
- Absentee (ABS 4) Non PCLR
- Disclaimer (DIS 4) Non PCLR
- Estate (EST 4) Non PCLR
- Foreign Will (FNW 4) Non PCLR
- Guardianship (GDN 4) Non PCLR
- Guardianship / Estate (G/E 4) Non PCLR
- Limited Guardianship (LGD 4) Non PCLR
- Minor Settlement /With Guardianship (MST 4) Non PCLR
- Non-Probate Notice to Creditors (NNC 4) Non PCLR
- Will Only (WLL 4) Non PCLR
- PROPERTY RIGHTS**
- Condemnation (CON 2) STANDARD
- Foreclosure (FOR 2) STANDARD
- Property Fairness (PFA 2) STANDARD
- Quiet Title (QTI 2) STANDARD
- Unlawful Detainer/Eviction (UND 2) Non PCLR
- TORT / MEDICAL MALPRACTICE**
- Hospital (MED 2) COMPLEX
- Medical Doctor (MED 2) COMPLEX
- Other Health Care Professional (MED 2) COMPLEX
- TORT / MOTOR VEHICLE**
- Death (TMV 2) STANDARD
- Non-Death Injuries (TMV 2) STANDARD
- Property Damage Only (TMV 2) STANDARD
- TORT / NON MOTOR VEHICLE**
- Asbestos (PIN 2) STANDARD
- Other Malpractice (MAL 2) COMPLEX
- Personal Injury (PIN 2) STANDARD
- Products Liability (PIN 2) COMPLEX
- Property Damage (PRP 2) STANDARD
- Wrongful Death (WDE 2) STANDARD
- WRIT**
- Habeas Corpus (WHC 2) Non PCLR
- Mandamus (WRM 2) Non PCLR
- Review (WRV 2) Non PCLR

Select the appropriate category, please check one below. This will create a track assignment request form which is not subject to PCLR 1.

DISCUSSION

Bar # _____
Phone# (253) 472-6000 City TACOMA State WA 98467
Fax# (253) 472-4100

Please check one category that best describes this case for indexing purposes.
Assumed tracks are listed next to the cause codes. (Non PCLR indicates no Track Assignment Request is required.)

APPEAL / REVIEW

- Administrative Law Review (ALR 2) *Non PCLR*
- Civil, Non-Traffic (LCA 2) *Non PCLR*
- Civil, Traffic (LCI 2) *Non PCLR*

CONTRACT / COMMERCIAL

- Breach of Contract (COM 2) *EXPEDITED*
- Commercial Contract (COM 2) *EXPEDITED*
- Commercial Non-Contract (COM 2) *EXPEDITED*
- Third Party Collection (COL 2) *EXPEDITED*

DOMESTIC RELATIONS

- Annulment/ Invalidity (INV 3) *DISSOLUTION*
- Child Custody (CUS 3) *DISSOLUTION*
- Dissolution with children (DIC 3) *DISSOLUTION*
- Dissolution without children (DIN 3) *DISSOLUTION*
- Foreign Judgment (FJU 3) *Non PCLR*
- Legal Separation (SEP 3) *DISSOLUTION*
- Mandatory Wage Assignment (MWA 3) *Non PCLR*
- Meretricious Relationship (MER 2) *Non PCLR*
- Modification (MOD 3) *Non PCLR*
- Out-of-State Custody (OSC 3) *DISSOLUTION*
- Reciprocal, Respondent in county (RIC 3) *Non PCLR*
- Reciprocal, Respondent out of county (ROC 3) *Non PCLR*

JUDGMENT

- Abstract Only (ABJ 2) *Non PCLR*
- Foreign Judgment (FJU 2) *Non PCLR*
- Judgment, Another County (ABJ 2) *Non PCLR*
- Judgment, Another State (FJU 2) *Non PCLR*
- Tax Warrant (TAX 2) *Non PCLR*
- Transcript of Judgment (TRJ 2) *Non PCLR*

OTHER COMPLAINT OR PETITION

- Compel/Confirm Binding Arbitration (MSC 2) *Non PCLR*
- Change of Name (CHN 2) *Non PCLR*
- Deposit of Surplus Funds (MSC 2) *Non PCLR*
- Emancipation of a Minor (EOM 2) *Non PCLR*
- Injunction (INJ 2) *Non PCLR*
- Interpleader (MSC 2) *Non PCLR*
- Malicious Harassment (MHA 2) *Non PCLR*
- Minor Settlement /No Guardianship (MST 2) *Non PCLR*
- Petition for Civil Commit/Sexual Predator (PCC 2) *Non PCLR*
- Seizure of Property from Comm of Crime (SPC 2) *Non PCLR*
- Seizure of Property Resulting from Crime (SPR 2) *Non PCLR*
- Subpoenas (MSC 2) *Non PCLR*

If you cannot determine the appropriate category, please describe the cause of action below. This will create a "Miscellaneous" cause which is not subject to PCLR 1, and does not require a Track Assignment Request Form.

ADOPTION / PATERNITY

- Adoption (ADP 5) *Non PCLR*
- Confidential Intermediary (MSC 5) *Non PCLR*
- Initial Pre-Placement Rpt (PPR 5) *Non PCLR*
- Modification (MOD 5) *Non PCLR*
- Paternity (PAT 5) *Non PCLR*
- Paternity/URES/UIFS (PUR 5) *Non PCLR*
- Relinquishment (REL 5) *Non PCLR*
- Terminate of Parent-Child Relation (TER 5) *Non PCLR*

PROBATE / GUARDIANSHIP

- Absentee (ABS 4) *Non PCLR*
- Disclaimer (DIS 4) *Non PCLR*
- Estate (EST 4) *Non PCLR*
- Foreign Will (FNW 4) *Non PCLR*
- Guardianship (GDN 4) *Non PCLR*
- Guardianship / Estate (G/E 4) *Non PCLR*
- Limited Guardianship (LGD 4) *Non PCLR*
- Minor Settlement /With Guardianship (MST 4) *Non PCLR*
- Non-Probate Notice to Creditors (NNC 4) *Non PCLR*
- Will Only (WLL 4) *Non PCLR*

PROPERTY RIGHTS

- Condemnation (CON 2) *STANDARD*
- Foreclosure (FOR 2) *STANDARD*
- Property Fairness (PFA 2) *STANDARD*
- Quiet Title (QTI 2) *STANDARD*
- Unlawful Detainer/Eviction (UND 2) *Non PCLR*

TORT / MEDICAL MALPRACTICE

- Hospital (MED 2) *COMPLEX*
- Medical Doctor (MED 2) *COMPLEX*
- Other Health Care Professional (MED 2) *COMPLEX*

TORT / MOTOR VEHICLE

- Death (TMV 2) *STANDARD*
- Non-Death Injuries (TMV 2) *STANDARD*
- Property Damage Only (TMV 2) *STANDARD*

TORT / NON MOTOR VEHICLE

- Asbestos (PIN 2) *STANDARD*
- Other Malpractice (MAL 2) *COMPLEX*
- Personal Injury (PIN 2) *STANDARD*
- Products Liability (PIN 2) *COMPLEX*
- Property Damage (PRP 2) *STANDARD*
- Wrongful Death (WDE 2) *STANDARD*

WRIT

- Habeas Corpus (WHC 2) *Non PCLR*
- Mandamus (WRM 2) *Non PCLR*
- Review (WRV 2) *Non PCLR*

EMPLOYMENT DISCRIMINATION

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

JOSEPH J. KIRBY and DEBORAH A. KIRBY, husband and wife,

No. 99-2-13911-4

Plaintiffs,

NOTICE OF APPEARANCE

v.

THE CITY OF TACOMA, a municipal corporation; RAY CORPUZ and "JANE DOE" CORPUZ, husband and wife; PHILIP ARREOLA and "JANE DOE" ARREOLA, husband and wife; WILLIAM WOODARD and CATHERINE WOODARD, husband and wife; RAYMOND ROBERTS and "JANE DOE" ROBERTS, husband and wife; DAVID BRAME and "JANE DOE" BRAME, husband and wife; and JAMES HAIRSTON and "JANE DOE" HAIRSTON, husband and wife,

Defendants.

TO: Joseph J. Kirby and Deboarah A. Kirby, Plaintiffs

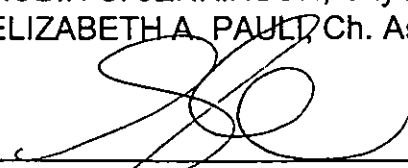
AND TO: John L. Messina, Attorney for Plaintiffs

PLEASE TAKE NOTICE that Defendants City of Tacoma, Ray Corpuz and "Jane Doe" Corpuz, husband and wife; William Woodard and Catherine Woodard, husband and wife, Raymond Roberts and "Jane Doe" Roberts, husband and wife; David Brame and "Jane Doe" Brame, husband and wife; and James Hairston and "Jane Doe" Hairston, husband and wife, enter their appearance by the undersigned attorneys, and direct that all future pleadings or

papers in the above-entitled cause, exclusive of original process, be served upon said Defendants by leaving a copy with their undersigned attorneys.

DATED this 28 day of December, 1999.

ROBIN S. JENKINSON, City Attorney
ELIZABETH A. PAULI, Ch. Asst. City Atty.


SHELLEY M. KERSLAKE, WSB #21820
Assistant City Attorney
Attorneys for Defendants City of Tacoma,
Corpuz, Woodard, Roberts, Brame and
Hairston

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

RECEIVED

Shelley 4/28/2003 14344 00229

JAN 11 2000 11:43 AM

HON. KAREN L. STROMBOM

TACOMA CITY ATTORNEY
CIVIL DIVISION

FILED
IN COUNTY CLERKS OFFICE
A.M. JAN 07 2000 P.M.
PIERCE COUNTY WASHINGTON
TED RUTT, COUNTY CLERK
DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

JOSEPH J. KIRBY and DEBORAH A.)
KIRBY, husband and wife,)

Plaintiffs,)

vs.)

THE CITY OF TACOMA, a municipal)
corporation; RAY CORPUZ and)
"JANE DOE" CORPUZ, husband and)
wife; PHILIP ARREOLA and "JANE)
DOE" ARREOLA, husband and)
wife; WILLIAM WOODARD and)
CATHERINE WOODARD, husband and)
wife; RAYMOND ROBERTS and "JANE)
DOE" ROBERTS, husband and wife;)
DAVID BRAME and "JANE DOE")
BRAME, husband and wife; and)
JAMES HAIRSTON and "JANE DOE")
HAIRSTON, husband and wife,)

Defendants.)

No. 99 2 13911 4

ACCEPTANCE OF SERVICE
OF SUMMONS AND COMPLAINT

The undersigned hereby acknowledges receipt of a copy of
the Summons and Complaint in this action and accepts service of
the Summons and Complaint on behalf of Ray Corpuz and "Jane Doe"

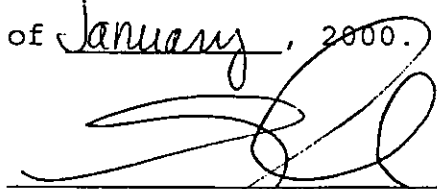
MESSINA • BULZOMI

5316 Orchard St. W.
Tacoma, WA 98467-3633
(253) 472-6000

ACCEPTANCE OF SERVICE.

1 Corpuz, husband and wife; William Woodard and Catherine Woodard,
2 husband and wife; Raymond Roberts and "Jane Doe" Roberts, husband
3 and wife; David Brame and "Jane Doe" Brame, husband and wife, and
4 James Hairston and "Jane Doe" Hairston, husband and wife. I also
5 agree to waive any defense of lack of personal jurisdiction and
6 insufficient service of process.

7 DATED this 5 day of January, 2000.



8
9
10 SHELLEY M. KERSLAKE 21820
11 Attorney for Defendants City of
12 Tacoma, Corpuz, Woodard, Roberts,
13 Brame and Hairston
14
15
16
17
18
19
20
21
22
23
24
25

MESSINA • BULZOMI
5316 Orchard St. W.
Tacoma, WA 98467-3633
(253) 472-6000

ACCEPTANCE OF SERVICE.

HON. KAREN L. STROMBOM

CERTIFICATION

I hereby certify that on 1/25/00 I deposited in the mails of the United States of America and/or placed with Legal Messengers and/or faxed a copy of the document to which this certificate is attached, for delivery to all counsel of record.

V. V. Francis
Messina Law Firm

RECEIVED

JAN 25 2000
JIA
AMC
1:30
32

TACOMA CITY ATTORNEY
CIVIL DIVISION

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

JOSEPH J. KIRBY and DEBORAH A.)
KIRBY, husband and wife,)
Plaintiffs,)

No. 99 2 13911 4

vs.)

CONFIRMATION OF SERVICE

THE CITY OF TACOMA, a municipal)
corporation; RAY CORPUZ and)
"JANE DOE" CORPUZ, husband and)
wife; PHILIP ARREOLA and "JANE)
DOE" ARREOLA, husband and)
wife; WILLIAM WOODARD and)
CATHERINE WOODARD, husband and)
wife; RAYMOND ROBERTS and "JANE)
DOE" ROBERTS, husband and wife;)
DAVID BRAME and "JANE DOE")
BRAME, husband and wife; and)
JAMES HAIRSTON and "JANE DOE")
HAIRSTON, husband and wife,)

Defendants.)

CS [] All the named defendants have been served, have joined or have accepted service in writing. (Check if appropriate; otherwise, check the below box.)

MESSINA • BULZOMI
5316 Orchard St. W.
Tacoma, WA 98467-3633
(253) 472-6000

1 CSSRV [X] One or more named defendants have not yet been served.
2 (If this box is checked, an additional confirmation of
3 service must be filed pursuant to subsection (b) when
4 service is obtained and the following information
5 provided.)

6 The following defendants have been served or accepted
7 service: All defendants except Philip and "Jane Doe"
8 Arreola.

9 The following defendants have not yet been served: Philip
10 and "Jane Doe" Arreola.

11 Reasons why service has not been obtained: Moved to Nevada.

12 How service will be obtained: Legal Messenger, Inc. to
13 have them served when found.

14 Date by which service is expected to be obtained: Unknown.

15 No other named defendants remain to be served.

16 A status conference is requested regarding:

17 DATED this 24 day of January, 2000.

18 MESSINA BULZOMI

19 By John L. Messina
20 JOHN L. MESSINA 4440
21 Attorneys for Plaintiffs

22 MESSINA • BULZOMI

23 5316 Orchard St. W.
24 Tacoma, WA 98467-3633
25 (253) 472-6000

FILED
IN COUNTY CLERKS OFFICE
A.M. JAN 26 2000 P.M.
PIERCE COUNTY WASHINGTON
TED RUTT, COUNTY CLERK
DEPUTY

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

JOSEPH J. KIRBY and DEBORAH A.
KIRBY, husband and wife,

No. 99-2-13911-4

Plaintiffs,

DEFENDANT CITY OF
TACOMA'S ANSWER AND
AFFIRMATIVE DEFENSES
TO PLAINTIFF'S COMPLAINT
FOR PERSONAL INJURIES
AND DAMAGES IN TORT

v.

THE CITY OF TACOMA, a municipal
corporation; RAY CORPUZ and
"JANE DOE" CORPUZ, husband and
wife; PHILIP ARREOLA and "JANE
DOE" ARREOLA, husband and wife;
WILLIAM WOODARD and
CATHERINE WOODARD, husband
and wife; RAYMOND ROBERTS and
"JANE DOE" ROBERTS, husband
and wife; DAVID BRAME and "JANE
DOE" BRAME, husband and wife; and
JAMES HAIRSTON and "JANE DOE"
HAIRSTON, husband and wife,

Defendants.

COMES NOW the defendant, City of Tacoma, by and through its
undersigned attorneys and by way of answer to plaintiff's Complaint for Personal
Injuries and Damages in Tort admits, denies and alleges as follows:

COPY

I.

1
2 In answer to paragraph 1 of plaintiff's Complaint, these defendants are
3 without knowledge or information sufficient to form a belief as to the truth of the
4 remaining allegations contained therein, and therefore, denies the same.

II.

5
6 2.1 In answer to paragraph 2.1 of plaintiff's Complaint, these defendants
7 admit that the City of Tacoma is a municipal corporation duly authorized under the
8 laws of the State of Washington with its principal place of business located in
9 Pierce County, Washington.

10
11 2.2 In answer to paragraph 2.2 of plaintiff's Complaint, these defendants
12 admit that the Tacoma Police Department is a department of the City of Tacoma.

13 2.3 In answer to paragraph 2.3 of plaintiff's Complaint, these defendants
14 admit that the City of Tacoma is the plaintiff's employer and the City of Tacoma
15 employs more than eight people.

III.

16
17
18 3.1 In answer to paragraph 3.1 of plaintiff's Complaint, these defendants
19 state that at all times herein, defendant Ray Corpuz, was acting in his official
20 capacity, and therefore deny the same.

21 3.2 In answer to paragraph 3.2 of plaintiff's Complaint, these defendants
22 state that at all times herein, defendant Philip Arreola, was acting in his official
23 capacity, and therefore deny the same.
24
25

1
2 3.3 In answer to paragraph 3.3 of plaintiff's Complaint, these defendants
3 state that at all times herein, defendants William Woodard and Catherine
4 Woodard, were acting in their official capacity, and therefore deny the same.

5 3.4 In answer to paragraph 3.4 of plaintiff's Complaint, these defendants
6 state at all times herein, defendant Raymond Roberts, was acting in his official
7 capacity, and therefore deny the same.

8 3.5 In answer to paragraph 3.5 of plaintiff's Complaint, these defendants
9 state at all times herein, defendant David Brame, was acting in his official capacity,
10 and therefore deny the same.

11 3.6 In answer to paragraph 3.6 of plaintiff's Complaint, these defendants
12 state at all times herein, defendant James Hairston, was acting in his official
13 capacity, and therefore deny the same.
14

15
16 IV.

17 In answer to paragraph 4 of plaintiff's Complaint, these defendants admit
18 that Ray Corpuz, Philip Arreola, William Woodard, Raymond Roberts, David
19 Brame and James Hairston were employees of the City of Tacoma and at various
20 times held supervisory authority over the plaintiff, Joseph J. Kirby, during his
21 employment with the City of Tacoma. As to Catherine Woodard, these defendants
22 deny the same.
23
24
25

V.

1
2 5.1 In answer to paragraph 5.1 of plaintiff's Complaint, these defendants
3 admit that plaintiff, Joseph J. Kirby, was employed by the City of Tacoma's Police
4 Department from approximately January of 1983 through the present.

5 5.2 In answer to paragraph 5.2 of plaintiff's Complaint, these defendants
6 deny the same.

7 5.3 In answer to paragraph 5.3 of plaintiff's Complaint, these defendants
8 deny the same.
9

10 VI.

11 In answer to paragraph 6 of plaintiff's Complaint, these defendants deny the
12 same.

13 VII.

14 In answer to paragraph 7 of plaintiff's Complaint, these defendants deny the
15 same.
16

17 VIII.

18 In answer to paragraph 8 of plaintiff's Complaint, these defendants deny the
19 same.

20 IX.

21 In answer to paragraph 9 of plaintiff's Complaint, these defendants admit
22 that a Claim for Damages was filed with the Division of Risk Management on
23 December 19, 1997; and are without knowledge and information sufficient to form
24

1 a belief as to the truth of the remaining allegations contained therein, and
2 therefore, deny the same.

