

The Honorable Suzanne R. Parisien
Trial Date: June 12, 2023
Noted for Hearing: April 17, 2023
Without Oral Argument

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

STACY IRWIN and KIMBERLY FERREIRO,

Plaintiffs,

v.

CITY OF SEATTLE, WASHINGTON, a
municipal corporation under the laws of the
State of Washington,

Defendant.

Case No. 21-2-11739-9 SEA

**PLAINTIFFS' MOTION
FOR SANCTIONS**

I. INTRODUCTION AND RELIEF REQUESTED

Plaintiffs Stacy Irwin and Kimberly Ferreiro request this Court award sanctions in the amount of \$18,400.00. This request for sanctions is against G. William Shaw for CR 11 sanctions and for Shaw his client, Jenny A. Durkan, for CR 37(b) sanctions. Plaintiffs seek CR 11 sanctions for filing a motion to quash and for a protective order that was devoid of facts, that was inconsistent with law, and appears to be done to increase the costs of litigation and to delay the proceedings and to harass the Plaintiffs. Plaintiffs seek CR 37(b) sanction against both Shaw and Durkan because the motion was filed without Shaw seeking or engaging in the requisite CR 26(i) discovery conference.

1 **II. STATEMENT OF FACTS**

2 **A. Plaintiffs attempt to obtain a date for Durkan’s deposition.**

3 On February 14, 2023, Defendant City of Seattle notified Plaintiffs that G. William Shaw
4 (hereinafter “Shaw”) was authorized to accept service of process for the deposition subpoena for
5 former Mayor Jenny Durkan. Mindenbergs Decl., Ex. 1. Shaw now claims that whether he was
6 authorized to accept service for Durkan was “in flux” on February 14, 2023. Shaw Decl. ¶9, Feb.
7 27, 2023, Sub. No. 132. That was untrue. On February 14, 2023, Defendant’s counsel, Brandi
8 Balanda, wrote in an email to Plaintiffs’ counsel: “we have been able to confirm that William Shaw
9 of K&L Gates is authorized to accept service of a deposition subpoena on former Mayor Jenny
10 Durkan for this matter.” Mindenbergs Decl., Ex. 1.

11 On February 15, 2023, Plaintiffs’ counsel contacted Shaw by phone and email to obtain a
12 date for the Durkan deposition but got no response from him. Mindenbergs Decl. ¶3. The following
13 day, Shaw returned Plaintiffs’ counsel’s call. Mindenbergs Decl. ¶4. Shaw confirmed he was
14 authorized to accept service of process for Durkan, but stated since she was “on vacation,” he would
15 get back to Plaintiffs about a date for her deposition. *Id.* Shaw also indicated he had been in contact
16 with the Defendant for some time about his authority to accept service of process for Durkan. When
17 asked how long, Shaw said, “in the past.” When asked if that meant weeks or months, Shaw
18 responded, “weeks—at least.” Mindenbergs Decl. ¶¶4-5, Ex. 2. Shaw’s declaration testimony that
19 he did not say “weeks—at least” is also untrue. *Id.* His claim that he saw no “utility” in responding
20 to the representation about what he said ignores the fact that Plaintiffs’ counsel not only repeated in
21 an email what he said in their telephonic conference but also again sought a date for Durkan’s
22 deposition. Shaw never responded to the February 16, 2023, email from Plaintiffs’ counsel seeking
23 a date for the Durkan deposition. Mindenbergs Decl. ¶6.

24 Mindenbergs contacted Shaw by email again on February 27, 2023, to obtain a date for the
25 Durkan deposition—this was the fifth contact with Shaw seeking a date for the Durkan deposition.
26 Mindenbergs Decl. ¶7, Ex. 3. Shaw again did not respond. Mindenbergs Decl. ¶8.

