

November 18 2010 1:53 PM

KEVIN STOCK
COUNTY CLERK
NO: 10-2-14958-4

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8 **STATE OF WASHINGTON**
9 **PIERCE COUNTY SUPERIOR COURT**

10 IN THE MATTER OF:

NO. 10-2-14958-4

11 THE RECALL OF DALE WASHAM,
12 Pierce County Assessor-Treasurer.

DECLARATION OF ALAN L. MILES

13 I, Alan L. Miles, under penalty of perjury under the laws of the State of Washington,
14 hereby declare as follows:

15 1. I am a duly appointed, qualified and acting Special Deputy Pierce County
16 Prosecuting Attorney.

17 2. This is an action to determine the sufficiency of recall charges filed against Pierce
18 County Assessor-Treasurer Dale Washam.

19 3. This action was initiated based on a statement of charges filed with the Pierce
20 County Auditor on or about October 29, 2010 by Robin Farris, Chairman, Committee to
21 Recall Dale Washam.

22 4. On or about November 17, 2010, Robin Farris, Chairman, Committee to Recall
23 Dale Washam, filed an "Amended Request Adjudication [sic] to Petition to the Citizens of
24 Pierce County for Recall of the Pierce County Assessor-Treasurer, Mr. Dale Washam (To
25
26


1 Correct Citation in Page 2, These are the Allegations, Line 19, Charge 6, Line 2, and to
2 Correct Verification)” (the “Amended Request”). A true and correct copy of the Amended
3 Request is attached hereto as Exhibit A.

4
5 5. In this action, the statutory duties of the Pierce County Prosecuting Attorney are
6 limited to drafting a ballot synopsis of the charges, certifying the charges and the synopsis to
7 the Court, and petitioning the Court for approval of the synopsis and for a determination of the
8 sufficiency of the charges. The Prosecuting Attorney has discharged these duties.

9 6. The Prosecuting Attorney takes no position on the validity or effect, if any, of the
10 Amended Request.

11 EXECUTED this 18th day of November, 2010.

12
13 RUSSELL D. HAUGE
Kitsap County Prosecuting Attorney

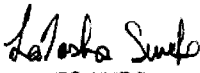
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16 ALAN L. MILES, WSBA No. 26961
17 Special Deputy Pierce County
Prosecuting Attorney
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Port Orchard, WA 98366-4676
19 (360) 337-7223
amiles@co.kitsap.wa.us

EXHIBIT A

November 17, 2010

Julie Anderson
Pierce County Auditor
2501 S. 35th St, Room 200
Tacoma, WA 98409


RECEIVED
Pierce County Auditor

NOV 17 2010

Subj: Amended Request Adjudication to Petition to the Citizens of Pierce County for Recall of the Pierce County Assessor-Treasurer, Mr. Dale Washam (To Correct Citation in Page 2, These are the Allegations, Line 19, Charge 6, Line 2, and to Correct Verification).

Enclosures:

- (1) Investigative Report - Investigation of Discrimination and Retaliation in the Pierce County Assessor/Treasurer's Office by Diane Hess Taylor dated August 7, 2009
- (2) Investigation Report: Complaints of Improper Governmental Conduct against Pierce County Assessor-Treasurer Dale Washam conducted by Kent Nakamura at Nakamura, LLC dated May 25, 2010 (Attachments not available)
- (3) Investigation Report - EEO Complaints in the Pierce County Office of the Assessor-Treasurer conducted by Donald W. Heyrich from Heyrich, Kalish, McGuigan, PLLC dated August 12, 2010
- (4) State of Washington Certificate of Appointment and Oath of Office

Dear Ms. Anderson,

As the Chairman of the Committee to Recall Dale Washam, I, Robin Farris, submit this document for the purpose of adjudication to petition for the recall of Pierce County Assessor-Treasurer for malfeasance on the following grounds:

1. Performance of duty in an improper manner;
2. Commission of illegal acts; and
3. Violation of the Oath of Office.

LAW GOVERNING RECALL OF AN ELECTED OFFICIAL

In *Chandler v. Otto*, 103 Wn.2d 268, 272, 693 P.2d 71, 73 (1984), the State Supreme Court outlines the onus of citizens to attempt a recall of an elected official as:

"For the purpose of recall, "(M)isfeasance or malfeasance in office means, 'wrongful conduct that affects, interrupts, or interferes with the performance of official duty.'" RCW 29A.56.110(1)

"Malfeasance can mean 'performance of a duty in an improper manner.'" RCW 29A.56.110(1)(a);

"Malfeasance can mean commission of an illegal act'" RCW 29A.56.010 (1)(b); and

"Violation of the Oath of Office is the willful (sic) neglect or failure by an elected public officer to perform faithfully a duty imposed by law." RCW 29A.56.110(2).

These are the allegations ...

Since taking office in January 2009, the Pierce County Assessor-Treasurer (A-T) consistently:

1. Performed his duty as Assessor-Treasurer in a grossly negligent manner that is incompatible with public office;
2. violated the laws of the State of Washington and Pierce County in the performance of his duties, created a hostile work environment with his capricious and retaliatory behavior, knowingly refused to cooperate with each of the three consultants hired to investigate employee Human Resources (HR) complaints; and
3. violated his Oath of Office.

In an effort towards brevity and clarity I will outline each of the allegations under the three definitions of malfeasance in the RCW 29A.56.110. Due to the large number of examples of Mr. Washam's poor judgment, attitude and behavior, I have selected the ones I have found to be the most offensive.

Mr. Washam had numerous EEO and retribution complaints since taking office in January, 2009. These complaints resulted in three investigations. The investigation results are detailed in Enclosure (1), (2) and (3). The following charges are based on these three investigations, research obtained on the Assessor-Treasurer's website and open source documents obtained by the Tacoma News Tribune through the Freedom of Information Act.

PERFORMANCE OF DUTY IN AN IMPROPER MANNER

1. As Assessor-Treasurer, Mr. Washam acted in a manner that is incompatible with public office.

Charge 1: Mr. Washam violated the Pierce County Code 3.14.030(c) Reporting Improper Government Action - Employee Protection, Pierce County Code 3.14.030(d) Retaliatory Action Prohibited, and Pierce County Code 3.14.030(e) Confidentiality of a Person Filing a Complaint

A. The A-T posted derogatory information on his website regarding Human Resource actions by his employees. In one example, Mr. Washam called an employee's HR complaint on the A-T website "Bogus." According to one report, the "Bogus" remark remained posted on the website under, 'Dale's Corner' for three months in 2009. He did not identify this person by name; however, he did post the investigation on his website with Ms. Barnes identified by name. These actions are unprofessional, retaliatory, and not consistent with the behavior a reasonable person might expect of an elected official; particularly an elected official with the level of trust required by the office of Assessor-Treasurer.

B. In the *first* investigation, in her summary of findings, Investigator Diane Hess Taylor, concludes, "Washam retaliated against the complainant based upon her participation in complaints against him based on [his religious references in the workplace] (1/22/09-see charge 2, example 3 of this document), and discrimination and retaliation (3/11/09).

Ms. Hess's findings further stated "the following events were retaliatory:"

1) Ostracism which included exclusion from communication, decision-making, and information about the Appraisal Division, which complainant oversees;

2) Requests for Investigation posted on Washam's website directed to the Pierce County Prosecuting Attorney, aimed at finding complainant "Guilty;" (Exhibit 14 of Enclosure (1)).

3) [The] 3/27/09 change in vacation policy, expressed in an email to the ATR office that the change was "due to abuse," and also publicly stating the change was "because a manager was abusing the policy," and "there's a manager who feels she can take two hours here and four hours there," clearly referring to the complainant. (Exhibit 9 of Enclosure (1))

4) Removal of the complainant's job duties (supervising nearly half the offices' staff, overseeing the Appraisal side of the office, participating as an office coordinator on the CAMA system upgrade, attendance at management team meetings and access to several sections on the office database;

5) [On] 5/11/09 assignment of complainant to a special project to remove her from her job, where she was assigned a lower level of work, and not provided sufficient direction to complete such projects;

The A-T reassigned a 31-year tenured employee of her leadership position and marginalized her into a special projects group. In the first of three investigations into Mr. Washam's chronic retaliatory behavior, Ms. Diane Hess Taylor, the investigator reported that "[w]hen the union requested details of the project and expected duration (on May 18), Deputy Ugas responded, 'we haven't thought that far ahead.'" His comment reflects that the reassignment was determined prior to identifying her function. And that the only other person Mr. Ugas could be referring to was Mr. Washam, when he said "WE haven't gotten that far."