3 X.

4 In answer to paragraph 10 of plaintiff's Complaint, these defendants deny
5 the same.

6 XI.

7 In answer to paragraph 11 of plaintiff's Complaint, these defendants deny
8 the same.

9 XII.

10 In answer to paragraph 12 of plaintiff's Complaint, these defendants deny
11 the same.
12

13 AFFIRMATIVE DEFENSES

14 XIV.

15 14.1 FOR FURTHER ANSWER, AND BY WAY OF AN AFFIRMATIVE
16 DEFENSE TO PLAINTIFF'S COMPLAINT, these defendants state that there is no
17 causation between the acts alleged as against these defendants and the damages
18 claimed to have been sustained by the plaintiff.
19

20 14.2 FOR FURTHER ANSWER, AND BY WAY OF AN AFFIRMATIVE
21 DEFENSE TO PLAINTIFF'S COMPLAINT, these defendants allege that plaintiff
22 has failed to state a claim upon which relief can be granted.
23
24
25

1 14.3 FOR FURTHER ANSWER, AND BY WAY OF AN AFFIRMATIVE
2 DEFENSE TO PLAINTIFF'S COMPLAINT, these defendants allege that plaintiff's
3 injuries, if any, were a proximate result of the actions of the plaintiff thereby barring
4 and/or diminishing any award or judgment against these defendants.

5 14.4 FOR FURTHER ANSWER, AND BY WAY OF AN AFFIRMATIVE
6 DEFENSE TO PLAINTIFF'S COMPLAINT, these defendants state that the plaintiff
7 lacks standing to sue for some or all of the relief sought therein.

8 14.5 FOR FURTHER ANSWER, AND BY WAY OF AN AFFIRMATIVE
9 DEFENSE TO PLAINTIFF'S COMPLAINT, these defendants allege that if the
10 plaintiff suffered injury or damages, then the risk of said injuries or damages was
11 assumed by the plaintiff.

12 14.6 FOR FURTHER ANSWER, AND BY WAY OF AN AFFIRMATIVE
13 DEFENSE TO PLAINTIFF'S COMPLAINT, these defendants allege that they are
14 immune from the instant suit pursuant to the principles of discretionary immunity.
15

16 14.7 FOR FURTHER ANSWER, AND BY WAY OF AN AFFIRMATIVE
17 DEFENSE TO PLAINTIFF'S COMPLAINT, these defendants allege that the
18 plaintiff's suit is subject to dismissal on the basis that it contains only conclusory
19 allegations and does not set forth facts necessary to support a cause of action
20 against the defendants, or to overcome immunity of the defendants.
21

22 14.8 FOR FURTHER ANSWER, AND BY WAY OF AN AFFIRMATIVE
23 DEFENSE TO PLAINTIFF'S COMPLAINT, these defendants reserve the right to
24


add additional affirmative defenses, cross-claims, counterclaims and third party defendants, as further information becomes known and available.

WHEREFORE, having fully answered plaintiffs' Complaint, these defendants pray for judgment as follows:

- 1. For judgment ordering that plaintiff's complaint against these defendants be dismissed with prejudice and plaintiff take nothing thereby.
- 2. For judgment awarding the defendants any and all relief, including, but not limited to, their costs and reasonable attorney's fees.
- 3. For such other and further relief as the Court deems just and equitable.

DATED this 24 day of January, 2000.

ROBIN S. JENKINSON, City Attorney
ELIZABETH A. PAULI, Ch. Asst. City Atty.

By: 

 SHELLEY M. KERSLAKE
 WSBA# 21820
 Assistant City Attorney
 Of Attorneys for Defendants

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

JOSEPH J. KIRBY and DEBORAH A.
KIRBY, husband and wife,

No. 99-2-13911-4

Plaintiffs,

NOTICE OF UNAVAILABILITY

v.

THE CITY OF TACOMA, a municipal
corporation; RAY CORPUZ and "JANE
DOE" CORPUZ, husband and wife; PHILIP
ARREOLA and "JANE DOE" ARREOLA,
husband and wife; WILLIAM WOODARD
and CATHERINE WOODARD, husband and
wife; RAYMOND ROBERTS and "JANE
DOE" ROBERTS, husband and wife; DAVID
BRAME and "JANE DOE" BRAME, husband
and wife; and JAMES HAIRSTON and
"JANE DOE" HAIRSTON, husband and wife,

Defendants.

TO : THE CLERK OF THE COURT

AND TO : All counsel

PLEASE TAKE NOTICE that the undersigned attorney of record, Shelley
M. Kerslake, Assistant City Attorney, will be out of the office from April 24,
2000, through May 8, 2000. During the aforementioned absence, said attorney
shall not be available for any hearings, trials, motions, or any other required

COPY


1 court appearances, and shall additionally be unavailable to actively respond to
2 any proposals or motions that may be filed within said period of absence. The
3 undersigned will request terms or other sanctions should any matters requiring
4 her attention or attendance be scheduled during this time.

5 The undersigned further requests that the Clerk of the Court transmit this
6 information whenever any motion or other matter is set within the time period
7 stated above, to inform the court hearing the matter of the filing of this notice.

8 RESPECTFULLY SUBMITTED this 23 day of March, 2000.

9
10 ROBIN S. JENKINSON, City Attorney
ELIZABETH A. PAULI, Ch. Asst. City Atty.

11
12
13 By:


14 SHELLEY M. KERSLAKE
15 WSBA# 21820
Assistant City Attorney
Attorneys for Defendants
16
17
18
19
20
21
22
23
24
25
26

FILED
IN COUNTY CLERKS OFFICE
A.M. APR 05 2000 P.M.
PIERCE COUNTY WASHINGTON
TODD RUTT, COUNTY CLERK
DEPUTY

RECEIVED
APR 05 2000
MESSINA LAW FIRM

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

JOSEPH J. KIRBY and DEBORAH A.
KIRBY, husband and wife,

Plaintiffs,

v.

THE CITY OF TACOMA, a municipal
corporation; RAY CORPUZ and "JANE
DOE" CORPUZ, husband and wife; PHILIP
ARREOLA and "JANE DOE" ARREOLA,
husband and wife; WILLIAM WOODARD
and CATHERINE WOODARD, husband and
wife; RAYMOND ROBERTS and "JANE
DOE" ROBERTS, husband and wife; DAVID
BRAME and "JANE DOE" BRAME, husband
and wife; and JAMES HAIRSTON and
"JANE DOE" HAIRSTON, husband and wife,

Defendants.

No. 99-2-13911-4

NOTICE OF APPEARANCE

TO: Joseph J. Kirby and Deboarah A. Kirby, Plaintiffs

AND TO: John L. Messina, Attorney for Plaintiffs

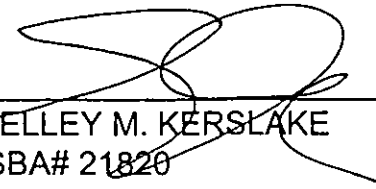
PLEASE TAKE NOTICE that Defendants, Philip Arreola and "Jane Doe"
Arreola, enter their appearance by the undersigned attorneys, and direct that all
future pleadings or papers in the above-entitled cause, exclusive of original
process, be served upon said Defendants by leaving a copy with their
undersigned attorneys.

COPY

DATED this 4th day of April, 2000.

ROBIN S. JENKINSON, City Attorney
ELIZABETH A. PAULI, Ch. Asst. City Atty.

By:



~~SHELLEY M. KERSLAKE~~
WSBA# 21820

Assistant City Attorney
Attorneys for Defendants Arreola

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

IN THE

SUPERIOR COURT, IN AND FOR THE COUNTY OF PIERCE, STATE OF WASHINGTON

CAUSE NO. 99-2-13911-4

JOSEPH J. KIRBY AND DEBORAH A. KIRBY, HUSBAND AND WIFE,

Declaration Of Service Of SUMMONS & COMPLAINT FOR PERSONAL INJURIES AND DAMAGES IN TORT; ORDER SETTING CASE SCHEDULE

vs. THE CITY OF TACOMA, A MUNICIPAL CORPORATION; ET AL.,

Plaintiff/Petitioner

FILED IN COUNTY CLERK'S OFFICE

A.M. APR 10 2000 P.M.

PIERCE COUNTY, WASHINGTON TED RUTT, COUNTY CLERK BY DEPUTY

DECLARATION:

Defendant/Respondent

Hearing Date:

The undersigned hereby declares: That s(he) is now and at all times herein mentioned was a citizen of the United States, over the age of eighteen, not an officer of a plaintiff corporation, not a party to nor interested in the above entitled action, and is competent to be a witness therein.

On the date & time of 3-30-00 @ 12:30 P.M. at the address of 1244 Speer Boulevard, #650

Denver city, Denver county, Colo state, this declarant served the above described documents upon

PHILIP ARREOLA

by then and there personally delivering one true and correct copy(ies) thereof, by then presenting to and leaving the same with

Philip Arreola, Personally

Person Receiving Documents and Their relationship

That at the time and place set forth above declarant duly served the above described documents in the above entitled action upon:

PHILIP ARREOLA

AND

APR 10 AM

by then and there personally delivering true and correct copy(ies) thereof, by then presenting to and leaving the same with # of copies

A Person of suitable age and discretion who stated the above adress to be the residence and usual place of abode of themselves and the subject(s) and / or subjects legal representative listed above.

The documents listed above were served in accordance with RCW 4.28.080 and/or client instructions. If service was substituted on another person or left with a person that refused to identify themselves, it is incumbent upon the client to notify ABC immediately in writing, if further attempts to serve, serve by mail, or investigate are required. If service was substituted on another person, pursuant to RCW 4.28.080 (16), service shall be complete on the tenth day after a copy of the documents are mailed to the subject at the address where service was made. Documents were not mailed by ABC.

No information was provided or discovered that indicates that the subjects served are members of the U.S. military.

Non Service and Due Diligence Section

Declarant states he diligently searched the local area described as Cities and/or Counties searched for defendant and was unable to find defendant for process service at this time. The following attempts and the resources used for this search are described below:

Declarant hereby states under penalty of perjury under the laws of the State of Colorado that the statement above is true and correct.

RAMONA MACIAS Type or Print Name & Registration # of Process Server

3-30-00 Dated

Signature of Process Server

ABC's Client Name Messina * Buizomi JLM/VL

Service Fees Total 80.00 Agent/Server Do NOT Price

ABC Tracking #: 1444743



ORIGINAL PROOF OF SERVICE

001990-1449

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

FILED
IN COUNTY CLERK'S OFFICE
A.M. 10:20 1999
PIERCE COUNTY, WASHINGTON
TED RUTT, COUNTY CLERK
BY _____ DEPUTY

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

JOSEPH J. KIRBY and DEBORAH A.)
KIRBY, husband and wife,)
Plaintiffs,)

No. 99 2 13911 4

vs.)

SUMMONS

THE CITY OF TACOMA, a municipal)
corporation; RAY CORPUZ and)
"JANE DOE" CORPUZ, husband and)
wife; PHILIP ARREOLA and "JANE)
DOE" ARREOLA, husband and)
wife; WILLIAM WOODARD and)
CATHERINE WOODARD, husband and)
wife; RAYMOND ROBERTS and "JANE)
DOE" ROBERTS, husband and wife;)
DAVID BRAME and "JANE DOE")
BRAME, husband and wife; and)
JAMES HAIRSTON and "JANE DOE")
HAIRSTON, husband and wife,)

Defendants.)

TO THE DEFENDANTS ABOVE NAMED:

A lawsuit has been started against you in the above-entitled court by the above-named plaintiffs. Plaintiffs' claim

HON. KAREN L. STROMBOM

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATION

I hereby certify that on 4-16-00 I deposited
 in the mails of the United States of America and/or
 placed with Legal Messengers and/or faxed a copy of the
 document to which this certificate is attached, for
 delivery to all counsel of record.

Julie A. DeFrances
 Messina Law Firm

RECEIVED

APR 17 2000
VIA
ABC
1:20
P

TACOMA CITY ATTORNEY
CIVIL DIVISION

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

JOSEPH J. KIRBY and DEBORAH A.)
KIRBY, husband and wife,)
Plaintiffs,)

No. 99 2 13911 4

vs.)

PLAINTIFFS' MOTION TO
AMEND COMPLAINT

THE CITY OF TACOMA, a municipal)
corporation; RAY CORPUZ and)
"JANE DOE" CORPUZ, husband and)
wife; PHILIP ARREOLA and "JANE)
DOE" ARREOLA, husband and)
wife; WILLIAM WOODARD and)
CATHERINE WOODARD, husband and)
wife; RAYMOND ROBERTS and "JANE)
DOE" ROBERTS, husband and wife;)
DAVID BRAME and "JANE DOE")
BRAME, husband and wife; and)
JAMES HAIRSTON and "JANE DOE")
HAIRSTON, husband and wife,)
Defendants.)

DATE OF HEARING: 4/28/00

I. RELIEF REQUESTED

Plaintiffs request that this Court enter an order allowing
them to amend their complaint to add a claim based on 42 U.S.C.
§1983. A proposed complaint is attached.

MESSINA • BULZOMI
5316 Orchard St. W.
Tacoma, WA 98467-3633
(253) 472-6000

II. STATEMENT OF FACTS

1
2 I, Jeffrey H. Sadler, declare as follows:

3 I am over the age of 18 years and am competent to make this
4 declaration.


5 I am one of the attorneys of record for plaintiffs in the
6 above matter. I make this declaration in support of plaintiffs'
7 motion to amend their complaint.

8 Plaintiff Joseph J. Kirby was employed by the City of
9 Tacoma's Police Department from approximately January 1983
10 through the present. During his employment plaintiff was
11 subjected to continued harassment and discrimination, including
12 discriminatory remarks, offensive language, disparate treatment,
13 adverse employment decisions and unjustified disciplinary
14 actions, by the named defendants.

15 During the course of initial discovery, it has come to
16 plaintiffs' attention that some of the disparate and discrimina-
17 tory practice is based on plaintiff Joe Kirby's race.

18 I certify under penalty of perjury under the laws of the
19 State of Washington that the foregoing is true and correct.

20 DATED this 13th day of April, 2000, at Tacoma,
21 Washington.

22
23 
24 JEFFREY H. SADLER 27136
25

MESSINA • BULZOMI

5316 Orchard St. W.
Tacoma, WA 98467-3633
(253) 472-6000

III. AUTHORITY

1
2 This Court is empowered to grant plaintiffs' motion
3 pursuant to CR 15.

4 CR 15(a) provides that a party may amend his pleading once
5 as a matter of course. "Otherwise, a party may amend his
6 pleading only by leave of court or by stipulation of the adverse
7 party; and leave shall be freely given when justice so requires."
8 CR 15(a).

9 A motion for amendment is addressed to the sound discretion
10 of the trial court. *Lincoln v. Transamerica Inv. Corp.*, 89 Wn.
11 2d 571, 573 (1978). Leave to amend shall be freely given when
12 justice so requires. CR 15(a). This mandate is to be heeded.
13 *Tagliani v. Colwell*, 10 Wn. App. 227, 233 (1973), quoting *Forman*
14 *v. Davis*, 371 U.S. 178, 182 (1962). In the absence of any
15 apparent injustice - such as undue delay, bad faith or dilatory
16 motive - the leave sought should be freely given. *Id.*

17 Amendment under Rule 15(a) is to be freely given when
18 justice so requires. The principal factor in determining whether
19 amendment will be granted is the presence or absence of prejudice
20 to the nonmoving party. *Del Guzzi Construction Co. v. Global*
21 *Northwest, LTD.*, 105 Wn.2d 878, 88, 719 P.2d 120 (1986). As a
22 result, the fact that the added material or claims could have
23 been included in the original pleading will not preclude
24 amendment in the absence of prejudice to the nonmoving party.
25 *Herron v. Tribune Publishing Co.*, 108 Wn.2d 878, 88, 719 P.2d 249

MESSINA • BULZOMI

5316 Orchard St. W.
Tacoma, WA 98467-3633
(253) 472-6000

1 (1987). Similarly, mere delay if not accompanied by prejudice to
2 the nonmoving party, is insufficient to justify denial. *Caruso*
3 *v. Local Union No. 690*, 100 Wn.2d 343, 350-51, 670 P.2d 240
4 (1983). Indeed, it is reversible error to deny the amendment on
5 this basis alone. *Id.*

6 The plaintiff became aware of the claim under 42 U.S.C.
7 sec. 1983 after the discovery process began. The defendant will
8 not be prejudiced by the addition of this claim, because they
9 will have plenty of time to prepare for it before the trial
10 begins. In addition, no depositions have been taken yet.
11 Discovery thus far has been limited to written interrogatories
12 and requests for production.

13 The longstanding policy behind Civil Rules 15 is judicial
14 economy--to avoid multiplicity of suits. Therefore, when
15 possible, all issues should be resolved in one action. *Roberts*
16 *v. Port of Seattle*, 46 Wn. 2d 509 (1955).

17 Sound policies such as judicial economy, efficiency, and
18 fairness are all furthered should this Court grant the
19 plaintiffs' motion to amend their complaint to add the claim
20 under 42 U.S.C. §1983.

21 IV. CONCLUSION

22 Plaintiffs respectfully request that this Court grant their
23 motion to amend their complaint to add a claim for a Section 1983
24
25

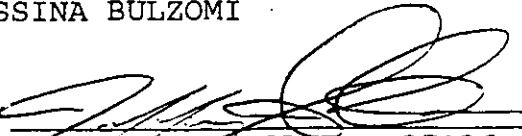
MESSINA • BULZOMI

5316 Orchard St. W.
Tacoma, WA 98467-3633
(253) 472-6000

1 action.

2 DATED this 13th day of April 2000.

3 MESSINA BULZOMI

4 By 
5 JEFFREY H. SADLER 27136
6 Attorneys for Plaintiffs

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MESSINA • BULZOMI

5316 Orchard St. W.
Tacoma, WA 98467-3633
(253) 472-6000

RECEIVED

Shelley 4/28/2003 14344 88251

APR 17 2000

JIA
ABC
1:30

TACOMA CITY ATTORNEY
CIVIL DIVISION



SUPERIOR COURT OF WASHINGTON
COUNTY OF PIERCE

JOSEPH J. KIRBY and DEBORAH A. KIRBY,
husband and wife,

Plaintiffs,

vs.

THE CITY OF TACOMA, et al,

Defendants.