1 **B. Plaintiffs filed a motion to compel.**

2 Plaintiffs filed a motion to compel the address of Durkan or designation of counsel to accept
3 service. See Plaintiffs’ Motion, Sub. No. 121. On February 28, 2023, Shaw filed a declaration in
4 opposition to Plaintiffs’ motion. Shaw acknowledged he knew that Plaintiffs intended to take the
5 Durkan deposition in the “fall of 2022.” Shaw Decl. ¶3, Feb. 27, 2023, Sub. No. 132. Shaw testified
6 by declaration that he is “a partner at K&L Gates, LLP who are outside counsel for the City of
7 Seattle and represent the City in other pending matters.” Shaw Decl. ¶¶2-3, Mar. 20, 2023, Sub. No.
8 151. What Shaw omitted is that **he is counsel of record** for the case of *Taylor, et al. v. City of*
9 *Seattle*, Case No. 20-2-14351-1 SEA—a case involving the injury and death of people protesting
10 the murder of George Floyd and the City’s involvement in those injuries. Durkan was a witness in
11 the yet unresolved *Taylor* case. Shaw defended the Durkan deposition on behalf of the City of
12 Seattle. Mindenbergs Decl., Exs. 6 & 7.

13 When Shaw refused to respond to Plaintiffs’ five separate attempts to obtain a date for the
14 Durkan deposition, Plaintiffs were forced to have a process server serve a Subpoena for Remote
15 Video Conference Deposition of Jenny Durkan and for Production of Documents on Shaw at his
16 offices on March 7, 2023. Shaw Decl., Ex. A, Mar. 20, 2023, Sub. No. 151.

17 **C. Shaw filed a motion to quash and for a protective order.**

18 Shaw waited until March 20, 2023, to move to quash the Durkan subpoena and for a
19 protective order. See Motion to Quash/Protective Order, Sub No. 151. Shaw did not seek and did
20 not engage in a discovery conference pursuant to CR 26(i) prior to filing the motion to
21 quash/protective order. Mindenbergs Decl. ¶10. Instead, Shaw sent an email to Plaintiffs’ counsel
22 on March 20, 2023, announcing that he planned to file an “Apex motion” later that day to be heard
23 on March 28, 2023, the day before the Durkan motion was noted. Mindenbergs Decl., Ex. 4.
24 Contrary to Shaw’s representation, the motion to quash and for a protective order was noted for
25 March 31, 2023. Shaw filed the motion to quash and for a protective order as counsel for the City
26 of Seattle seeking the relief. See Motion to Quash, Sub. No. 147. The City’s lawyers in this matter

1 notified the Court that the City was not seeking the relief in the Durkan motion and that Shaw
2 represented Durkan, not the City of Seattle. See City’s Response, Sub. No. 148 and Balanda Decl.,
3 Sub. No. 149.

4 On Saturday, March 25, 2023, Shaw sent an email to Plaintiffs’ counsel in which he claimed
5 that Durkan was “out of town and not available for a deposition on March 29, 2023.” Mindenbergs
6 Decl., Ex. 5.

7 Plaintiffs responded to the Motion to Quash and for a Protective Order. Plaintiffs argued that
8 the Defendant had designated Durkan as a witness and a declaration of Kimberly Ferreiro
9 specifically identifying Durkan’s role in the decisions leading to the Whistleblower Complaint.
10 Plaintiffs also requested sanction under CR 11 and CR 37(b). See Plaintiffs’ Response in Opposition
11 to Jenny Durkan’s Motion to Quash and/or for Protective Order Regarding Subpoena to Jenny
12 Durkan for Deposition and Production of Documents, Sub. No. 152.

13 Durkan’s motion to quash the deposition subpoena and for a protective order prohibiting
14 Plaintiffs from taking the Durkan deposition is unsupported by facts. Shaw submitted a declaration
15 in support of the motion, but the declaration contains no facts claiming to support the claim that
16 former Mayor Durkan had no involvement in her legal counsel’s direction to Plaintiffs to violate the
17 PRA. Recognizing that his Motion to Quash was without merit, Shaw sent an email to the Court
18 striking the motion to quash.

19 On March 28, 2023, Plaintiffs’ counsel sent an email to Shaw indicating they would be
20 willing to refrain from seeking sanctions if Shaw and Durkan paid the attorney fees Plaintiffs
21 incurred in responding to the motion filed without a discovery conference, devoid of facts and law,
22 and oblivious that Durkan was named as a witness for the Defendant. Mindenbergs Decl., Ex. 8.

