

I Sue for Money - WCOG Version

The following story describes how major supporters and contributors of the Washington Coalition for Open Government (WCOG) have used the Public Records Act. The supporters are numbered rather than named as it is the story that is important, not the actors. The references include the names, should anyone care to delve that deeply.

In the [About](#) page of this website, I noted that the City of Gold Bar would not be part of these postings. However, this story about the use of the PRA is too informative to omit.

This story starts (as did the previous post) at WCOG's Annual Conference at the UW campus in April 2010. In a break out session, a major supporter, a Seattle lawyer, call him WCOG Lawyer # 1, gave a talk on how to use the Washington State Public Records Act (PRA). His concluding remark was on handling disputes over the law and was "I could win, but there would be no money involved. So I sue for money." This seems to be a major characteristic of Washington's PRA.

Meanwhile, another WCOG supporter, call her WCOG Lawyer # 2, had hired WCOG Lawyer # 1 to pursue a PRA lawsuit against the City of Gold Bar. In that action, WCOG Lawyer # 1 told the City that the issue raised was important to his client and they would pursue the lawsuit into Appellate Court and the Supreme Court if necessary.

Shortly after that, there was a settlement meeting in which the lawyers said they would settle the lawsuit for \$ 90,000; \$ 30,000 to WCOG Lawyer # 1 and \$ 60,000 to WCOG Lawyer # 2 (the requestor). While the City's Attorney was reviewing the offer and preparing a response, both WCOG Lawyers left the building ending the discussion.

Meanwhile WCOG Lawyer # 2 and her associates pursued multiple legal actions against the City of Gold Bar and its elected officials. All court decisions were found to be in favor of the City and judgments provided against the plaintiffs in many of the cases. In one of the cases, WCOG Lawyer # 3 represented the plaintiffs at court which ruled for the City.

The initial lawsuit went to court and was argued on behalf of WCOG Lawyer # 2 by WCOG Lawyer # 1. The judge ruled for the City.

At this point in, both WCOG Lawyer # 1 and WCOG Lawyer # 3 relinquished their positions in the actions. However, all was not lost, as WCOG Lawyer # 4 arrived on the scene.

WCOG Lawyer # 4 initiated a settlement offer of over \$ 250,000 for three cases. Meanwhile, WCOG Lawyer # 2 continued with claims of criminal activity that she would be exposing. An interesting point here is that one of the cases did not yet exist. So, it was a settlement of “pay us or we will sue you some more”. A California court ruled in an eerily similar situation that the “pay us or we will sue you some more” while threatening criminal complaints was “extortion”. But the actions of WCOG Lawyers # 2 and # 4 under Washington State law are more plausibly called “open government”.

The City Council declined the offer and the three cases referenced moved on to Appellate Court in two cases and a new lawsuit was initiated in Federal Court in the third case. Let’s see how they turned out.

Case 1 was the appeal of the case argued by WCOG Lawyer # 1 and concerned sufficiency of a records search and attorney client privilege. In this instance, WCOG Lawyer # 5 arrived with a WCOG Amicus Brief for the court, which is a third party argument on the case. A most interesting part of this brief was that WCOG supported “blatantly abusing the PRA”. There were some factual errors in that brief and so approximately 60 upper Sky Valley Citizens supported an Amicus Brief in response to the WCOG brief.

As counsel on the case, WCOG Lawyer # 4 wrote a response to the Citizens brief. A major point made was that the 60 citizens were not an incorporated body and so did not have standing to make the brief. In other words, she one-upped Mitt Romney's "Corporations are people" to "Only corporations are people". In any case, the Court accepted the Citizens brief (whether or not they were incorporated) although the Court noted it might have no legal impact on the case.

The Appellate Court affirmed the Superior Court's decision saying *"Moreover, she has failed to call to our attention anything in this record where she provided evidence, not mere allegations,..."*

Case 2 was a continuation of the case argued by WCOG Lawyer # 3 and concerned alleged violations of the Open Public Meetings Act where the City Council allegedly made a decision in closed session. Interestingly, their evidence consisted of the declaration by a former councilmember who said that the Council did not vote on the issue in the closed session.

Even more interesting was a unique legal argument made by WCOG Lawyer # 4 at oral argument. She kept asking the court about the "secret powers" of Mayor Joe Beavers. Mayor Beavers, being in the audience, was thinking "Lady, if I had secret powers, you would be doing the Day-o dance from Beetlejuice right now".

The Appellate Court found for the City, noting that the plaintiff *"...fails to raise a genuine issue of material fact..."*

Case 3 was a Federal Civil Rights Lawsuit that had not been filed at the time of the settlement offer. This case was filed against an aggregate of Snohomish County elected and appointed officials. Without going into detail, the Judge's decision dismissing the case used words such as *"implausible"* and *"incomprehensible"*. An online commentator noted *"They left out looney"*.

So there you have it. A quarter million dollar settlement offer is made for three lawsuits that are based on little more than gossip passed off as breaking news. This would be funny in a “My Cousin Vinny” sort of way except that it costs local taxpayers tens of thousands of dollars to defend these lawsuits and they can only obtain hundreds of dollars in statutory relief when they win.

So, what is the Washington Coalition for Open Government anyway?

Is it an organization making sure that local taxpayers are well served by their governmental officials?

Or is it a cover for their major supporters to self-enrich themselves at the expense of local taxpayers?

WCOG Lawyer # 2 (currently suspended from the practice of law) has now upped the settlement offer to \$ 6,000,000 with the comment that she and her partner have the resources to continue these actions “for the next 30 years”.

Easy availability to public records is a hallmark of good government in Washington and should be protected. However, profiteering off of the process needs to go away.

This is not a rant against Washington Coalition for Open Government lawyers. They are simply doing what the law allows them to do.

This is a rant against a law that has a built-in financial incentive to encourage its use in an abusive manner.

References

Case 1

Snohomish County 10-2-02355-9

Appellate Court 71425-2-1

Case 2

Snohomish County 12-2-02255-9

Appellate Court 70321-8-1

Case 3

US District Court Case C14-235RAJ

California Case Reference

Mendoza v. Hamzeh (2013) 215 Cal.App.4th 799

Settlement Offer Reference

Sky Valley Chronicle February 17, 2014

<http://skyvalleychronicle.com/FEATURE-NEWS/NUISANCE-LAWSUIT-QUEEN-ANNE-BLOCK-DEMANDS-OVER-250-000-br-i-From-small-Washington-town-to-leave-it-alone-i-1640028>

Copies available upon request.