CERTIFICATION
I hereby certify that on 4-14-00 I deposited
in the mails of the United States of America and/or
placed with Legal Messengers and/or faxed a copy of the
document to which this certificate is attached, for
delivery to all counsel of record.
Yukie A. No-Franco
Messina Law Firm

NO. 99 2 13911 4

NOTE FOR MOTION DOCKET
(Clerk's Action Required)

TO THE CLERK OF THE SUPERIOR COURT AND TO:

Name: Shelley Kerslake, Esq. WSB #: 21820
Address: 747 Market St., Room 1120 Attorney For: Defendants
Tacoma, WA 98402 Phone: 591-5755

(Please note additional attorneys on reverse side; check box [] if reverse side is used)

Please take notice that the undersigned will bring on for hearing a motion for:

Motion to Amend Complaint for Personal Injuries
(Type of Motion)

The hearing is requested to be held during the regular motion calendar on:

DATE REQUESTED FOR HEARING/MOTION
April 28, 2000

Nature of Case: Employment Discrimination

Dated: 4/14/00 Signed: [Signature]

Name: Jeffrey H. Sadler, Esq. WSB #: 27136

Address: 5316 Orchard St. W. Attorney For: plaintiffs

Tacoma, WA 98467 Phone: 472-6000

Fax: 475-7886

THE ABOVE INFORMATION MUST BE COMPLETED AND SIGNED

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATION

I hereby certify that on 4-19-00 I deposited
 in the mails of the United States of America and/or
 placed with Legal Messengers and/or faxed a copy of the
 document to which this certificate is attached, for
 delivery to all counsel of record.

Messina Law Firm

Messina Law Firm

HON. KAREN L. STROMBOM

RECEIVED

APR 20 2000
VIP
APC
4:35

TACOMA CITY ATTORNEY
CIVIL DIVISION

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

JOSEPH J. KIRBY and DEBORAH A.)
KIRBY, husband and wife,)

No. 99 2 13911 4

Plaintiffs,)

vs.)

DEMAND FOR JURY
OF TWELVE

THE CITY OF TACOMA, a municipal)
corporation; RAY CORPUZ and)
"JANE DOE" CORPUZ, husband and)
wife; PHILIP ARREOLA and "JANE)
DOE" ARREOLA, husband and)
wife; WILLIAM WOODARD and)
CATHERINE WOODARD, husband and)
wife; RAYMOND ROBERTS and "JANE)
DOE" ROBERTS, husband and wife;)
DAVID BRAME and "JANE DOE")
BRAME, husband and wife; and)
JAMES HAIRSTON and "JANE DOE")
HAIRSTON, husband and wife,)

Defendants.)

COME NOW the plaintiffs and hereby demand a trial of the
above-entitled cause of action by a jury of twelve persons. The

MESSINA • BULZOMI

5316 Orchard St. W.
Tacoma, WA 98467-3633
(253) 472-6000

DEMAND FOR JURY.

1 fee for said jury has been deposited with the office of the
2 Pierce County Clerk.

3 DATED this 19 day of April, 2000.

4 MESSINA BULZOMI

5 By 

6 JOHN L. MESSINA 4440
7 Attorneys for Plaintiffs

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MESSINA • BULZOMI
5316 Orchard St. W.
Tacoma, WA 98467-3633
(253) 472-6000

RECEIVED

4/28/2003 14344 00254

APR 19 2000

TACOMA CITY ATTORNEY
CIVIL DIVISION



SUPERIOR COURT OF WASHINGTON
COUNTY OF PIERCE

JOSEPH J. KIRBY and DEBORAH A. KIRBY,
husband and wife,

Plaintiffs,

vs.

THE CITY OF TACOMA, et al,

Defendants.

CERTIFICATION

I hereby certify that on 4-18-00 I deposited
in the mails of the United States of America and/or
placed with Legal Messengers and/or faxed a copy of the
document to which this certificate is attached, for
delivery to all counsel of record.

William A. De Franco

Messina Law Firm

NO. 99 2 13911 4

RE-NOTE FOR MOTION DOCKET

(Clerk's Action Required)

TO THE CLERK OF THE SUPERIOR COURT AND TO:

Name: Shelley Kerslake, Esq. WSB #: 21820
Address: 747 Market St., Room 1120 Attorney For: Defendants
Tacoma, WA 98402 Phone: 591-5755

(Please note additional attorneys on reverse side; check box [] if reverse side is used)

Please take notice that the undersigned will bring on for hearing a motion for:

Motion to Amend Complaint for Personal Injuries

(Type of Motion)

The hearing is requested to be held during the regular motion calendar on:

DATE REQUESTED FOR HEARING/MOTION
May 12, 2000

Nature of Case: Employment Discrimination

Dated: 4/18/00 Signed: *Jeffrey H. Sadler*

Name: Jeffrey H. Sadler, Esq. WSB #: 27136

Address: 5316 Orchard St. W. Attorney For: Plaintiffs

Tacoma, WA 98467 Phone: 472-6000

Fax: 475-7886

THE ABOVE INFORMATION MUST BE COMPLETED AND SIGNED

Note For Motion Docket

(NIMTDK) PCLR 7(a)(2) Rev 6/4/98

Copyright (C) 1998 Attorney's Eagle Eye Service, Inc.

(AFC; reprint on Pink Paper; use reverse side)

FILED
IN COUNTY CLERKS OFFICE
A.M. APR 19 2000 P.M.
PIERCE COUNTY WASHINGTON
TO PLYMOUTH COUNTY CLERK
1999

4/28/2000 14344 00255

HON. KAREN L. STROMBOM

CERTIFICATION
I hereby certify that on 4-19-00 I deposited
in the mails of the United States of America and/or
placed with Legal Messengers and/or faxed a copy of the
document to which this certificate is attached, for
delivery to all counsel of record.
Valerie A. DeFrances
Messina Law Firm

RECEIVED

MAY 24 2000
VIA FAX
9:50 AM

TACOMA CITY ATTORNEY
CIVIL DIVISION

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

JOSEPH J. KIRBY and DEBORAH A.)
KIRBY, husband and wife,)

Plaintiffs,)

vs.)

THE CITY OF TACOMA, a municipal)
corporation; RAY CORPUZ and)
"JANE DOE" CORPUZ, husband and)
wife; PHILIP ARREOLA and "JANE)
DOE" ARREOLA, husband and)
wife; WILLIAM WOODARD and)
CATHERINE WOODARD, husband and)
wife; RAYMOND ROBERTS and "JANE)
DOE" ROBERTS, husband and wife;)
DAVID BRAME and "JANE DOE")
BRAME, husband and wife; and)
JAMES HAIRSTON and "JANE DOE")
HAIRSTON, husband and wife,)

Defendants.)

No. 99 2 13911 4

CONFIRMATION OF JOINDER
OF PARTIES, CLAIMS AND
DEFENSES

CJNSC [] The parties make the following joint representations:
[IF THIS BOX IS CHECKED, THERE WILL NOT BE A STATUS
CONFERENCE.]

MESSINA • BULZOMI
5316 Orchard St. W.
Tacoma, WA 98467-3633
(253) 472-6000

1. This case is not subject to mandatory arbitration. (If it is, this report should not be filed; instead, no later than the deadline for filing this report, a statement of arbitrability should be filed.)
2. No additional parties will be joined.
3. All parties have been served or have accepted service.
4. All mandatory pleadings have been filed.
5. No additional claims or defenses will be raised.
6. The parties anticipate no problems in meeting the deadlines for disclosing possible witnesses and other, subsequent deadlines in the Case Schedule.
7. All parties have cooperated in completing this report.

CJ [X] The parties do not join in making the foregoing representations, as explained below (if appropriate, check both the box at left and every applicable box below):

[IF THE BOX ADJACENT TO THE PRECEDING SENTENCE IS CHECKED, THERE WILL BE A STATUS CONFERENCE, WHICH ALL PARTIES OR THEIR ATTORNEYS MUST ATTEND.]

- [] An additional party will be joined.
- [] A party remains to be served.
- [X] A mandatory pleading remains to be filed.
- [] An additional claim or defense will be raised.
- [] One or more parties anticipate a problem in meeting the deadlines for disclosing possible witnesses or other, subsequent deadlines in the Case Schedule.
- [X] Other explanation: There is a pending Motion to Amend Complaint.

The City of Tacoma reserves the right to assert additional affirmative defenses as discovery continues; however, a joint status conference is NOT necessary in this regard.

MESSINA • BULZOMI

5316 Orchard St. W.
Tacoma, WA 98467-3633
(253) 472-6000

1 In order to obtain the court's direction in the matters described
2 above, the parties will appear at an Initial Status Conference,
3 the date of which (as stated in the Case Schedule) is: Week of
4 May 15, 2000.

5 DATED this 19 day of April, 2000.

6 MESSINA BULZOMI

7 By John L. Messina
8 JOHN L. MESSINA 4440
9 Attorneys for Plaintiffs

10 Shelley Kerlake FOR
11 SHELLEY KERSLAKE #21820
12 Attorney for Defendants
13 BY TELEPHONIC AUTHORITY

14
15
16
17
18
19
20
21
22
23
24
25
MESSINA • BULZOMI

5316 Orchard St. W.
Tacoma, WA 98467-3633
(253) 472-6000

HON. KAREN L. STROMBOM

RECEIVED

MAY 24 2000 ^{VIP} ₁₅₄₀

TACOMA CITY ATTORNEY
CIVIL DIVISION

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

JOSEPH J. KIRBY and DEBORAH A.)
KIRBY, husband and wife,)

Plaintiffs,)

vs.)

THE CITY OF TACOMA, a municipal)
corporation; RAY CORPUZ and)
"JANE DOE" CORPUZ, husband and)
wife; PHILIP ARREOLA and "JANE)
DOE" ARREOLA, husband and)
wife; WILLIAM WOODARD and)
CATHERINE WOODARD, husband and)
wife; RAYMOND ROBERTS and "JANE)
DOE" ROBERTS, husband and wife;)
DAVID BRAME and "JANE DOE")
BRAME, husband and wife; and)
JAMES HAIRSTON and "JANE DOE")
HAIRSTON, husband and wife,)

Defendants.)

No. 99 2 13911 4

ACCEPTANCE OF SERVICE
OF SUMMONS AND
AMENDED COMPLAINT

The undersigned hereby acknowledges receipt of a copy of
the Summons and Amended Complaint in this action and accepts
service of the Summons and Amended Complaint on behalf of Ray

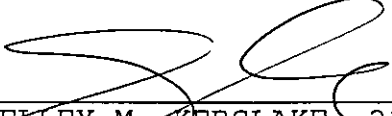
MESSINA • BULZOMI

5316 Orchard St. W.
Tacoma, WA 98467-3633
(253) 472-6000

ACCEPTANCE OF SERVICE.

1 Corpuz and "Jane Doe" Corpuz, husband and wife; William Woodard
2 and Catherine Woodard, husband and wife; Raymond Roberts and
3 "Jane Doe" Roberts, husband and wife; David Brame and "Jane Doe"
4 Brame, husband and wife, and James Hairston and "Jane Doe"
5 Hairston, husband and wife. I also agree to waive any defense of
6 lack of personal jurisdiction and insufficient service of
7 process.

8 DATED this 24 day of May, 2000.

9
10 
11 _____
12 SHELLEY M. KERSLAKE 21820
13 Attorney for Defendants City of
14 Tacoma, Corpuz, Woodard, Roberts,
15 Brame and Hairston
16
17
18
19
20
21
22
23
24
25

ACCEPTANCE OF SERVICE.

MESSINA • BULZOMI

5316 Orchard St. W.
Tacoma, WA 98467-3633
(253) 472-6000

HON. KAREN L. STROMBOM

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATION

I hereby certify that on 6/7/00 I deposited in the mails of the United States of America and/or placed with Legal Messengers and/or faxed a copy of the document to which this certificate is attached, for delivery to all counsel of record.

S. La France
Messina Law Firm

FILED
IN COUNTY CLERK'S OFFICE
A.M. JUN - 7 2000 P.M.
PIERCE COUNTY, WASHINGTON
BY TED RUTT, COUNTY CLERK
DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

JOSEPH J. KIRBY and DEBORAH A.)
KIRBY, husband and wife,)

Plaintiffs,)

No. 99 2 13911 4

vs.)

PLAINTIFFS' DISCLOSURE
OF PRIMARY WITNESSES

THE CITY OF TACOMA, a municipal)
corporation; RAY CORPUZ and)
"JANE DOE" CORPUZ, husband and)
wife; PHILIP ARREOLA and "JANE)
DOE" ARREOLA, husband and)
wife; WILLIAM WOODARD and)
CATHERINE WOODARD, husband and)
wife; RAYMOND ROBERTS and "JANE)
DOE" ROBERTS, husband and wife;)
DAVID BRAME and "JANE DOE")
BRAME, husband and wife; and)
JAMES HAIRSTON and "JANE DOE")
HAIRSTON, husband and wife,)

Defendants.)

COME NOW the plaintiffs, by and through their attorneys of record, and provide the following list of primary witnesses.

2 JUN - 8 2000

MESSINA • BULZOMI

5316 Orchard St. W.
Tacoma, WA 98467-3633
(253) 472-6000

1 1. Joseph Kirby
11808 Seminole Road SW
2 Tacoma, WA 98499

3 Joseph Kirby is a plaintiff in this cause of action.

4 2. Deborah A. Kirby
11808 Seminole Road SW
5 Tacoma, WA 98499

6 Deborah Kirby is a plaintiff in this cause of action.

7 3. Ray Corpuz
City of Tacoma
8 Tacoma, WA

9 Ray Corpuz is City Manager of Tacoma and is a defendant
10 in this cause of action.

11 4. Philip Arreola

12 Philip Arreola is a former Chief of Police in Tacoma and
is a defendant in this cause of action.

13 5. William R. Woodard
Tacoma Police Department

14 William Woodard is Assistant Chief of Police and is a
15 defendant in this cause of action.

16 6. Raymond Roberts
Tacoma Police Department

17 Raymond Roberts is Assistant Chief of the Tacoma Police
18 Department and is a defendant in this cause of action.

19 7. David Brame
Tacoma Police Department

20 David Brame is an employee of the Tacoma Police
21 Department and is a defendant in this cause of action.

22 8. James Hairston
Tacoma Police Department

23 James Hairston is the Chief of Police of Tacoma and is a
24 defendant in this cause of action.

25

MESSINA • BULZOMI

5316 Orchard St. W.
Tacoma, WA 98467-3633
(253) 472-6000

1 The majority of the following witnesses are employees of
2 the Tacoma Police Department. Residential addresses and
3 telephone numbers are known to defendants:

3 9. Anthony Abuan
4 Lieutenant 4103

5 Anthony Abuan is an employee of the Tacoma Police
6 Department and has knowledge of the alleged facts in this
7 incident.

8 10. John W. Bair
9 Detective #383

10 John W. Bair is an employee of the Tacoma Police
11 Department and has knowledge of the alleged facts in this
12 incident.

13 11. Edward L. Baker
14 Detective #339

15 Edward L. Baker is an employee of the Tacoma Police
16 Department and has knowledge of the alleged facts in this
17 incident.

18 12. Jimmy D. Bass
19 Sergeant # 181

20 Jimmy D. Bass is an employee of the Tacoma Police
21 Department and has knowledge of the alleged facts in this
22 incident.

23 13. Wayne J. Beals
24 Police Patrol Officer #423

25 Wayne J. Beals is an employee of the Tacoma Police
Department and has knowledge of the alleged facts in this
incident.

14. Douglas R. Billman
Police Patrol Officer #309

Douglas R. Billman is an employee of the Tacoma Police
Department and has knowledge of the alleged facts in this
incident.

15. Robert R. Blystone
Sergeant #334

MESSINA • BULZOMI

5316 Orchard St. W.
Tacoma, WA 98467-3633
(253) 472-6000

1 Robert R. Blystone is a former union president and
2 employee of the Tacoma Police Department, and has knowledge of
the alleged facts in this incident.

3 16. Stuart J. Bracken
4 Police Patrol Officer #242

5 Stuart J. Bracken is an employee of the Tacoma Police
6 Department and has knowledge of the alleged facts in this
7 incident.

8 17. John M. Branham
9 Sergeant #368

10 John M. Branham is an employee of the Tacoma Police
11 Department and has knowledge of the alleged facts in this
12 incident.

13 18. Paul A. Brown
14 Police Patrol Officer #383

15 Paul A. Brown is an employee of the Tacoma Police
16 Department and has knowledge of the alleged facts in this
17 incident.

18 19. Barbara E. Buchholz
19 Police Secretary #932

20 Barbara E. Buchholz is an employee of the Tacoma Police
21 Department and has knowledge of the alleged facts in this
22 incident.

23 20. Joseph A. Bundy
24 Police Patrol Officer # 158

25 Joseph A. Bundy is an employee of the Tacoma Police
Department and has knowledge of the alleged facts in this
incident.

26 21. Alvis I. Calitis
27 Police Patrol Specialist #018

28 Alvis I. Calitis is an employee of the Tacoma Police
29 Department and has knowledge of the alleged facts in this
30 incident.

31 22. Richard N. Caron
32 Sergeant #375

MESSINA • BULZOMI

5316 Orchard St. W.
Tacoma, WA 98467-3633
(253) 472-6000

1 Richard N. Caron is an employee of the Tacoma Police
2 Department and has knowledge of the alleged facts in this
incident.

3 23. Rhonda J. Carter
4 Police Secretary #943

5 Rhonda J. Carter is an employee of the Tacoma Police
6 Department and has knowledge of the alleged facts in this
7 incident.

8 24. Norman Conaway
9 Detective #307

10 Norman Conaway is an employee of the Tacoma Police
11 Department and has knowledge of the alleged facts in this
12 incident.

13 25. Tracy D. Conaway
14 Police Patrol Officer #285

15 Tracy D. Conaway is an employee of the Tacoma Police
16 Department and has knowledge of the alleged facts in this
17 incident.

18 26. Rodney D. Cook
19 Police Patrol Officer #265

20 Rodney D. Cook is an employee of the Tacoma Police
21 Department and has knowledge of the alleged facts in this
22 incident.

23 27. Peter M. Cribbin
24 Sergeant #217

25 Peter M. Cribbin is an employee of the Tacoma Police
Department and has knowledge of the alleged facts in this
incident.

28. Michael J. Darland
29 Deputy Chief #212

30 Michael J. Darland is an employee of the Tacoma Police
31 Department and has knowledge of the alleged facts in this
32 incident.

33 29. Timothy A. Deccio
34 Police Patrol Officer #294
35

MESSINA • BULZOMI

5316 Orchard St. W.
Tacoma, WA 98467-3633
(253) 472-6000

1 Timothy A. Deccio is an employee of the Tacoma Police
2 Department and has knowledge of the alleged facts in this
incident.

3 30. Mary E. Eby
4 Police Secretary #950

5 Mary E. Eby is an employee of the Tacoma Police Depart-
ment and has knowledge of the alleged facts in this incident.

6 31. Leona J. Ellis
7 Detective #298

8 Leona J. Ellis is an employee of the Tacoma Police
Department and has knowledge of the alleged facts in this
9 incident.

10 32. David P. Engstrom
Police Patrol Officer #348

11 David P. Engstrom is an employee of the Tacoma Police
12 Department and has knowledge of the alleged facts in this
incident.