23 **D. Shaw filed a fraudulent certification.**

24 Even though Shaw has knowledge that the Defendant has listed Durkan as a trial witness, he
25 intends to move this Court again to quash the amended subpoena for the Durkan deposition and for
26 a protective order. To that end, on March 29, 2023, Shaw filed a notice of court date entitled:

1 “Defendant City of Seattle’s Motion to Quash and/or for Protective Order Regarding Subpoena to
2 Jenny Durkan for Deposition and Production of Documents.” See Notice, Sub. No. 155. A certificate
3 of compliance signed by Shaw is included with the notice in which he claims to have complied with
4 “the certification requirements of CR 26(i), having held a video Zoom conference with counsel for
5 Plaintiffs, Susan Mindenbergs, on March 29, 2023, on the issues addressed in the instant motion.”
6 See Certification, Sub. No. 157. This too is untrue—no such conference was held on March 29,
7 2023, or at any other time between Shaw and Plaintiffs’ counsel.¹

8 **E. Plaintiffs incurred attorney fees.**

9 Plaintiffs’ counsel spent 26 hours responding to the Shaw/Durkan motion to quash and for a
10 protective order. Mindenbergs Decl. ¶14, Ex. 8. Attorney Mindenbergs’ usual and customary hourly
11 rate is \$575.00 per hour. In 2022, Mindenbergs was counsel of record in the case entitled *LaRose*
12 *v. King County*, Pierce County Superior Court Case No. 15-2-13418-9. She was awarded \$550.00
13 an hour plus a 1.25 multiplier for a total of \$687.50 per hour for her work on that case. The jury in
14 *LaRose* returned a verdict in her favor in the amount of \$7,000,000.00. The trial court awarded fees
15 in the case in excess of \$4,000,000.00. Mindenbergs Decl., Ex. 9. On January 1, 2023, attorney
16 Mindenbergs increased her hourly rate from \$550.00 to \$575.00 per hour. Mindenbergs Decl. ¶16.

17 Plaintiffs are seeking \$14,950.00 for attorney fees incurred responding to Durkan Motion to
18 Quash and for Sanctions and an additional \$3,450.00 for six hours of attorney fees incurred drafting
19 this motion for sanctions for total of \$18,400.00.

20 **III. STATEMENT OF ISSUES**

- 21 **1. Whether the Court should award Plaintiffs attorney fees incurred responding to a**
22 **motion to quash/protective order when no discovery conference was held and the**
23 **motion is devoid of facts and law, is harassing, and had caused delay.**
- 24 **2. Whether the Court should award Plaintiffs attorney fees incurred for drafting the**
25 **motion for sanctions.**

26 ¹ Shaw sent an email regarding the submission to the Court blaming the submission on “clerical” staff.
Mindenbergs Decl., Ex. 8.

1 **IV. EVIDENCE RELIED UPON**

2 Plaintiffs Irwin and Ferreiro rely on the evidence contained in the Declarations of Susan B.
3 Mindenbergs and G. William Shaw, the exhibits thereto, and the pleadings and documents filed
4 herein.

5 **V. ARGUMENT AND AUTHORITY**

6 **A. Plaintiffs are seeking sanctions pursuant to CR 11.**

7 CR 11 “is aimed at reducing delaying tactics, procedural harassment and mounting legal
8 costs.” *Physicians Ins. Exch. v. Fisons Corp.*, 122 Wn.2d 299, 341, 858 P.2d 1054 (1993) (citing
9 3A L. Orland & Tegland, Wash. Prac., *Rules Practice* 215 (4th ed. 1992)). “Such practices ‘tend to
10 impose unjustified burdens on other parties, frustrate those who seek to vindicate their rights in the
11 courts, obstruct the judicial process, and bring the civil justice system into disrepute.’” *Fisons*, 122
12 Wn.2d 341 (citing *Schwarzer, Sanctions Under the New Federal Rule 11 – A Closer Look*, 104
13 F.R.D. 181, 182 (1985)). The purpose behind CR 11 is to deter baseless filings and to curb abuses
14 of the judicial system. *Bryant v. Joseph Tree, Inc.*, 119 Wn.2d 210, 219, 829 P.2d 1099 (1992). CR
15 11 requires attorneys to do the following: “1) conduct a reasonable inquiry into the facts supporting
16 the document; 2) conduct a reasonable inquiry into the law, such that the document embodies
17 existing legal principles or a good faith argument for the extension, modifications, or reversal of
18 existing law; and 3) not to interpose the document for the purposes of delay, harassment, or
19 increasing the costs of litigation.” *Watson v. Maier*, 64 Wn. App. 889, 896, 827 P.2d 311 (1992).