13 33. William A. Foster
14 Detective #079

15 William A. Foster is an employee of the Tacoma Police
Department and has knowledge of the alleged facts in this
16 incident.

17 34. David A. Frost
Sergeant #080

18 David A. Frost is an employee of the Tacoma Police
19 Department and has knowledge of the alleged facts in this
incident.

20 35. Mark W. Fulghum
21 Police Patrol Officer #209

22 Mark W. Fulghum is an employee of the Tacoma Police
Department and has knowledge of the alleged facts in this
23 incident.

24 36. Daniell L. Griswold
Sergeant #495

25

MESSINA • BULZOMI

5316 Orchard St. W.
Tacoma, WA 98467-3633
(253) 472-6000

1 Daniell L. Griswold is an employee of the Tacoma Police
2 Department and has knowledge of the alleged facts in this
incident.

3 37. Peter M. Habib
4 Sergeant #026

5 Peter M. Habib is an employee of the Tacoma Police
6 Department and has knowledge of the alleged facts in this
incident.

7 38. Gayle M. Hall
8 Police Secretary #942

9 Gayle M. Hall is an employee of the Tacoma Police
10 Department and has knowledge of the alleged facts in this
incident.

11 39. Kenneth R. Hall
12 Police Patrol Officer #024

13 Kenneth R. Hall is an employee of the Tacoma Police
14 Department and has knowledge of the alleged facts in this
incident.

15 40. Tanya Hannon
16 Administrative Services Manager #971

17 Tanya Hannon is an employee of the Tacoma Police
18 Department and has knowledge of the alleged facts in this
incident.

19 41. Barton J. Hayes
20 Police Patrol Officer #438

21 Barton J. Hayes is an employee of the Tacoma Police
22 Department and has knowledge of the alleged facts in this
incident.

23 42. Mary K. Herrman
24 Police Patrol Officer #278

25 Mary K. Herrman is an employee of the Tacoma Police
Department and has knowledge of the alleged facts in this
incident.

43. Daryl C. Higgins
Detective #230

MESSINA • BULZOMI

5316 Orchard St. W.
Tacoma, WA 98467-3633
(253) 472-6000

1 Daryl C. Higgins is an employee of the Tacoma Police
2 Department and has knowledge of the alleged facts in this
incident.

3 44. Myla Hoffman-Hite
4 Former City of Tacoma EEO

5 Myla Hoffman-Hite is an employee of the Tacoma Police
6 Department and has knowledge of the alleged facts in this
7 incident.

8 45. Heath W. Holden
9 Police Patrol Officer #424

10 Heath W. Holden is an employee of the Tacoma Police
11 Department and has knowledge of the alleged facts in this
12 incident.

13 46. Corina E. Hopkins
14 Police Patrol Officer #499

15 Corina E. Hopkins is an employee of the Tacoma Police
16 Department and has knowledge of the alleged facts in this
17 incident.

18 47. Charles Howard
19 Lieutenant (retired)

20 Charles Howard is a former employee of the Tacoma Police
21 Department and has knowledge of the alleged facts in this
22 incident.

23 48. Darell Hughes
24 Lieutenant

25 Darell Hughes is an employee of the Tacoma Police
Department and has knowledge of the alleged facts in this
incident.

49. Steve Kirby
address to be provided

Mr. Kirby is a City Councilman. He has knowledge of the
alleged facts in this incident.

50. Manuela M. Loth
Police Patrol Officer #263

MESSINA • BULZOMI

5316 Orchard St. W.
Tacoma, WA 98467-3633
(253) 472-6000

1 Manuela M. Loth is an employee of the Tacoma Police
2 Department and has knowledge of the alleged facts in this
3 incident.

3 51. Gary H. Loyd
4 Police Patrol Officer #325

4 Gary H. Loyd is an employee of the Tacoma Police
5 Department and has knowledge of the alleged facts in this
6 incident.

6 52. Mark K. Mann
7 Sergeant #283

8 Mark K. Mann is an employee of the Tacoma Police
9 Department and has knowledge of the alleged facts in this
10 incident.

10 53. Barry N. McColeman
11 Detective #144

11 Barry N. McColeman is an employee of the Tacoma Police
12 Department and has knowledge of the alleged facts in this
13 incident.

13 54. Richard D. McCrea
14 Lieutenant #163

15 Richard D. McCrea is an employee of the Tacoma Police
16 Department and has knowledge of the alleged facts in this
17 incident.

17 55. Helen E. McKinney
18 Police Patrol Officer #150

18 Helen E. McKinney is an employee of the Tacoma Police
19 Department and has knowledge of the alleged facts in this
20 incident.

20 56. Charles E. Meinema
21 Captain #238

22 Charles E. Meinema is a Police Captain and formerly
23 Assistant Chief of Tacoma Police and has knowledge of the
24 alleged facts in this incident.

24 57. Joseph M. Mettler
25 Police Patrol Officer 113

MESSINA • BULZOMI

5316 Orchard St. W.
Tacoma, WA 98467-3633
(253) 472-6000

1 Joseph M. Mettler is an employee of the Tacoma Police
2 Department and has knowledge of the alleged facts in this
incident.

3 58. Paul Mielbrecht
4 Captain

5 Paul Mielbrecht is an employee of the Tacoma Police
6 Department and has knowledge of the alleged facts in this
incident.

7 59. Gene E. Miller
8 Detective #329

9 Gene E. Miller is an employee of the Tacoma Police
10 Department and has knowledge of the alleged facts in this
incident.

11 60. Alan R. Morris
12 Police Patrol Officer #057

13 Alan R. Morris is an employee of the Tacoma Police
14 Department and has knowledge of the alleged facts in this
incident.

15 61. Paul L. Nielsen
16 Police Patrol Officer #276

17 Paul L. Nielsen is an employee of the Tacoma Police
18 Department and has knowledge of the alleged facts in this
incident.

19 62. David T. Olsen
20 Captain (Retired)

21 David T. Olsen is a former employee of the Tacoma Police
22 Department and has knowledge of the alleged facts in this
incident.

23 63. Philip F. Pavey
24 Detective #379

25 Philip F. Pavey is an employee of the Tacoma Police
Department and has knowledge of the alleged facts in this
incident.

64. Thomas C. Peltier
Lieutenant (Retired)

MESSINA • BULZOMI

5316 Orchard St. W.
Tacoma, WA 98467-3633
(253) 472-6000

1 Thomas C. Peltier is a former employee of the Tacoma
2 Police Department and has knowledge of the alleged facts in
this incident.

3 65. InCha Poindexter
4 Police Secretary #949

5 InCha Poindexter is an employee of the Tacoma Police
6 Department and has knowledge of the alleged facts in this
7 incident.

8 66. Martin L. Price
9 Police Patrol Officer #324

10 Martin L. Price is an employee of the Tacoma Police
11 Department and has knowledge of the alleged facts in this
12 incident.

13 67. Dennis W. Quillio
14 Police Patrol Specialist #394

15 Dennis W. Quillio is an employee of the Tacoma Police
16 Department and has knowledge of the alleged facts in this
17 incident.

18 68. Jennifer R. Quillio
19 Police Patrol Officer #107

20 Jennifer R. Quillio is an employee of the Tacoma Police
21 Department and has knowledge of the alleged facts in this
22 incident.

23 69. Charles N. Howard
24 Lieutenant (Retired) #359

25 Charles N. Howard is a former employee of the Tacoma
Police Department and has knowledge of the alleged facts in
this incident.

70. James R. Howatson
Lieutenant #336

James R. Howatson is an employee of the Tacoma Police
Department and has knowledge of the alleged facts in this
incident.

71. Darell S. Hughes
Lieutenant #259

MESSINA • BULZOMI

5316 Orchard St. W.
Tacoma, WA 98467-3633
(253) 472-6000

1 Darell S. Hughes is an employee of the Tacoma Police
2 Department and has knowledge of the alleged facts in this
3 incident.

3 72. Don L. Irvin
4 Sergeant #253

4 Don L. Irvin is an employee of the Tacoma Police
5 Department and has knowledge of the alleged facts in this
6 incident.

6 73. Paul A. Jagodinski
7 Police Patrol Officer #290

8 Paul A. Jagodinski is an employee of the Tacoma Police
9 Department and has knowledge of the alleged facts in this
10 incident.

10 74. Mark E. Jenkins
11 Sergeant #250

11 Mark E. Jenkins is an employee of the Tacoma Police
12 Department and has knowledge of the alleged facts in this
13 incident.

13 75. Colleen E. Johnson
14 Police Patrol Officer #432

15 Colleen E. Johnson is an employee of the Tacoma Police
16 Department and has knowledge of the alleged facts in this
17 incident.

17 76. Gary V. Johnson
18 Police Patrol Officer # 189

18 Gary V. Johnson is an employee of the Tacoma Police
19 Department and has knowledge of the alleged facts in this
20 incident.

20 77. Diana R. Judge
21 Police Patrol Officer #351

22 Diana R. Judge is an employee of the Tacoma Police
23 Department and has knowledge of the alleged facts in this
24 incident.

24 78. Shawn A. Kelstrup
25 Police Patrol Officer #459

MESSINA • BULZOMI

5316 Orchard St. W.
Tacoma, WA 98467-3633
(253) 472-6000

1 Shawn A. Kelstrup is an employee of the Tacoma Police
2 Department and has knowledge of the alleged facts in this
incident.

3 79. Denise M. Kieffer
Sergeant #305

4
5 Denise M. Kieffer is an employee of the Tacoma Police
6 Department and has knowledge of the alleged facts in this
incident.

7 80. Dennis J. Kieffer
Sergeant #371,

8 Dennis J. Kieffer is an employee of the Tacoma Police
9 Department and has knowledge of the alleged facts in this
incident.

10 81. Carol E. Krancich
Detective #479

11
12 Carol E. Krancich is an employee of the Tacoma Police
13 Department and has knowledge of the alleged facts in this
incident.

14 82. Patricia A. Larkin
Detective #244

15 Patricia A. Larkin is an employee of the Tacoma Police
16 Department and has knowledge of the alleged facts in this
incident.

17 83. Darell J. Larsen
Sergeant #052

18
19 Darell J. Larsen is an employee of the Tacoma Police
20 Department and has knowledge of the alleged facts in this
incident.

21 84. Roger L. Lawrence
Police Patrol Officer #306

22 Roger L. Lawrence is an employee of the Tacoma Police
23 Department and has knowledge of the alleged facts in this
incident.

24 85. Jewell E. Lerum
Sergeant #206

25

MESSINA • BULZOMI

5316 Orchard St. W.
Tacoma, WA 98467-3633
(253) 472-6000

1 Jewell E. Lerum is an employee of the Tacoma Police
2 Department and has knowledge of the alleged facts in this
3 incident.

3 86. Larry P. Lindberg
4 Detective #289

4 Larry P. Lindberg is an employee of the Tacoma Police
5 Department and has knowledge of the alleged facts in this
6 incident.

6 87. Gary G. Lock
7 Sergeant #366

8 Gary G. Lock is an employee of the Tacoma Police
9 Department and has knowledge of the alleged facts in this
10 incident.

10 88. Thomas Peltier
11 Lieutenant (Retired)

11 Thomas Peltier is a former employee of the Tacoma Police
12 Department and has knowledge of the alleged facts in this
13 incident.

13 89. Donald L. Ramsdell
14 Lieutenant #347

15 Donald L. Ramsdell is an employee of the Tacoma Police
16 Department and has knowledge of the alleged facts in this
17 incident.

17 90. Ronald M. Rasmussen
18 Police Patrol Officer #146

18 Ronald M. Rasmussen is an employee of the Tacoma Police
19 Department and has knowledge of the alleged facts in this
20 incident.

20 91. Frank G. Richmond
21 Detective #328

22 Frank G. Richmond is an employee of the Tacoma Police
23 Department and has knowledge of the alleged facts in this
24 incident.

24 92. Barbara A. Salinas
25 Police Patrol Officer #321

MESSINA • BULZOMI

5316 Orchard St. W.
Tacoma, WA 98467-3633
(253) 472-6000

1 Barbara A. Salinas is an employee of the Tacoma Police
2 Department and has knowledge of the alleged facts in this
3 incident.

3 93. Steven W. Shake
4 Detective #023

4 Steven W. Shake is an employee of the Tacoma Police
5 Department and has knowledge of the alleged facts in this
6 incident.

6 94. Robert Sheehan
7 Tacoma Police Union Local No. 6
8 901 South I St.
9 Tacoma, WA 98405

9 Robert Sheehan is Vice President of the Tacoma Police
10 Union Local No. 6.

10 95. James C. Smith
11 Sergeant #292

11 James C. Smith is an employee of the Tacoma Police
12 Department and has knowledge of the alleged facts in this
13 incident.

13 96. Thomas C. Strickland
14 Lieutenant #083

14 Thomas C. Strickland is an employee of the Tacoma Police
15 Department and has knowledge of the alleged facts in this
16 incident.

16 97. Michael M. Taylor
17 Sergeant #007

17 Michael M. Taylor is an employee of the Tacoma Police
18 Department and has knowledge of the alleged facts in this
19 incident.

19 98. Samuel M. Thrall
20 Sergeant #237

20 Samuel M. Thrall is an employee of the Tacoma Police
21 Department and has knowledge of the alleged facts in this
22 incident.

22 99. Erik W. Timothy
23 Police Patrol Officer #133
24
25

MESSINA • BULZOMI

5316 Orchard St. W.
Tacoma, WA 98467-3633
(253) 472-6000

1 Erik W. Timothy is an employee of the Tacoma Police
2 Department and has knowledge of the alleged facts in this
incident.

3 100. Sylvia C. Trent
4 Police Secretary #925

5 Sylvia C. Trent is an employee of the Tacoma Police
6 Department and has knowledge of the alleged facts in this
incident.

7 101. Richard A. Warner
8 Police Patrol Officer #239
9 Richard A. Warner is an employee of the Tacoma Police
10 Department and has knowledge of the alleged facts in this
11 incident.

12 102. Gary L. Wiegand
13 Lieutenant #207

14 Gary L. Wiegand is an employee of the Tacoma Police
15 Department and has knowledge of the alleged facts in this
16 incident.

17 103. James A. Young
18 Sergeant #361

19 James A. Young is an employee of the Tacoma Police
20 Department and has knowledge of the alleged facts in this
21 incident.

22 104. Sergeant Yuhasz

23 Sergeant Yuhasz is employed in Internal Affairs for the
24 Tacoma Police Department and has knowledge of the alleged facts
25 in this incident.

105. Rebecca A. Zeutschel
Detective #268

Rebecca A. Zeutschel is an employee of the Tacoma Police
Department and has knowledge of the alleged facts in this
incident.

106. D. P. Van Blaricom
839 91st Lane NE
Bellevue, WA 98004
425-453-0082

MESSINA • BULZOMI

5316 Orchard St. W.
Tacoma, WA 98467-3633
(253) 472-6000

1 Mr. Van Blaricom is a Police Practices expert. A copy of
 2 his curriculum vitae is attached. He will testify as an expert
 3 witness regarding his knowledge of Police Department procedures
 4 regarding promotions, admonishments, retaliatory activity
 5 towards union members, and other issues related to the
 6 discriminatory treatment of plaintiff by the Tacoma Police
 7 Department and its actors, agents and employees. Further, Mr.
 8 Van Blaricom will testify to other department procedures
 9 including, but not limited to, an opinion on the specific
 10 treatment of plaintiff.

11 107. Philip G. Lindsay, M.D.
 12 1101 Madison Street, Suite 1260
 13 Seattle, WA 98104

14 Doctor Lindsay is a physician specializing in Internal
 15 Medicine and Psychiatry. A copy of Doctor Lindsay's curriculum
 16 vitae is attached. Doctor Lindsay has the education, experi-
 17 ence and knowledge to testify regarding his evaluation and
 18 treatment of Joseph Kirby as it relates to the events in this
 19 incident.

20 108. Douglas Robinson, M.D.
 21 Montlake Professional Building
 22 2200 24th Avenue East
 23 Seattle, WA 98112

24 Doctor Robinson is a physician. He has the education,
 25 training and experience to testify regarding his independent
 medical examination of plaintiff on or around 5/24/99.

109. Dr. Berryman Edwards
 address to be provided

Dr. Edwards is a physician. He has the education,
 training and experience to testify regarding his independent
 medical examination of Joseph Kirby on December 12/2/99 and
 12/9/99.

110. Jerome Rad, M.D.
 Allenmore Medical Center
 South 19th & Union, Ste A206
 Tacoma, WA

Doctor Rad is a physician. He has the education,
 training and experience to testify regarding his treatment of
 Joseph Kirby and the effect the events of this incident have
 had on his health.

MESSINA • BULZOMI

5316 Orchard St. W.
 Tacoma, WA 98467-3633
 (253) 472-6000

1 111. Gary L. Hendricksen, M.D.
 2 Allenmore Hospital
 3 1901 S. Union Ave.
 4 Tacoma, WA 98411

5 Doctor Hendricksen is a physician specializing in
 6 occupational medicine. He has the education, training and
 7 experience to testify regarding his findings as a result of his
 8 examination of Joseph Kirby for the City of Tacoma.

9 112. Zachary T. Kirby
 10 11808 Seminole Rd SW
 11 Lakewood, WA 98499

12 Zachary Kirby is the plaintiffs' son and will testify
 13 regarding his observations of the effects of the incident on
 14 his parents.

15 113. Lara N. Kirby
 16 11808 Seminole Road SW
 17 Lakewood, WA 98499

18 Lara Kirby is the plaintiffs' daughter. She will testify
 19 regarding her observations of the effects of the incident on
 20 her parents.

21 114. Jolin Lowry
 22 PO Box 112496
 23 Tacoma, WA 98411

24 Jolin Lowry is a friend of plaintiffs and can testify
 25 regarding her observations of the effects of the incident on
 the lives of the plaintiffs.

Plaintiffs reserve the right to supplement with those
 witnesses identified and to be identified by defendant and with
 additional witnesses identified through discovery and
 investigation.

DATED this 7th day of June 2000.

MESSINA BULZOMI

BY  2736 JLC
 JOHN L. MESSINA 4440
 Attorneys for Plaintiffs

MESSINA • BULZOMI

5316 Orchard St. W.
 Tacoma, WA 98467-3633
 (253) 472-6000

D. P. VAN BLARICOM, INC.

MPA, FBI-NA, CHIEF OF POLICE (RET.)

POLICE PRACTICES EXPERT

335 - 91ST LANE N.E.

BELLEVUE, WASHINGTON 98004-4811

(425) 453-0082 FAX (425) 453-3263 E-Mail dvbinc@aol.com

SUMMARY OF QUALIFICATIONS:

- A. Retained as a police expert by both plaintiffs and defendants in over **850** lawsuits alleging police liability throughout the United States.
- B. Testified on numerous occasions in federal courts, state courts and arbitrations.
- C. Recognized as an expert on the issues of:
 - 1. **POLICE USE OF FORCE** (plaintiff's expert in the leading 9th Cir. case of Davis v. Mason County, WA 1991, a consultant to federal prosecution task force in United States v. Koon, et al. 1993 and a plaintiff's expert in Rodney King v. City of Los Angeles 1994, defendants' expert in 1st Cir. case of Roy v. City of Lewiston, ME 1994);
 - 2. **LESS-LETHAL ALTERNATIVES TO DEADLY FORCE IN BOTH EQUIPMENT AND TACTICS** (plaintiff's expert in the 9th Cir. case of Reed v. Hoy 1989 and ID S.Ct. case of Kessler v. Payette County and State of Idaho 1997);
 - 3. **POLICE K-9s AS USE OF FORCE** (quoted in Deadly Force: What We Know 1992);
 - 4. **CONTROL OF POLICE VEHICULAR PURSUIT and EMERGENCY DRIVING** (my policy was recommended by the Public Risk and Insurance Management Association of Washington, D.C. as being among the 4 best in the United States 1984, quoted by 2 CA Appellate Courts in Payne v. City of Perris 1993, Berman v. City of Daly City 1993, OR S.Ct. case of Lowrimore v. Marion County 1990 and MS S.Ct. case of Mosby v. Jeffries 1998);
 - 5. **POLICE ADMINISTRATION and POLICY;**
 - 6. **POLICE PRACTICES, PROCEDURES and STANDARDS of CARE** (plaintiff's expert in the 9th Cir. Case of Gulliford v. Pierce County);
 - 7. **SPECIAL DUTIES TO PROTECT and 911 RESPONSES** (plaintiffs' expert in WA S.Ct. cases of Bailey v. Town of Forks 1987 and Roy v. City of Everett 1992, AZ S.Ct. case Hutcherson v. City of Phoenix 1998, MT S.Ct. case of Nelson v. Driscoll 1999 and the leading 9th Cir. case of Wood v. Ostrander 1988);
 - 8. **DOMESTIC VIOLENCE** (quoted by the National Law Enforcement Policy Center in their model policy 1991);
 - 9. **CIVIL RIGHTS VIOLATIONS** (under 42 U.S.C. § 1983);

10. IN-CUSTODY ASPHYXIA;
11. POLICE INTERNAL INVESTIGATION and DISCIPLINE;
12. DISCRIMINATORY POLICE EMPLOYMENT PRACTICES;
13. AMERICANS WITH DISABILITIES ACT (discriminatory failure to provide access);
14. POLICE COLLECTIVE BARGAINING;
15. FIREARMS (USMC trained small arms repair MOS 2111); and
16. PRIVATE SECURITY ISSUES (plaintiff's expert in US WD WA Groom v. Safeway).

- D. Served 29 years in municipal policing with the last 11 as Chief of Police (until retirement and election to the City Council at the end of 1985) in Bellevue, Washington - the State's then fourth largest and fastest growing city.
- E. Directed development of a progressive police department and created several model programs, including: control of vehicular pursuits, alternatives to deadly force, fully integrated emergency response team operations, domestic violence reduction, affirmative action employment of minorities and women, comprehensive crime prevention, lateral recruitment of experienced officers, police canine operations, multi-city narcotics unit and others. Additionally, co-authored the Washington State Standards on Internal Discipline of Law Enforcement agencies.
- F. Served on many professional commissions and committees, including: Washington Criminal Justice Education & Training Center Steering Committee, Bellevue Community College Local Advisory Council and Chairman Law Enforcement Program Advisory Board, Washington Attorney General's Committee on Security and Privacy, consultant to U.S. Department of Justice Community Relations Service, consultant to the National Consultation on Safety and Force, intern with 94th Congress, Governor's appointee to Community Task Force for Corrections Development, Washington State Council on Crime & Delinquency's Adult Criminal Policy Committee and Ad Hoc Committee on Board of Prison Terms/Paroles, Youth Eastside Services Board of Trustees, Eastside Community Mental Health Center Advisory Board, King County Executive's appointee to E911 Task Force, U.S. Attorney's Law Enforcement Coordinating Committee, Governor's appointee to Select Committee for Police/Fire Pension Review, IACP's Education & Training Committee, IACP's Organized Crime Committee, Assessor Team Leader for 1 of 5 Pilot Projects of the Commission on Accreditation for Law Enforcement Agencies, Governor's appointee to the Emergency Commission on Prison Overcrowding, IACP book reviewer, Suburban Cities Association's Jail Advisory Committee, Governor's Advisory Group on Personal Harassment, Portland, Oregon Chief's Committee on Police Use of Force. Assisted the appointing authorities at various times in selecting Chiefs of Police for Cities of Longview, Everett, Bellingham, Richland, Bremerton, Kirkland, Redmond, Clyde Hill, Kent (1991), Bellevue (1996) a Sheriff of King County and the Security Administrator of Seattle City Light (all in the State of Washington), King County Regional Justice Center Citizens Site Advisory Committee, Solutions To Tragedies of Police Pursuits Advisory Board, Superintendent of Public Instruction's Washington State Safe Schools Advisory Committee, King County Civil Rights Commission.
- G. Hold a security clearance from the U. S. Government.

H. Maintain an extensive and current library of standards, policies, procedures, references, depositions and information on other experts with subscription services to update professional and legal developments in my areas of expertise.

EDUCATION:

University of Washington - bachelor of arts degree with magna cum laude honors in 1973

Seattle University - master of public administration degree in 1976

University of Washington - certificate in forensics

Graduate of the FBI's National Academy and Law Enforcement Executive Development programs

Numerous and continuing professional training courses

TEACHING AND TRAINING EXPERIENCE:

Admitted as an adjunct faculty member at City University. Taught law enforcement courses at the Bellevue Police Academy, Washington Criminal Justice Education and Training Center, Bellevue Community College, Seattle University, Northwestern University's Traffic Institute and International City Management Association's Training Institute. Lectured on police-related issues before the University of Washington School of Law and Graduate School of Public Affairs, Simon Fraser University, American Civil Liberties Union, Washington State Bar, Seattle-King County Bar, Washington State Court Administrators, Washington Association of Legal Secretaries, American G. I. Forum, United States Justice Department Community Relations Service, National Institute of Law Enforcement and Criminal Justice, U. S. Attorney General's Task Force on Family Violence, Montana Department of Social and Rehabilitation Services, Washington Advisory Committee to the U.S. Commission on Civil Rights, American Society of Criminology, debated California Highway Patrol Commissioner on police pursuit before National Association of Police Planners and International Association of Police Planning and Research Officers in 1990, Labor Relations Information System, City of Bellevue's Management Certificate Training Program, lectured for Association of Trial Lawyers of America's Civil Rights Section and the National College of Advocacy on excessive force from the expert's perspective in 1994 and domestic violence litigation liability arising from failure of prevention and response in 1995, lectured on loss prevention civil liability to Nordstrom Washington/ Alaska Region in 1997. Additionally, served on the Law Enforcement Education Advisory Committee to the Washington State Board for Community College Education in developing their statewide curriculum and also achieved the first college accreditation of a Basic Law Enforcement Academy in the State of Washington.

PUBLICATIONS:

"Recruitment and Retention of Minority Race Persons as Police Officers" in September 1976 issue of The Police Chief magazine, "An Overview of Police Service Today" in the April 18th and May 2nd, 1978 issues of Law Enforcement News, "Kids Meet Cops Through Basketball Trading Card Program" in the July 9th, 1979 issue of Law Enforcement News, "A Police Chief's View of Deadly Force" in the

National Institute of Law Enforcement & Criminal Justice January 1979 booklet on Police Use of Deadly Force, "Career Development: The Next Step to Police Professionalism" in the November 1979 issue of The Police Chief magazine, "Crime Prevention Cuts Insurance Cost" in the August 1980 issue of Center City Report, "A Sensible Alternative to Those High-Speed Chases" in the November 25, 1980 issue of The Seattle Times, "Chiefs Should Chase Sane Pursuit Driving Guidelines" in the December 22, 1980 issue of Law Enforcement News, "Commercial Crime Prevention Can Earn Discounts" in the February 1981 issue of the FBI Law Enforcement Bulletin, "Enforcing Malicious Harassment Laws" in the January 1983 edition of Washington Council on Crime and Delinquency News, "Reducing Crime, Traffic Accidents - Bellevue Shows It Can Be Done" in the May 10, 1983 issue of The Seattle Times and the June 27, 1983 issue of Law Enforcement News, "Carrying A Gun - It Depends On You" in the February 3, 1985 issue of the Journal-American, "When To Use Deadly Force" in the Winter 1985 issue of the Washington Law Enforcement Executive Journal, "Domestic Violence - A New Approach to an Old Problem" in the June 1985 issue of The Police Chief magazine, "In Pursuit Of The Pursuers - Police Pursuit Liability" in the 1987 issue of The Expert Witness Reporter, "It's Time for Police To Re-Examine Their Role In Society" in the October 1, 1989 issue of The Seattle Times, "Shaking The Pillars of Police Tradition" in the October 31, 1989 issue of Law Enforcement News, "Training-The First Hundred Years" in Law Enforcement In Washington State: The First Hundred Years 1889-1989, "K-9 Use of Force: A Biting Example of Questionable Policy" in the July/August 1992 issue of Law Enforcement News, "Police Pursuit: Uncontrolled Deadly Force" in the February 28, 1993 issue of Law Enforcement News, Bulletin Alert on a "Hair-raising Comb" in the June 1994 issue of the FBI Law Enforcement Bulletin, "Excessive Force - The Expert's Perspective" in the Association of Trial Lawyers of America July 1994 Annual Convention Reference Materials Volume I, "Domestic Violence Litigation: Liability Arising from Failure of Prevention and Response" in the Association of Trial Lawyers of America July 1995 Annual Convention Reference Materials Volume I, "Shades of Blue: What White Police Officers Can - and Must - Learn from Minority Officers" in the January/February 1996 of the Police Executive Research Forum's Subject to Debate, "Doing Something About Excessive Force" in the January 15, 1998 issue of Law Enforcement News, "The Consistent Law Enforcement Expert" in the November/December 1998 issue of The Forensic Examiner, "To Pursue or Not to Pursue: THAT is the Question" in the November 1998 issue of Police, "Handling the Mentally Ill" in the March 2000 issue of Police.

NATIONAL TELEVISION APPEARANCES:

NBC Nightly News special report on the dangers of police vehicular pursuit.

NBC Today Show:

1. Personal protection against criminal attack;
2. Misuse of pepper spray to punish.

NBC "You Be The Judge" on the dangers of police vehicular pursuit.

NATIONAL RADIO APPEARANCE:

NPR "Cops and the Mentally Ill".

QUOTED IN MAJOR NEWSPAPERS:

USA Today, Wall Street Journal, The New York Times, Los Angeles Times, San Francisco Examiner, The Seattle Times, The Oregonian, Toronto Sun.

PROFESSIONAL MEMBERSHIPS:

International Association of Chiefs of Police (Life Member), Police Executive Research Forum, Americans for Effective Law Enforcement, FBI National Academy Associates, Washington Association of Sheriffs & Police Chiefs (Life Member), Police Marksman Association, Law Enforcement Alliance of America, Police Writers Club, American College of Forensic Examiners Executive Advisory Board and Continuing Education Committee of the American Board of Law Enforcement Experts, American Society of Law Enforcement Trainers, International Police Association.

OTHER ACTIVITIES AND ASSOCIATIONS:

Present -

Washington State Retired Deputy Sheriffs/Police Officers Association, Retired Bellevue Police Officers Association, Pioneer Association.

Past -

Salvation Army's Metropolitan Seattle Advisory Board, Seattle University Alumni Association Board of Governors, Journal-American Board of Contributors, Historical Society of Seattle and King County Board of Trustees, Secretary of State's Advisory Group on Charitable Solicitations, King County Landmarks Commissioner, Bellevue Downtown Park Review Committee, Co-Chairman of Bellevue Chamber of Commerce Legislative Committee, Search and Screening Committee for Selection of Bellevue Community College President, Washington State Civil Air Patrol Citizens Advisory Council, Statewide City Employees Retirement System elected Trustee, City of Bellevue Disability Board, Municipal Employees Benefit Trust Retirement Committee, City of Bellevue Liaison to the Washington State Legislature, Bellevue Rotary Club, Aircraft Owners and Pilots Association as an FAA licensed commercial airplane and glider pilot with ratings for single engine land and sea, multi-engine land and instrument operations, elected Bellevue City Councilmember (did not run for re-election), Chairman of the Emerald City Flight Festival, Chairman of Wings Over Washington Centennial Celebration, Bellevue Repertory Theater Advisory Board, Woodland Park Zoo Bond Oversight Committee, United Olympic Life Insurance Company Board of Directors, Lakes Club

Board of Governors, Columbia Tower Club Founder Member, Wing Luke Asian Museum Advisory Board, National Defense Executive Reserve Emeritus, Vice President and Planning Committee Chairman of the Museum of Flight Board of Trustees Executive Committee, Bellevue Convention Center Authority Vice Chairman and Chairman of the Construction, Human Resources and Art Advisory Committees - Note: structure was selected as the "Best New Building" by the Puget Sound Business Journal, Eastside Journal Editorial Board, Advance Bellevue Advisory Board.

AWARDS:

USMC Expert Rifleman 1953-1956, FBI "Possible Club" 1970 (of the 19,130 police officers who attended the FBI National Academy during the 50 years from when it started to the year of my retirement in 1985, I was 1 of only 165/ .0086% who fired a perfect score on the PPC or TRC), Appreciation from the Drug Enforcement Administration 1977, Outstanding Community Service from Bellevue Jaycees 1979, Human Rights (Implementing Law and Order with Justice) from Baha'i Communities of Bellevue and Eastside 1980, Youth Service from the Chief Seattle Council of the Boy Scouts of America 1983, Program Innovation from the King County Domestic Violence Coalition 1983, Support and Service from Bellevue Cadet Squadron Auxiliary USAF 1984, Law Enforcement Appreciation from the Puget Sound Chapter of the American Society for Industrial Security (presented by the Governor of the State of Washington) 1984, Outstanding Volunteer Service from the Salvation Army 1984, Outstanding Service as a Public Official Citizenship Award from the Bellevue Kiwanis Club 1985, Appreciation from the United States Secret Service 1986, **Award for Public Service from The U.S. Department of Justice 1986**, Recognition for 30 Years of Public Service from the City of Bellevue 1986, Recognition and Commendation Resolution by the Municipality of Metropolitan Seattle 1988, Appreciation for Service from the Woodland Park Zoo Bond Oversight Committee 1990, Appreciation for Service from the King County Executive 1992, Appreciation for Personal Contribution to Developing Bellevue Convention Center from the City of Bellevue 1993, Outstanding Support of the Arts (jointly with wife) from the City of Bellevue Arts Commission 1993, ACFE Diplomate and Fellow: Board Certified Forensic Examiner 1995, Commendation for Outstanding Service from the City of Bellevue 1997.

HONORABLE FRANKLIN D. BURGESS

FILED
RECEIVED
JUN 15 2000
LOGGED
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT TACOMA
DEPUTY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JOSEPH J. KIRBY and DEBORAH A.
KIRBY, husband and wife,

Plaintiffs,

v.

THE CITY OF TACOMA, a municipal
corporation; RAY CORPUZ and "JANE
DOE" CORPUZ, husband and wife; PHILIP
ARREOLA and "JANE DOE" ARREOLA,
husband and wife; WILLIAM WOODARD
and CATHERINE WOODARD, husband and
wife; RAYMOND ROBERTS and "JANE
DOE" ROBERTS, husband and wife; DAVID
BRAME and "JANE DOE" BRAME, husband
and wife; and JAMES HAIRSTON and
"JANE DOE" HAIRSTON, husband and wife,

Defendants.

No. C00-5332 FDB

AFFIDAVIT OF SERVICE

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

MARLA J. HUGHES, being first duly sworn on oath, deposes and states:

I am a citizen of the United States over the age of eighteen and
competent to be a witness herein.

On the 14th day of June, 2000, I deposited with ABC Legal
Messengers a copy of *Certification of Shelley M. Kerlake* with directions to
deliver the same to the following:

John L. Messina, Messina Bulzomi, 5316 Orchard St. W., Tacoma, WA
98467.

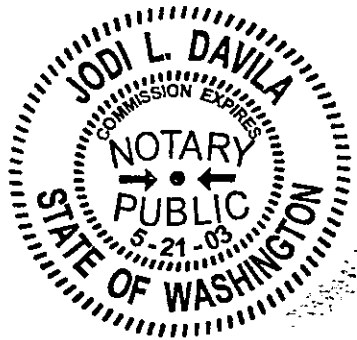
Marla J. Hughes

Marla J. Hughes

SUBSCRIBED AND SWORN to before me this 14th day of June, 2000.

Jodi L. Davila

Printed name: JODI L. DAVILA
NOTARY PUBLIC in and of the State of
Washington residing at Makam
Commission expires: 5-21-03



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

HONORABLE FRANKLIN D. BURGESS

MESSINA LAW FIRM
JUN 15 2000
RECEIVED

FILED
JUN 15 2000
RECEIVED
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
TACOMA

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JOSEPH J. KIRBY and DEBORAH A.
KIRBY, husband and wife,

Plaintiffs,

v.

THE CITY OF TACOMA, a municipal
corporation; RAY CORPUZ and
"JANE DOE" CORPUZ, husband and
wife; PHILIP ARREOLA and "JANE
DOE" ARREOLA, husband and wife;
WILLIAM WOODARD and
CATHERINE WOODARD, husband
and wife; RAYMOND ROBERTS and
"JANE DOE" ROBERTS, husband
and wife; DAVID BRAME and "JANE
DOE" BRAME, husband and wife; and
JAMES HAIRSTON and "JANE DOE"
HAIRSTON, husband and wife,

Defendants.

No. C00-5332 FDB

DEFENDANTS' ANSWER AND
AFFIRMATIVE DEFENSES
TO PLAINTIFFS' AMENDED
COMPLAINT FOR PERSONAL
INJURIES AND DAMAGES IN TORT

COME NOW the defendants, City of Tacoma, by and through their
undersigned attorneys and by way of answer to plaintiffs' Amended Complaint for
Personal Injuries and Damages in Tort, admit, deny and allege as follows:

DEFENDANTS' ANSWER TO
PLAINTIFFS' AMENDED COMPLAINT - 1

ORIGINAL

Tacoma City Attorney
Civil Division
747 Market Street, Room 1120
Tacoma, Washington 98402-3767
(253) 591-5885/FAX 591-5755

5

I.

1
2 In answer to paragraph 1 of plaintiffs' Amended Complaint, these
3 defendants are without knowledge or information sufficient to form a belief as to
4 the truth of the remaining allegations contained therein, and therefore, deny the
5 same.

II.

6
7 2.1 In answer to paragraph 2.1 of plaintiffs' Amended Complaint, these
8 defendants admit that the City of Tacoma is a municipal corporation duly
9 authorized under the laws of the State of Washington with its principal place of
10 business located in Pierce County, Washington.
11

12 2.2 In answer to paragraph 2.2 of plaintiffs' Amended Complaint, these
13 defendants admit that the Tacoma Police Department is a department of the City
14 of Tacoma.
15

16 2.3 In answer to paragraph 2.3 of plaintiffs' Amended Complaint, these
17 defendants admit that the City of Tacoma is the plaintiffs' employer and the City of
18 Tacoma employs more than eight people.