20 The Defendant has listed Durkan as a primary witness. After reasonable diligence, this
21 should have alerted Shaw that Durkan had testimonial knowledge. Instead, Shaw presented no
22 relevant facts supporting Durkan’s motion. The legal precedent Shaw cited was obviously
23 inapposite to the issues in this case. Shaw cited *Clarke v. Wash. Atty. General’s Office*, 133 Wn.
24 App. 767, 138 P.3d 144 (2006) in support of Durkan’s motion. Clarke was a clerk typist in the
25 Attorney General’s Office sought the deposition of Governor Gregoire in her capacity as former
26 Attorney General. There was no evidence that the Governor had “any personal knowledge about

1 Clarke, Clarke’s termination, or the incidents involving the termination.” Finding other people a
2 better source of first-hand, relevant information, the trial court denied Clarke’s motion to take the
3 Governor’s deposition. *Clarke*, 133 Wn. App. 767, 138 P.3d at 151. See also, *Dobson v. Vail*, No.
4 C10-5233 KLS (W.D. Wash. Sept. 21, 2011) (Plaintiff-inmate’s efforts to depose Washington
5 Secretary of Department of Corrections Eldon Vail quashed as “Plaintiff had not articulated how
6 testimony he seeks from Mr. Vail is relevant to his claims or that Mr. Vail has first-hand knowledge
7 that cannot be easily obtained from another source or through less burdensome means.”)

8 Shaw’s motion is not “well-grounded in fact, [and] not warranted by existing law . . .” See
9 *MacDonald v. Korum Ford*, 80 Wn. App. 883-84, 912 P.2d 1052 (1996). Here, Shaw failed to
10 engage into a reasonable pre-filing investigation into the factual and legal basis of his claim. See
11 *MacDonald*, 80 Wn. App. at 884. Shaw’s motives are unknown, but his refusal to communicate
12 with Plaintiffs’ counsel for weeks about a date for the Durkan deposition after acknowledging his
13 authorization to accept service of process for her, his lack of candor with the Court and with
14 Plaintiffs and his failure to be forthcoming with the Court about his representation of the City of
15 Seattle lead to the logical conclusion that his actions are clearly intended to cause procedural delay,
16 and to harass and increase the costs of litigation to Plaintiffs. CR 11 sanctions are appropriate here.

17 **B. Plaintiffs are seeking sanctions pursuant to CR 37(b).**

18 The Court should award costs and fees to Plaintiffs because Shaw/Durkan did not seek or
19 engage in a CR 26(i) conference before filing the motion to quash and for a protective order.² CR
20 26(i) provides, where a party has willfully “failed to confer in good faith, the court may apply the
21 sanctions provided under rule 37(b).” CR 37(b) sanctions include reasonable expenses, including
22 attorney fees. CR 37(b)(2). CR 37(b) sanctions are appropriate here.

23
24
25 ² Shaw’s March 29, 2023, submission to this Court falsely certifying his compliance with CR 26(i) may
26 have been submitted in error but it was submitted over his signature and was not true. Shaw’s blaming his
support staff notwithstanding, this most recent submission again caused unnecessary delay and increased the
costs to Plaintiffs.

1 **VI. CONCLUSION**

2 For the reasons cited above, Plaintiffs respectfully request this Court award Plaintiffs the
3 amount of \$18,400.00 as a CR 11 sanctions against G. William Shaw and CR 37(b) sanctions against
4 Shaw his client Jenny A. Durkan.

5
6 DATED this 4th day of April 2023.

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24
25 *I certify that this memorandum contains 2683 words, in compliance with the Local Civil Rules.*
26

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on April 4, 2023, the undersigned caused a true and correct copy of the
3 foregoing document to be served in the manner indicated below upon the following individual(s):

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19 The foregoing statement is made under the penalty of perjury under the laws of the State of
20 Washington and is true and correct.

21 DATED this 4th day of April 2023.

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