III.

19
20 3.1 In answer to paragraph 3.1 of plaintiffs' Amended Complaint, these
21 defendants state that at all times herein, defendant Ray Corpuz, was acting in his
22 official capacity, and therefore deny the same.
23
24
25
26

1 deny the same. As to Ray Corpuz, the defendants deny any direct supervisory
2 authority over the plaintiff.

3 V.

4 5.1 In answer to paragraph 5.1 of plaintiffs' Amended Complaint, these
5 defendants admit that plaintiff, Joseph J. Kirby, was employed by the City of
6 Tacoma's Police Department from approximately January of 1983 through the
7 present.

8 5.2 In answer to paragraph 5.2 of plaintiffs' Amended Complaint, these
9 defendants deny the same.

10 5.3 In answer to paragraph 5.3 of plaintiffs' Amended Complaint, these
11 defendants deny the same.

12 VI.

13 In answer to paragraph 6 of plaintiffs' Amended Complaint, these
14 defendants deny the same.

15 VII.

16 In answer to paragraph 7 of plaintiffs' Amended Complaint, these
17 defendants deny the same.

18 VIII.

19 In answer to paragraph 8 of plaintiffs' Amended Complaint, these
20 defendants deny the same.

IX.

1
2 In answer to paragraph 9 of plaintiffs' Amended Complaint, these
3 defendants deny the same.

X.

4
5 In answer to paragraph 10 of plaintiffs' Amended Complaint, these
6 defendants admit that a Claim for Damages was filed with the Division of Risk
7 Management on December 19, 1997; and are without knowledge and information
8 sufficient to form a belief as to the truth of the remaining allegations contained
9 therein, and therefore, deny the same.
10

XI.

11
12 In answer to paragraph 11 of plaintiffs' Amended Complaint, these
13 defendants deny the same.

XII.

14
15 In answer to paragraph 12 of plaintiffs' Amended Complaint, these
16 defendants deny the same.
17

XIII.

18
19 In answer to paragraph 13 of plaintiffs' Amended Complaint, these
20 defendants deny the same.
21

XIV.

22
23 In answer to paragraph 14 of plaintiffs' Amended Complaint, these
24 defendants state that they do not believe that this paragraph requires an answer.
25
26

AFFIRMATIVE DEFENSES

XIV.

1
2
3 14.1 FOR FURTHER ANSWER, AND BY WAY OF AN AFFIRMATIVE
4 DEFENSE TO PLAINTIFFS' AMENDED COMPLAINT, these defendants state that
5 there is no causation between the acts alleged as against these defendants and
6 the damages claimed to have been sustained by the plaintiffs.

7
8 14.2 FOR FURTHER ANSWER, AND BY WAY OF AN AFFIRMATIVE
9 DEFENSE TO PLAINTIFFS' AMENDED COMPLAINT, these defendants allege
10 that plaintiffs have failed to state a claim upon which relief can be granted.

11
12 14.3 FOR FURTHER ANSWER, AND BY WAY OF AN AFFIRMATIVE
13 DEFENSE TO PLAINTIFFS' AMENDED COMPLAINT, these defendants allege
14 that plaintiffs' injuries, if any, were a proximate result of the actions of the plaintiffs
15 thereby barring and/or diminishing any award or judgment against these
16 defendants.

17
18 14.4 FOR FURTHER ANSWER, AND BY WAY OF AN AFFIRMATIVE
19 DEFENSE TO PLAINTIFFS' AMENDED COMPLAINT, these defendants state that
20 the plaintiffs lack standing to sue for some or all of the relief sought therein.

21
22 14.5 FOR FURTHER ANSWER, AND BY WAY OF AN AFFIRMATIVE
23 DEFENSE TO PLAINTIFFS' AMENDED COMPLAINT, these defendants allege
24 that if the plaintiffs suffered injury or damages, then the risk of said injuries or
25 damages was assumed by the plaintiffs.
26

1 14.6 FOR FURTHER ANSWER, AND BY WAY OF AN AFFIRMATIVE
2 DEFENSE TO PLAINTIFFS' AMENDED COMPLAINT, these defendants allege
3 that they are immune from the instant suit pursuant to the principles of
4 discretionary immunity.

5 14.7 FOR FURTHER ANSWER, AND BY WAY OF AN AFFIRMATIVE
6 DEFENSE TO PLAINTIFFS' AMENDED COMPLAINT, these defendants allege
7 that the plaintiffs' suit is subject to dismissal on the basis that it contains only
8 conclusory allegations and does not set forth facts necessary to support a cause
9 of action against the defendants, or to overcome immunity of the defendants.
10

11 14.8 FOR FURTHER ANSWER AND BY WAY OF AN ADDITIONAL
12 AFFIRMATIVE DEFENSE TO PLAINTIFFS' AMENDED COMPLAINT, these
13 defendants allege that the plaintiff has failed to exhaust his administrative
14 remedies, and further, has not utilized the procedures Washington State
15 provides for seeking remedies rendering the instant suit premature under
16 applicable federal/state decisional and statutory law.
17

18 14.9 FOR FURTHER ANSWER AND BY WAY OF AN ADDITIONAL
19 AFFIRMATIVE DEFENSE TO PLAINTIFFS' COMPLAINT, these defendants
20 state that they are immune from the instant suit under the doctrine of qualified
21 immunity, pursuant to state and/or federal statutory and decisional law.
22

23 14.11 FOR FURTHER ANSWER, AND BY WAY OF AN AFFIRMATIVE
24 DEFENSE TO PLAINTIFFS' AMENDED COMPLAINT, these defendants reserve
25
26

1 the right to add additional affirmative defenses, cross-claims, counterclaims and
 2 third party defendants, as further information becomes known and available.

3 WHEREFORE, having fully answered plaintiffs' Amended Complaint, these
 4 defendants pray for judgment as follows:

5 1. For judgment ordering that plaintiffs' Amended Complaint against
 6 these defendants be dismissed with prejudice and plaintiff take nothing thereby.


7 2. For judgment awarding the defendants any and all relief, including,
 8 but not limited to, their costs and reasonable attorney's fees.

9 3. For judgment awarding the defendants any and all relief, including,
 10 but not limited to, their costs and reasonable attorney's fees provided for in
 11 42 USC § 1988, pertaining to the prevailing parties.

12 3. For such other and further relief as the Court deems just and
 13 equitable.
 14

15 DATED this 14 day of June, 2000.

16
 17 ROBIN S. JENKINSON, City Attorney
 ELIZABETH A. PAULI, Ch. Asst. City Atty.

18
 19 By: 
 20 SHELLEY M. KERSLAKE, WSB #21820
 Assistant City Attorney
 Of Attorneys for Defendants
 21
 22
 23
 24
 25
 26

HONORABLE FRANKLIN D. BURGESS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

FILED
RECEIVED
LODGED
JUN 15 2000
BY [Signature]
U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT TACOMA
DEPUTY

JOSEPH J. KIRBY and DEBORAH A.
KIRBY, husband and wife,

Plaintiffs,

v.

THE CITY OF TACOMA, a municipal
corporation; RAY CORPUZ and "JANE
DOE" CORPUZ, husband and wife; PHILIP
ARREOLA and "JANE DOE" ARREOLA,
husband and wife; WILLIAM WOODARD
and CATHERINE WOODARD, husband and
wife; RAYMOND ROBERTS and "JANE
DOE" ROBERTS, husband and wife; DAVID
BRAME and "JANE DOE" BRAME, husband
and wife; and JAMES HAIRSTON and
"JANE DOE" HAIRSTON, husband and wife,

Defendants.

No. C00-5332 FDB

AFFIDAVIT OF SERVICE

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

MARLA J. HUGHES, being first duly sworn on oath, deposes and states:

I am a citizen of the United States over the age of eighteen and
competent to be a witness herein.

ORIGINAL

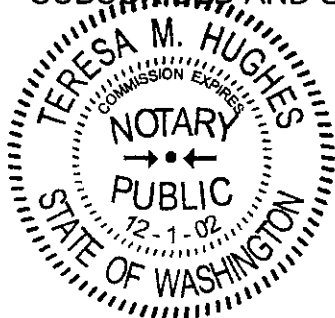
On the 14th day of June, 2000, I deposited with ABC Legal
Messengers copies of the Defendants' Answer and Affirmative Defenses to
Plaintiffs' Amended Complaint for Personal Injuries and Damages in Tort, with
directions to deliver the same to the following:

John L. Messina, Messina Bulzomi, 5316 Orchard St. W., Tacoma, WA
98467.

Marla J. Hughes

Marla J. Hughes

SUBSCRIBED AND SWORN to before me this 14th day of June, 2000.



Teresa M. Hughes

Printed name: Teresa M. Hughes
NOTARY PUBLIC in and or the State of
Washington residing at Tacoma
Commission expires: 12-1-02

ENTERED
ON DOCKET

JUN 07 2000

BY DEPUTY CMG

FILED	LODGED
RECEIVED	
JUN 07 2000	
CLERK U.S. DISTRICT COURT WESTERN DISTRICT OF WASHINGTON AT TACOMA	
BY	DEPUTY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JOSEPH J. KIRBY and DEBORAH A.
KIRBY, husband and wife,

C00-5332FDB

Plaintiffs,

ORDER REGARDING
DISCOVERY AND
DEPOSITIONS

V.

THE CITY OF TACOMA, a municipal
corporation; RAY CORPUZ and "JANE
DOE" CORPUZ, husband and wife;
PHILIP ARREOLA and "JANE DOE"
ARREOLA, husband and wife; WILLIAM
WOODARD and CATHERINE
WOODWARD, husband and wife;
RAYMOND ROBERTS and "JANE
DOE" ROBERTS, husband and wife;
DAVID BRAME and "JANE DOE"
BRAME, husband and wife; and JAMES
HAIRSTON and "JANE DOE"
HAIRSTON, husband and wife,

Defendants.

It is ORDERED that:

1. DISCOVERY. All discovery matters should be resolved by agreement if possible. If a ruling is needed on any discovery question, counsel should timely file a written motion. Upon proffer, only *emergency* ruling shall be expedited through a telephone conference all with the court at (253) 593-6307.

2. DEPOSITIONS. Depositions will be conducted in compliance with the following rules.

1 (a) **Examination.** If there are multiple parties, each side should ordinarily
2 designate on attorney to conduct the main examination of the deponent, an any questioning
3 by other counsel on that side should be limited to matters not previously covered.

4 (b) **Objections.** The only objections that should be raised at the depositions are
5 those involving a privilege against disclosure, or some matter that may be remedied if
6 presented at the time (such as the form of the question or the responsiveness of the answer),
7 or that the question seeks information beyond the scope of discovery. Objections on other
8 grounds are unnecessary and should be avoided. All objections should be concise and must
9 not suggest answers to, or otherwise coach, the deponent. Argumentative interruptions will
10 not be permitted.

11 (c) **Directions Not to Answer.** Directions to the deponent not to answer are
12 improper. Advice not to answer may be appropriate on the ground of privilege or to
13 enable a party or deponent to be present a motion to the court or special master for
14 termination of the deposition on the ground that it is being conducted in bad faith or in
15 such a manner as unreasonably to annoy, embarrass or oppress the party or the deponent,
16 or for appropriate limitations upon the scope of the deposition (e.g., on the ground that the
17 line of inquiry is not relevant nor reasonably calculated to lead to the discovery of
18 admissible evidence). When a privilege is claimed, the witness should nevertheless answer
19 questions relevant to the existence, extent or waiver of the privilege, such as the date of the
20 communication, who made the statement in question, to whom and in whose presence the
21 statement was made, other persons to whom the contents of the statement have been
22 disclosed, and the general subject matter of the statement.

23 (d) **Responsiveness.** Witnesses will be expected to answer all questions directly
24 and without evasion, to the extent of their testimonial knowledge, unless they choose to
25 follow the advice of counsel not to answer.

26 (e) **Private consultation.** Private conferences between deponents and their
27 attorneys during the actual taking of the deposition are improper, except for the purpose o

1 datelining whether a privilege should be asserted. Unless prohibited by the court for good
2 cause shown, such conferences may, however, be held during normal recesses and
3 adjournments.

4 (f) Conduct of Examining Counsel. examining counsel will refrain from asking
5 questions he or she knows to be beyond the legitimate scope of discovery, and from undue
6 repetition.

7 (g) Courtroom Standard. All counsel and parties should conduct themselves in
8 deposition with the same courtesy and respect for the rules that are required in the
9 courtroom during trial.

10 3. RESPONSIBILITY OF PLAINTIFF'S COUNSEL. This order is issued at
11 the outset of the case, and a copy is delivered by the clerk to counsel for plaintiff. Plaintiffs
12 counsel (or plaintiff if pro se) is directed to deliver a copy of this order to each other party
13 within ten(10) days after receiving notice of that party's appearance.

14 DATED this 7 day of JUNE 2000.

15
16 
17 FRANKLIN B. BURGESS
18 United States District Judge
19
20
21
22
23
24
25
26
27
28

car

United States District Court
for the
Western District of Washington
June 7, 2000

* * MAILING CERTIFICATE OF CLERK * *

Re: 3:00-cv-05332

True and correct copies of the attached were mailed by the clerk to the following:

John L Messina, Esq.
MESSINA LAW FIRM
5316 ORCHARD ST W
TACOMA, WA 98467-3633
FAX 1-253-475-7886

Shelley M Kerslake, Esq.
TACOMA CITY ATTORNEY'S OFFICE
STE 1120
747 MARKET ST
TACOMA, WA 98402-3767
253-591-5885

ENTERED
ON DOCKET

JUN 07 2000
BY DEPUTY MB

FILED _____ LODGED _____
RECEIVED
JUN 07 2000
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT TACOMA
BY _____ DEPUTY

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JOSEPH J. KIRBY and DEBORAH A.
KIRBY, husband and wife,

Plaintiffs,

V.

THE CITY OF TACOMA, a municipal
corporation; RAY CORPUZ and "JANE
DOE" CORPUZ, husband and wife;
PHILIP ARREOLA and "JANE DOE"
ARREOLA, husband and wife; WILLIAM
WOODARD and CATHERINE
WOODARD, husband and wife;
RAYMOND ROBERTS and "JANE DOE"
ROBERTS, husband and wife; DAVID
BRAME and "JANE DOE" BRAME,
husband and wife; and JAMES HAIRSTON
and "JANE DOE" HAIRSTON, husband
and wife,

Defendants.

C00-5332FDB

ORDER REQUIRING JOINT
STATUS REPORT

It is ORDERED that:

All parties are directed to confer and provide the Court with a Joint Status Report not later than October 6, 2000. FILING DEADLINES MEAN THE DATE ITEMS ARE TO BE FILED IN TACOMA. The Joint Status Report shall contain the following information:

1. What is the statutory jurisdictional basis for this Court's jurisdiction.
 - a. Concisely state the facts underlying the asserted basis for this Court's jurisdiction.
 - b. If a corporation is a party, name the state by which it was incorporated, and set forth facts demonstrating the corporation's principal place of business.
2. Is there any other jurisdiction where this cause of action might have been brought? If so, why is the Western District of Washington the preferred place of filing?
3. What is the nature and complexity of the case?
4. What is the status of the case including hearings, motions, and discovery.
5. Should this case or portions of it be referred to a Special Master pursuant to Fed.R. Civ.P. 53?
6. Is this case appropriate for mediation under Local Rule 39.1? *If no, explain.*
7. Do the parties agree to consent that a full-time magistrate judge may conduct all proceedings including trial under Local Rule MJR 13?
8. On what date will the case be ready for trial, considering Local Rule 16 deadlines?
9. Is the trial to be jury or non-jury?
10. The number of trial days required?
11. The names, addresses and telephone numbers of trial counsel?
12. The dates on which trial counsel are unavailable and any other complications to be considered in setting a trial date?
13. Suggestions for shortening or simplifying trial.
14. Should the case be bifurcated, trying liability issues before damages issues, or bifurcated in any other way?

It is the responsibility of the Plaintiff's counsel to serve a copy of this order upon all parties who may appear after this Order is filed within ten (10) days of receipt of service of an appearance. It is also the responsibility of Plaintiff's counsel to initiate the communication necessary to prepare this Joint Status Report.

If counsel are unable to agree upon the content of any part of the status report, they may

1 respond in separate paragraphs. *Separate status reports are not to be filed.*

2 If on the due date of the Joint Status Report, *all* defendant(s) or respondent(s) have not
3 been served, counsel for the plaintiff shall advise the Court in an independent status report when
4 service will be effected and why service has not been previously accomplished.

5 If on the due date the defendant(s) or Respondent(s) have been served and no answer or
6 appearance has been filed counsel for the plaintiff shall file an dependent status report setting
7 forth the above information in items 1 through 10 to the extent possible. This report shall also
8 include the current status of the non-appearing parties.

9 Failure to respond to this Order pursuant to its terms may result in the impositions of
10 sanctions by the Court. The Clerk of this Court is instructed to send uncertified copies of this
11 Order to all counsel of record.

12 DATED this 7 day of June 2000.

13
14
15
16 
17
18
19
20
21
22
23
24
25
26
27
28
FRANKLIN D. BURGESS
United States District Judge

car

United States District Court
for the
Western District of Washington
June 7, 2000

* * MAILING CERTIFICATE OF CLERK * *

Re: 3:00-cv-05332

True and correct copies of the attached were mailed by the clerk to the following:

John L Messina, Esq.
MESSINA LAW FIRM
5316 ORCHARD ST W
TACOMA, WA 98467-3633
FAX 1-253-475-7886

Shelley M Kerlake, Esq.
TACOMA CITY ATTORNEY'S OFFICE
STE 1120
747 MARKET ST
TACOMA, WA 98402-3767
253-591-5885

Judge Burgess

FILED RECEIVED LODGED
JUN 06 2000
BY CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT TACOMA DEPUTY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JOSEPH J. KIRBY and DEBORAH A.
KIRBY, husband and wife,

Plaintiffs,

v.

THE CITY OF TACOMA, a municipal
corporation; RAY CORPUZ and "JANE
DOE" CORPUZ, husband and wife; PHILIP
ARREOLA and "JANE DOE" ARREOLA,
husband and wife; WILLIAM WOODARD
and CATHERINE WOODARD, husband and
wife; RAYMOND ROBERTS and "JANE
DOE" ROBERTS, husband and wife; DAVID
BRAME and "JANE DOE" BRAME, husband
and wife; and JAMES HAIRSTON and
"JANE DOE" HAIRSTON, husband and wife,

Defendants.

No. C00-5332 FDB

(Superior Court of the State of
Washington County of Pierce
No. 99-2-13911-4)

NOTICE OF REMOVAL OF
ACTION FROM STATE COURT

TO THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT
COURT FOR THE WESTERN DISTRICT OF WASHINGTON

PLEASE TAKE NOTICE THAT, pursuant to 28 U.S.C. § 1441(b),
defendants, City of Tacoma, Ray Corpuz and Jane Doe Corpuz, Philip Arreola
and Jane Doe Arreola, William Woodard and Catherine Woodard, Raymond
Roberts and Jane Doe Roberts, David Brame and Jane Doe Brame, James

NOTICE OF REMOVAL - 1

ORIGINAL

Tacoma City Attorney
Civil Division
747 Market Street, Room 1120
Tacoma, Washington 98402-3767
(253) 591-5885/FAX 591-5755

(1)

Report # 500102

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

1 Hairston and Jane Doe Hariston, hereby remove this action from the Superior
2 Court of the State of Washington, County of Pierce, to the United States District
3 Court for the Western District of Washington at Tacoma. Defendants appear
4 solely for the purpose of removal and for no other purpose, reserving all other
5 defenses available to them and allege on information and belief as follows:

6 1. Plaintiff filed the above captioned action against defendants in the
7 Superior Court of the State of Washington, County of Pierce, on December 20,
8 1999. Each of the defendants have been served with, or accepted service of a
9 copy of the Complaint. A copy of the Complaint is attached hereto as Exhibit A.
10 Plaintiff filed the Amended complaint against defendants in the Superior Court
11 of the State of Washington, County of Pierce, on May 22, 2000. Defendant City
12 of Tacoma has been received a copy of the Amended Complaint and attaches
13 a copy hereto as Exhibit B.
14

15 2. This Notice of Removal is being filed within 30 days after the first
16 receipt by any defendant of the Amended Complaint and thus is timely filed
17 pursuant to 28 U.S.C. § 1446(b).
18

19 3. This is a civil action for which the United States District Court has
20 original jurisdiction pursuant to 28 U.S.C. § 1331 as the plaintiff has asserted, in
21 his Amended Complaint, a cause of action pursuant to 42 U.S.C. § 1983 for an
22 alleged violation of his constitutional and civil rights.
23

24 4. Plaintiff has also asserted various state tort actions. Defendants
25 request that all claims be removed from the Superior Court of the State of
26

1 Washington, County of Pierce, and that this Court exercise supplemental
2 jurisdiction over these claims pursuant to 28 U.S.C. § 1367(a) and 28 U.S.C.
3 § 1441(c).


4 5. Pursuant to 28 U.S.C. § 1446(a). copies of all process, pleadings,
5 and orders served upon defendants to date are attached.

6 5. The defendants will promptly file a copy of this Notice in the Superior
7 Court of the State of Washington, County of Pierce, and will serve a copy of the
8 same on the plaintiff in accordance with 28 U.S.C. § 1446(d).

9 WHEREFORE, the defendants give notice that the above-captioned
10 action commenced against them in the Superior Court of the State of
11 Washington, County of Pierce, has been removed to this Court.

12 DATED this 25 day of May, 2000.

13
14
15 ROBIN S. JENKINSON, City Attorney
16 ELIZABETH A. PAULI, Ch. Asst. City Atty.

17
18 
19 SHELLEY M. KERSLAKE, WSB #21820
20 Assistant City Attorney
21 Of Attorneys for Defendants
22
23
24
25
26

RECEIVED

1999 DEC 23 PM 2:47

CITY CLERK'S
OFFICE

RECEIVED

DEC 23 1999

FILED
IN COUNTY CLERK'S OFFICE
A.M. 12:00 1999 P.M.
PIERCE COUNTY, WASHINGTON
TED RUTT COUNTY CLERK
BY _____ DEPUTY

TACOMA CITY ATTORNEY
CIVIL DIVISION

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

JOSEPH J. KIRBY and DEBORAH A.)
KIRBY, husband and wife,)

Plaintiffs,)

vs.)

THE CITY OF TACOMA, a municipal)
corporation; RAY CORPUZ and)
"JANE DOE" CORPUZ, husband and)
wife; PHILIP ARREOLA and "JANE)
DOE" ARREOLA, husband and)
wife; WILLIAM WOODARD and)
CATHERINE WOODARD, husband and)
wife; RAYMOND ROBERTS and "JANE)
DOE" ROBERTS, husband and wife;)
DAVID BRAME and "JANE DOE")
BRAME, husband and wife; and)
JAMES HAIRSTON and "JANE DOE")
HAIRSTON, husband and wife,)

Defendants.)

No. 99 2 13911 4

COMPLAINT FOR PERSONAL
INJURIES AND DAMAGES IN
TORT

PLAINTIFFS ALLEGE:

MESSINA • BULZOMI

5316 Orchard St. W.
Tacoma, WA 98467-3633
(253) 472-6000

I.

1
2 Plaintiffs Joseph J. Kirby and Deborah A. Kirby were, at
3 all times material hereto, husband and wife and residents of
4 Pierce County, Washington.

II.

5
6 2.1 Defendant, The City of Tacoma, is a municipal
7 corporation duly authorized under the laws of the State of
8 Washington with its principal place of business located in Pierce
9 County, Washington.

10 2.2 The Tacoma Police Department is a department of The
11 City of Tacoma.

12 2.3 Defendant, The City of Tacoma, stood in the
13 relationship of employer of plaintiff and employed a work force
14 of a nature and extent to make it subject to the provisions of
15 RCW 49.60.

III.

16
17 3.1 At all times material hereto, defendants Ray Corpuz
18 and "Jane Doe" Corpuz were husband and wife, and residents of
19 Pierce County, Washington. All actions hereinafter alleged to
20 have been performed by defendant Ray Corpuz, were done for and on
21 his own behalf and for and on the behalf of the marital community
22 consisting of Ray Corpuz and "Jane Doe" Corpuz.

23 3.2 At all times material hereto, defendants Philip
24 Arreola and "Jane Doe" Arreola were husband and wife, and
25 residents of Pierce County, Washington. All actions hereinafter

MESSINA • BULZOMI

5316 Orchard St. W.
Tacoma, WA 98467-3633
(253) 472-6000

1 alleged to have been performed by defendant Philip Arreola, were
2 done for and on his own behalf and for and on the behalf of the
3 marital community consisting of Philip Arreola and "Jane Doe"
4 Arreola.

5 3.3 At all times material hereto, defendants William
6 Woodard and Catherine Woodard were husband and wife, and
7 residents of Pierce County, Washington. All actions hereinafter
8 alleged to have been performed by either William Woodard or
9 Catherine Woodard were done for and on each defendant's own
10 behalf and for and on the behalf of the marital community
11 consisting of William Woodard and Catherine Woodard.

12 3.4 At all times material hereto, defendants Raymond
13 Roberts and "Jane Doe" Roberts were husband and wife, and
14 residents of Pierce County, Washington. All actions hereinafter
15 alleged to have been performed by defendant Raymond Roberts, were
16 done for and on his own behalf and for and on the behalf of the
17 marital community consisting of Raymond Roberts and "Jane Doe"
18 Roberts.

19 3.5 At all times material hereto, defendants David Brame
20 and "Jane Doe" Brame were husband and wife, and residents of
21 Pierce County, Washington. All actions hereinafter alleged to
22 have been performed by defendant David Brame, were done for and
23 on his own behalf and for and on the behalf of the marital
24 community consisting of David Brame and "Jane Doe" Brame.

25
MESSINA • BULZOMI

5316 Orchard St. W.
Tacoma, WA 98467-3633
(253) 472-6000

VI.

1
2 For a cause of action against the defendants, plaintiff
3 Joseph J. Kirby claims that he was harassed and discriminated
4 against by the employees of defendant, The City of Tacoma, at
5 which time defendant's employees had authority over him and that
6 such harassment and discrimination were condoned by defendant The
7 City of Tacoma, which wrongfully and negligently failed to act to
8 protect plaintiff and to prevent further abuse. Said harassment
9 and discrimination made plaintiff's work environment hostile,
10 unpleasant and unbearable, and violated his rights.

VII.

11
12 For another cause of action against defendants, plaintiff
13 claims that said defendants retaliated against him for exercising
14 his rights under RCW 49.60.

VIII.

15
16 For another cause of action against defendants, plaintiff
17 claims that said defendant The City of Tacoma was negligent in
18 the hiring, retention and supervision of the above-named
19 individual defendants.

IX.

20
21 A Claim for Damages has been duly filed with the Division
22 of Risk Management of the City of Tacoma, for the injuries and
23 damages sustained by Joseph J. Kirby. Said claim has neither
24 been admitted nor denied.
25

MESSINA • BULZOMI

5316 Orchard St. W.
Tacoma, WA 98467-3633
(253) 472-6000

X.

1
2 As a direct and proximate result of the negligent and
3 unlawful conduct of the defendants, plaintiff Joseph J. Kirby
4 sustained personal injuries, both physical and mental, which will
5 continue for an indefinite period of time in the future; he has
6 suffered mental pain and psychological disability, together with
7 a loss of earnings; plaintiff has further been rendered highly
8 susceptible to further injury in the future, which susceptibility
9 will persist for an indefinite period of time, if not perma-
10 nently.

XI.

11
12 As a direct and proximate result of the defendants'
13 negligence and other unlawful conduct, plaintiff Deborah A. Kirby
14 has lost and continues to lose the services and consortium of
15 plaintiff Joseph J. Kirby, her husband, to her damage in such sum
16 of money as will reasonably compensate her for such loss, past,
17 present, and future.

XII.

18
19 As a direct and proximate result of the negligence and
20 unlawful conduct of defendants, plaintiffs have been specially
21 and generally damaged in an amount to be fully proven at the time
22 of trial.

XIII.

23
24 Under the provisions of RCW 49.60, plaintiffs are entitled
25 upon prevailing, to an award of reasonable attorneys' fees, and

MESSINA • BULZOMI

5316 Orchard St. W.
Tacoma, WA 98467-3633
(253) 472-6000

1 request the same in an amount to be determined at the conclusion
2 of the trial.

3 WHEREFORE, plaintiffs pray for judgment against the defen-
4 dants, for such sums of money as will reasonably and justly
5 compensate them for their damages sustained as hereinbefore
6 alleged, together with their costs and disbursements herein to be
7 taxed, and for prejudgment interest.

8 MESSINA BULZOMI

9
10 DATED: 12/4/99 BY *John L. Messina*
11 JOHN L. MESSINA 4440
12 Attorneys for Plaintiffs

13 STATE OF WASHINGTON)
14 County of Pierce) : ss.

15 JOSEPH KIRBY, being first duly sworn upon oath, deposes and
16 says:

17 That he is one of the plaintiffs above-named; that he has
18 read the foregoing Complaint for Personal Injuries and Damages in
19 Tort, knows the contents thereof and believes the same to be
20 true.

21
22 *Joseph Kirby*
23 JOSEPH KIRBY

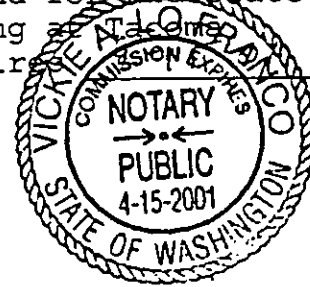
24 Signed and sworn to before me on the 20th day of Dec.,
25

MESSINA • BULZOMI
5316 Orchard St. W.
Tacoma, WA 98467-3633
(253) 472-6000

1 1999, by Joseph Kirby.

Patricia A. DeFranco

2 Notary Public in and for the State of
3 Washington, residing at [redacted]
4 My appointment expires [redacted]



5 **THE PLAINTIFF WILL NOT**
6 **ACCEPT SERVICE OF PLEADINGS**
7 **OR MOTIONS VIA FAX.**
8 [redacted]

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MESSINA • BULZOMI
5316 Orchard St. W.
Tacoma, WA 98467-3633
(253) 472-6000

orig. claim filed 9-1-99

RECEIVED

1999 DEC 23 PM 2:46

CITY CLERK'S OFFICE

RECEIVED

DEC 23 1999

TACOMA CITY ATTORNEY CIVIL DIVISION

FILED IN COUNTY CLERK'S OFFICE
A.M. 12:00 1999
PIERCE COUNTY WASHINGTON
TED RUTZ COUNTY CLERK
BY _____

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

JOSEPH J. KIRBY and DEBORAH A.)
KIRBY, husband and wife,)

Plaintiffs,)

vs.)

THE CITY OF TACOMA, a municipal)
corporation; RAY CORPUZ and)
"JANE DOE" CORPUZ, husband and)
wife; PHILIP ARREOLA and "JANE)
DOE" ARREOLA, husband and)
wife; WILLIAM WOODARD and)
CATHERINE WOODARD, husband and)
wife; RAYMOND ROBERTS and "JANE)
DOE" ROBERTS, husband and wife;)
DAVID BRAME and "JANE DOE")
BRAME, husband and wife; and)
JAMES HAIRSTON and "JANE DOE")
HAIRSTON, husband and wife,)

Defendants.)

No. 99 2 13911 4

SUMMONS

TO THE DEFENDANTS ABOVE NAMED:

A lawsuit has been started against you in the above-entitled court by the above-named plaintiffs. Plaintiffs' claim

MESSINA • BULZOMI

5316 Orchard St. W.
Tacoma, WA 98467-3633
(253) 472-6000

1 is stated in the written complaint, a copy of which is served
 2 upon you with this Summons.

3 In order to defend against this lawsuit, you must respond
 4 to the complaint by stating your defense in writing, and serve a
 5 copy upon the person signing this summons within 20 days after
 6 the service of this summons, if served within the State of
 7 Washington, and 60 days if served outside the State of
 8 Washington, excluding the day of service, or a default judgment
 9 may be entered against you without notice. A default judgment is
 10 one where plaintiffs are entitled to what they ask for because
 11 you have not responded. If you serve a notice of appearance on
 12 the undersigned person, you are entitled to notice before a
 13 default judgment may be entered.

14 You may demand that the plaintiffs file this lawsuit with
 15 the court. If you do so, the demand must be in writing and must
 16 be served upon the person signing this summons. Within 14 days
 17 after you serve the demand, the plaintiffs must file this lawsuit
 18 with the court, or the service on you of this summons and
 19 complaint will be void.

20 If you wish to seek the advice of an attorney in this
 21 matter, you should do so promptly so that your written response,
 22 if any, may be served on time.

23 This summons is issued pursuant to Rule 4 of the Superior
 24 Court Civil Rules of the State of Washington.

25 DATED this 6 day of Dec., 1999.

MESSINA BULZOMI

By John L. Messina
 JOHN L. MESSINA 4440
 Attorneys for Plaintiffs

MESSINA • BULZOMI

5316 Orchard St. W.
 Tacoma, WA 98467-3633
 (253) 472-6000

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

TACOMA CITY ATTORNEY
CIVIL DIVISION

DEC 23 1999

RECEIVED

RECEIVED

1999 DEC 23 PM 2:47

CITY CLERK'S
OFFICE

No. 99-2-13911-4
ORDER SETTING
CASE SCHEDULE

KIRBY

v.

CITY OF TACOMA

Type of Case: MSC
Track Assignment: Standard
Assigned Department: 18 - Judge Karen L. Strombom
Docket Code: ORSCS

Confirmation of Service	01/17/00
Confirmation of Joinder of Parties, Claims and Defenses	04/17/00
Jury Demand	04/24/00
Obtain Settlement Conf Judge/Comm from Commissioners' Services (See PCLR 3(c) 2(b) & 94.04 (f))	Week Of 05/15/00
Status Conference (Contact Court for Specific Date)	Week Of 05/15/00
Plaintiff's Disclosure of Primary Witnesses	06/12/00
Defendant's Disclosure of Primary Witnesses	07/10/00
Disclosure of Rebuttal Witnesses	08/28/00
Deadline for Filing Motion to Adjust Trial Date	09/25/00
Discovery Cutoff	10/30/00
Exchange of Witness and Exhibit Lists and Documentary Exhibits	11/13/00
Deadline for Hearing Dispositive Pretrial Motions	11/20/00
Settlement Conference (Contact Court for Specific Date)	Week Of 11/20/00
Joint Statement of Evidence	11/20/00
Pretrial Conference (Contact Court for Specific Date)	Week Of 12/04/00
Trial	12/18/00 9:30

NOTICE TO PLAINTIFF/PETITIONER

If the case has been filed, the plaintiff shall serve a copy of the Case Schedule on the defendant(s) with the summons and complaint/petition: Provided that in those cases where service is by publication the plaintiff shall serve the Case Schedule within five (5) court days of service of the defendant's first response/appearance. If the case has not been filed, but an initial pleading is served, the Case Schedule shall be served within five (5) court days of filing. See PCLR 1.

NOTICE TO ALL PARTIES

All attorneys and parties shall make themselves familiar with the Pierce County Local Rules, particularly those relating to case scheduling. Compliance with the scheduling rules is mandatory and failure to comply shall result in sanctions appropriate to the violation. If a statement of arbitrability is filed, PCLR 1 does not apply while the case is in arbitration.

DATED: 12/20/99



Judge Karen L. Strombom
Department 18

HON. KAREN L. STROMBOM

RECEIVED

MAY 24 2000
VIA
FILE

TACOMA CITY ATTORNEY
CIVIL DIVISION

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

JOSEPH J. KIRBY and DEBORAH A.)
KIRBY, husband and wife,)
Plaintiffs,)

No. 99 2 13911 4

vs.)

STIPULATION AND ORDER
AMENDING COMPLAINT

THE CITY OF TACOMA, a municipal)
corporation; RAY CORPUZ and)
"JANE DOE" CORPUZ, husband and)
wife; PHILIP ARREOLA and "JANE)
DOE" ARREOLA, husband and)
wife; WILLIAM WOODARD and)
CATHERINE WOODARD, husband and)
wife; RAYMOND ROBERTS and "JANE)
DOE" ROBERTS, husband and wife;)
DAVID BRAME and "JANE DOE")
BRAME, husband and wife; and)
JAMES HAIRSTON and "JANE DOE")
HAIRSTON, husband and wife,)

Defendants.)

FILED
DEPT. 18
~~IN OPEN COURT~~
MAY 22 2000
Pierce County Clerk
By _____ Deputy

Plaintiffs and defendants, by and through their attorneys
of record, hereby stipulate that plaintiffs may amend their

MESSINA • BULZOMI

5316 Orchard St. W.
Tacoma, WA 98467-3633
(253) 472-6000

1 complaint to add a claim based on 42 U.S.C. §1983.

2 DATED this 12th day of MAY 2000.

3 MESSINA BULZOMI

4 By [Signature]
5 JEFFREY H. SADLER 27136
6 Attorneys for Plaintiffs

7 [Signature]
8 SHELLEY M. KERSLAKE # 21820
9 Attorney for Defendants

10 ORDER

11 Based upon the foregoing stipulation, it is hereby
12 ORDERED that plaintiffs' may amend their complaint to add
13 a claim based on 42 U.S.C. §1983.

14 DONE IN OPEN COURT this ___ day of _____ 2000.

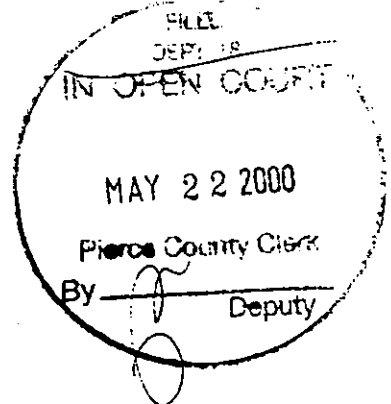
15
16
17 KAREN L. STROMBOM
18 JUDGE

18 Presented by:
19 MESSINA BULZOMI

20 By [Signature]
21 JEFFREY H. SADLER 27136
22 Attorneys for Plaintiffs

22 Copy received, notice of
23 presentation waived:

24 [Signature]
25 SHELLEY M. KERSLAKE # 21820
Attorney for Defendants



MESSINA • BULZOMI

5316 Orchard St. W.
Tacoma, WA 98467-3633
(253) 472-6000

HON. KAREN L. STROMBOM

CERTIFICATION

I hereby certify that on 4-14-00 I deposited
 in the mails of the United States of America and/or
 placed with Legal Messengers and/or faxed a copy of the
 document to which this certificate is attached, for
 delivery to all counsel of record.

Vickie A. DeFrances
 Messina Law Firm

RECEIVED

MAY 24 2000

11:49 AM
5/24/00

TACOMA CITY ATTORNEY
CIVIL DIVISION

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

JOSEPH J. KIRBY and DEBORAH A.)
KIRBY, husband and wife,)

Plaintiffs,)

vs.)

THE CITY OF TACOMA, a municipal)
corporation; RAY CORPUZ and)
"JANE DOE" CORPUZ, husband and)
wife; PHILIP ARREOLA and "JANE)
DOE" ARREOLA, husband and)
wife; WILLIAM WOODARD and)
CATHERINE WOODARD, husband and)
wife; RAYMOND ROBERTS and "JANE)
DOE" ROBERTS, husband and wife;)
DAVID BRAME and "JANE DOE")
BRAME, husband and wife; and)
JAMES HAIRSTON and "JANE DOE")
HAIRSTON, husband and wife,)

Defendants.)

No. 99 2 13911 4

AMENDED
COMPLAINT FOR PERSONAL
INJURIES AND DAMAGES IN
TORT

FILED
DEPT. 18
IN ORDER

MAY 22 2000

Pierce County Clerk
By [Signature] Deputy

PLAINTIFFS ALLEGE:

MESSINA • BULZOMI

5316 Orchard St. W.
Tacoma, WA 98467-3633
(253) 472-6000

I.

1
2 Plaintiffs Joseph J. Kirby and Deborah A. Kirby were, at
3 all times material hereto, husband and wife and residents of
4 Pierce County, Washington.

II.

5
6 2.1 Defendant, The City of Tacoma, is a municipal
7 corporation duly authorized under the laws of the State of
8 Washington with its principal place of business located in Pierce
9 County, Washington.

10 2.2 The Tacoma Police Department is a department of The
11 City of Tacoma.

12 2.3 Defendant, The City of Tacoma, stood in the
13 relationship of employer of plaintiff and employed a work force
14 of a nature and extent to make it subject to the provisions of
15 RCW 49.60.

III.

16
17 3.1 At all times material hereto, defendants Ray Corpuz
18 and "Jane Doe" Corpuz were husband and wife, and residents of
19 Pierce County, Washington. All actions hereinafter alleged to
20 have been performed by defendant Ray Corpuz, were done for and on
21 his own behalf and for and on the behalf of the marital community
22 consisting of Ray Corpuz and "Jane Doe" Corpuz.

23 3.2 At all times material hereto, defendants Philip
24 Arreola and "Jane Doe" Arreola were husband and wife, and
25 residents of Pierce County, Washington. All actions hereinafter

MESSINA • BULZOMI

5316 Orchard St. W.
Tacoma, WA 98467-3633
(252) 472-6000

1 alleged to have been performed by defendant Philip Arreola, were
2 done for and on his own behalf and for and on the behalf of the
3 marital community consisting of Philip Arreola and "Jane Doe"
4 Arreola.

5 3.3 At all times material hereto, defendants William
6 Woodard and Catherine Woodard were husband and wife, and
7 residents of Pierce County, Washington. All actions hereinafter
8 alleged to have been performed by either William Woodard or
9 Catherine Woodard were done for and on each defendant's own
10 behalf and for and on the behalf of the marital community
11 consisting of William Woodard and Catherine Woodard.

12 3.4 At all times material hereto, defendants Raymond
13 Roberts and "Jane Doe" Roberts were husband and wife, and
14 residents of Pierce County, Washington. All actions hereinafter
15 alleged to have been performed by defendant Raymond Roberts, were
16 done for and on his own behalf and for and on the behalf of the
17 marital community consisting of Raymond Roberts and "Jane Doe"
18 Roberts.

19 3.5 At all times material hereto, defendants David Brame
20 and "Jane Doe" Brame were husband and wife, and residents of
21 Pierce County, Washington. All actions hereinafter alleged to
22 have been performed by defendant David Brame, were done for and
23 on his own behalf and for and on the behalf of the marital
24 community consisting of David Brame and "Jane Doe" Brame.
25

1 VI.

2 For a cause of action against the defendants, plaintiff
3 Joseph J. Kirby claims that he was harassed and discriminated
4 against by the employees of defendant, The City of Tacoma, at
5 which time defendant's employees had authority over him and that
6 such harassment and discrimination were condoned by defendant The
7 City of Tacoma, which wrongfully and negligently failed to act to
8 protect plaintiff and to prevent further abuse. Said harassment
9 and discrimination made plaintiff's work environment hostile,
10 unpleasant and unbearable, and violated his rights.

11 VII.

12 For another cause of action against defendants, plaintiff
13 claims that said defendants retaliated against him for exercising
14 his rights under RCW 49.60.

15 VIII.

16 For another cause of action against defendants, plaintiff
17 claims that said defendant The City of Tacoma was negligent in
18 the hiring, retention and supervision of the above-named
19 individual defendants.

20 IX.

21 For another cause of action against defendants, plaintiff
22 claims that said defendants violated his rights under 42 U.S.C.
23 §1983, by discriminating against him based on his race.
24
25

MESSINA • BULZOMI

5316 Orchard St. W.
Tacoma, WA 98467-3633
(253) 472-6000

1 X.

2 A Claim for Damages has been duly filed with the Division
3 of Risk Management of the City of Tacoma, for the injuries and
4 damages sustained by Joseph J. Kirby. Said claim has neither
5 been admitted nor denied.

6 XI.

7 As a direct and proximate result of the negligent and
8 unlawful conduct of the defendants, plaintiff Joseph J. Kirby
9 sustained personal injuries, both physical and mental, which will
10 continue for an indefinite period of time in the future; he has
11 suffered mental pain and psychological disability, together with
12 a loss of earnings; plaintiff has further been rendered highly
13 susceptible to further injury in the future, which susceptibility
14 will persist for an indefinite period of time, if not perma-
15 nently.

16 XII.

17 As a direct and proximate result of the defendants'
18 negligence and other unlawful conduct, plaintiff Deborah A. Kirby
19 has lost and continues to lose the services and consortium of
20 plaintiff Joseph J. Kirby, her husband, to her damage in such sum
21 of money as will reasonably compensate her for such loss, past,
22 present, and future.

23 XIII.

24 As a direct and proximate result of the negligence and
25 unlawful conduct of defendants, plaintiffs have been specially

MESSINA • BULZOMI

5316 Orchard St. W.
Tacoma, WA 98467-3633
(253) 472-6000

1 and generally damaged in an amount to be fully proven at the time
2 of trial.

3 XIV.


4 Under the provisions of RCW 49.60, plaintiffs are entitled
5 upon prevailing, to an award of reasonable attorneys' fees, and
6 request the same in an amount to be determined at the conclusion
7 of the trial.

8 WHEREFORE, plaintiffs pray for judgment against the defen-
9 dants, for such sums of money as will reasonably and justly
10 compensate them for their damages sustained as hereinbefore
11 alleged, together with their costs and disbursements herein to be
12 taxed, and for prejudgment interest.

13 MESSINA BULZOMI.

14
15 DATED: 4-13-00

16 BY 
JOHN L. MESSINA 4440

17 BY 
JEFFREY H. SADLER 27136
18 Attorneys for Plaintiffs

19
20 STATE OF WASHINGTON)
21 : ss.)
County of Pierce)

22 JOSEPH KIRBY, being first duly sworn upon oath, deposes and
23 says:

24 That he is one of the plaintiffs above-named; that he has
25 read the foregoing Amended Complaint for Personal Injuries and

MESSINA • BULZOMI

5316 Orchard St. W.
Tacoma, WA 98467-3633
(253) 472-6000

1 Damages in Tort, knows the contents thereof and believes the same
2 to be true.

3
4 *Joseph Kirby*
JOSEPH KIRBY

5 Signed and sworn to before me on the 14th day of April,
6 2000, by Joseph Kirby.

7 *John A. De Franco*
8 Notary Public in and for the State of
Washington, residing at Tacoma.
9 My appointment expires 4-15-01.

10 **THE PLAINTIFF WILL NOT**
11 **ACCEPT SERVICE OF PLEADINGS**
12 **OR MOTIONS VIA FAX.**
13

14
15
16
17
18
19
20
21
22
23
24
25

HON. KAREN L. STROMBOM

CERTIFICATION

I hereby certify that on 4-7-00 I deposited
 in the mails of the United States of America and/or
 placed with Legal Messengers and/or faxed a copy of the
 document to which this certificate is attached, for
 delivery to all counsel of record.

V. U. Messina
 Messina Law Firm

RECEIVED

APR 17 2000
 VIA NBC
 1:30 PM

TACOMA CITY ATTORNEY
 CIVIL DIVISION

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

JOSEPH J. KIRBY and DEBORAH A.)
 KIRBY, husband and wife,)

No. 99 2 13911 4

Plaintiffs,)

SUMMONS ON AMENDED
 COMPLAINT FOR PERSONAL
 INJURIES AND DAMAGES IN
 TORT

vs.)

THE CITY OF TACOMA, a municipal)
 corporation; RAY CORPUZ and)
 "JANE DOE" CORPUZ, husband and)
 wife; PHILIP ARREOLA and "JANE)
 DOE" ARREOLA, husband and)
 wife; WILLIAM WOODARD and)
 CATHERINE WOODARD, husband and)
 wife; RAYMOND ROBERTS and "JANE)
 DOE" ROBERTS, husband and wife;)
 DAVID BRAME and "JANE DOE")
 BRAME, husband and wife; and)
 JAMES HAIRSTON and "JANE DOE")
 HAIRSTON, husband and wife,)

Defendants.)

TO THE DEFENDANTS ABOVE NAMED:

A lawsuit has been started against you in the above-
 entitled court by the above-named plaintiffs. Plaintiffs' claim

MESSINA • BULZOMI
 5316 Orchard St. W.
 Tacoma, WA 98467-3633
 (253) 472-6000

1 is stated in the written amended complaint, a copy of which is
 2 served upon you with this Summons.


3 In order to defend against this lawsuit, you must respond
 4 to the amended complaint by stating your defense in writing, and
 5 serve a copy upon the person signing this summons within 20 days
 6 after the service of this summons, if served within the State of
 7 Washington, and 60 days if served outside the State of
 8 Washington, excluding the day of service, or a default judgment
 9 may be entered against you without notice. A default judgment is
 10 one where plaintiffs are entitled to what they ask for because
 11 you have not responded. If you serve a notice of appearance on
 12 the undersigned person, you are entitled to notice before a
 13 default judgment may be entered.

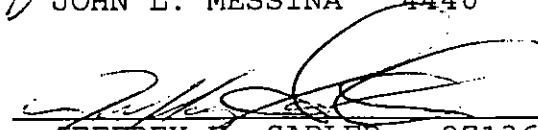
14 If you wish to seek the advice of an attorney in this
 15 matter, you should do so promptly so that your written response,
 16 if any, may be served on time.

17 This summons is issued pursuant to Rule 4 of the Superior
 18 Court Civil Rules of the State of Washington.

19 DATED this 13th day of April, 2000.

20 MESSINA BULZOMI

21 By 
 22 JOHN L. MESSINA 4440

23 By 
 24 JEFFREY H. SADLER 27136
 25 Attorneys for Plaintiffs

MESSINA • BULZOMI

5316 Orchard St. W.
 Tacoma, WA 98467-3633
 (253) 472-6000

FILED RECEIVED LODGED
JUN 06 2000
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT TACOMA
DEPUTY

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JOSEPH J. KIRBY and DEBORAH A.
KIRBY, husband and wife,

Plaintiffs,

v.

THE CITY OF TACOMA, a municipal
corporation; RAY CORPUZ and "JANE
DOE" CORPUZ, husband and wife; PHILIP
ARREOLA and "JANE DOE" ARREOLA,
husband and wife; WILLIAM WOODARD
and CATHERINE WOODARD, husband and
wife; RAYMOND ROBERTS and "JANE
DOE" ROBERTS, husband and wife; DAVID
BRAME and "JANE DOE" BRAME, husband
and wife; and JAMES HAIRSTON and
"JANE DOE" HAIRSTON, husband and wife,

Defendants.

No. **000-5382 FDB**

(Superior Court of the State of
Washington County of Pierce
No. 99-2-13911-4)

AFFIDAVIT OF SERVICE

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

MARLA J. HUGHES, being first duly sworn on oath, deposes and states:

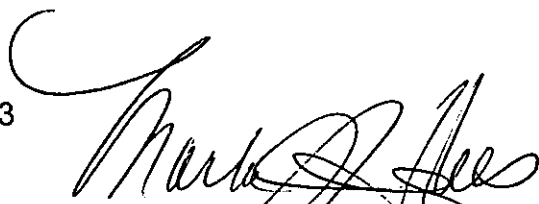
I am a citizen of the United States over the age of eighteen and
competent to be a witness herein.

ORIGINAL

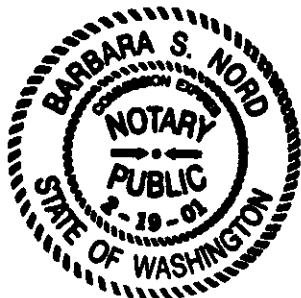
2

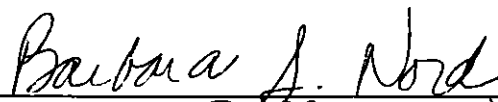
On the 5th day of June, 2000, I deposited with ABC Legal Messengers
copies of the *Notice of Removal of Action from State Court and Civil Cover*
Sheet, with directions to deliver the same to the following:

Jeffrey Sadler
MESSINA BULZOMI
5316 Orchard St W
Tacoma, WA 98467-3633


MARLA J. HUGHES

SUBSCRIBED AND SWORN to before me this 5th day of June, 2000.




Printed Name: BARBARA S. NORD
NOTARY PUBLIC in and for the State of
Washington, residing at: TACOMA
My commission expires: 2-19-01

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

JOSEPH J. KIRBY and DEBORAH A. KIRBY,
husband and wife

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF
(EXCEPT IN U.S. PLAINTIFF CASES)

DEFENDANTS : CITY OF TACOMA, a municipal corp.,
RAY CORPUZ and "JANE DOE CORPUZ, h/w, PHILIP
ARREOLA and "JANE DOE" ARREOLA h/w, WILLIAM
WOODARD and CATHERINE WOODARD h/w, RAYMOND
ROBERTS and "JANE DOE ROBERTS h/w, DAVID BRAME and
"JANE DOE BRAME h/w, JAMES HAIRSTON and JANE DOE
HAIRSTON, h/w (IN U.S. PLAINTIFF CASES ONLY) Pierce County

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Jeffrey H. Sadler
MESSINA BULZOMI
5316 Orchard St W.
Tacoma, WA 98467-3633

ATTORNEYS (IF KNOWN)

Shelley M. Kerslake
Assistant City Attorney
747 Market St. #1120
Tacoma, WA 98402

Pierce
FILED
RECEIVED
JUN 06 2000
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

II. BASIS OF JURISDICTION (PLACE AN "X" IN ONE BOX ONLY)

- 1 U.S. Government Plaintiff
- 2 U.S. Government Defendant
- 3 Federal Question (U.S. Government Not a Party)
- 4 Diversity (Indicate Citizenship of Parties in item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- | | | | | | |
|---|--------------------------------|--------------------------------|---|--------------------------------|--------------------------------|
| Citizen of This State | PTF <input type="checkbox"/> 1 | DEF <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | PTF <input type="checkbox"/> 4 | DEF <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Entitlement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 169 Other Contract <input type="checkbox"/> 193 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury — Med. Malpractice <input type="checkbox"/> 365 Personal Injury — Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commercial/CC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 610 Selective Service <input type="checkbox"/> 630 Patent <input type="checkbox"/> 630 Securities/Commodities/Exchange <input type="checkbox"/> 675 Customer Challenge 12 USC 3410 <input type="checkbox"/> 691 Agricultural Acts <input type="checkbox"/> 692 Economic Stabilization Act <input type="checkbox"/> 693 Environmental Matters <input type="checkbox"/> 694 Energy Allocation Act <input type="checkbox"/> 695 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 990 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Wetters <input checked="" type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence HABEAS CORPUS: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 620 Copyrights <input type="checkbox"/> 630 Patent <input type="checkbox"/> 640 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395f) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 670 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 671 IRS — Third Party 28 USC 7809

V. ORIGIN (PLACE AN "X" IN ONE BOX ONLY)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from another district (specify)
- 6 Multidistrict Litigation
- 7 Appeal to District Judge from Magistrate Judgment

ORIGINAL

VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

Plaintiff has asserted a cause of action pursuant to 42 U.S.C. § 1983 for an alleged violation of his constitutional and civil rights.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:
JURY DEMAND: YES NO

VIII. RELATED CASE(S) (See instructions): IF ANY

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

May 24, 2000

SHELLEY M. KERSLAKE, WSB #21820

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-44

Authority For Civil Cover Sheet

The JS-44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs - Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS-44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section IV above, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause.

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demands such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS-44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

JAMIGIRO

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
OFFICE OF THE CLERK
1717 Pacific Avenue
Tacoma, Washington 98402

*Mailed
6/6/00*

Case No. C00-5332FDB
Kirby v. City of Tacoma

Counsel:

The above entitled action was removed to the United States District Court from the Superior Court on June 6, 2000. This case has been assigned to the Honorable Franklin D. Burgess.

Your attention is directed to the provisions of Rule 38(b) and 81(c) of the Federal Rules of Civil Procedure, pertaining to the filing of demands for trial by jury in Federal Court.

You are also advised that by general order effective June 24, 1971, each petitioner for removal under Chapter 89 of Title 28, USC, shall, within ten days of filing his petition for removal, file with the clerk of this court black-on-white copies of all records and proceedings in the State Court, together with his or his counsel's verification that they are true copies of all records and proceedings in the State Court. The copies need not be certified or exemplified by the State Court, and the added cost of certification or exemplification will be not allowed as a cost item under 29 USC, Section 1920(4) unless certification is required after an opposing party challenges the accuracy of the copies.

Sincerely,

Bruce Rifkin, Clerk

By 

Deputy Clerk.

cc: all counsel