6) [On] 5/12/09 removal of complainant from her office to a remote and inferior worksite." Enclosure (1), page 3-4

GROSS NEGLIGENCE IN OPERATION OF THE A-T OFFICE

Charge 2: Gross Waste of Public Funds as defined in RCW 42.40.020(5)

1. The A-T wasted hundreds of thousands of dollars pursuing criminal charges for his predecessor's use of statistical valuation rather than the physical inspections required by law. In the *second* investigation report (Enclosure (2)), Mr. Nakamura's reports on page 9 that, "Although 'gross waste of public funds' is undefined in Pierce County's Code, the state's whistle-blowing statute, [RCW 42.40.020(5)], defines a 'gross waste of funds' to mean, '...to spend or use funds or to allow funds to be used without valuable result in a timely manner[, which] grossly deviat[es] from the standard of care or competence that a reasonable person would observe in the same situation.'"

The following statements are examples of allowing funds to be used without valuable result:

A. Over the past 22 months in office, Mr. Washam doggedly pursued criminal charges against his predecessor, Mr. Madsen, regardless of the following rulings:

- 2005 Pierce County Superior Court Case No. 05-2-05329-7 finding, Judge William Thomas McPhee states, "The court further finds that there is a 'legally cognizable justification' for Mr. Madsen's actions and therefore Charge #2 is not legally sufficient." (page 2). "Charge #2 involved the alleged false reports to DOR, and so included elements of both the use of

- KMP initials and the failure to make the physical inspections. Judge McPhee's order was not appealed." Enclosure (1), Exhibit 15, page 2; or
- A 2009 review by the Washington State Auditor's office stating it was unlikely that Mr. Madsen's valuation methodology negatively impacted Pierce County residents.

Further, since March 2009, Mr. Washam wrote more than a dozen letters to state and county officials requesting a criminal investigation of Mr. Madsen's conduct from 2001-2008, each have summarily declined his request.

B. On October 18, 2010, as a private citizen, the Deputy A-T, Mr. Ugas, filed a document with the Pierce County Auditor's office to recall the Pierce County Prosecuting Attorney. This is one more transparent attempt by Mr. Washam to retaliate against the District Attorney, Mr. Lindquist, for not agreeing with the A-T office's attempts to criminally prosecute the former A-T, Mr. Ken Madsen.

C. According to employees, as stated in more than one investigation, Mr. Washam's pursuit to criminally prosecute Mr. Madsen takes up nearly 100% of Mr. Washam's, Mr. Ugas's and Ms. Borck's (the A-T's Assistant) time and energy.

VIOLATED THE RCW'S AND THE PIERCE COUNTY CODE

Charge 3: Mr. Washam violated the **Pierce County Code Chapter 3.14.030(c), Improper Governmental Action**, by failing to rectify his retaliatory acts and **3.16 Equal Employment Opportunity Policy**. "Under **Chapter 3.16**, he failed to protect Sally Barnes from retaliation, false accusations, or future improper treatment and has not taken reasonably prompt and effective remedial measures." Enclosure (2) page 47

Charge 4: Violated Pierce County Code 3.15.020(b)(2)

In open business settings, Mr. Washam used profane, questionable, negative or angry language and gestures. He continued to reference religion; in fact prefacing his comments with the knowledge of wrongdoing after being cautioned about this offending practice. The *second* of three Investigation Reports written by Kent Nakamura stated in May 2010 (over one year after Mr. Washam was initially cautioned not to bring religious comments into the workplace), "...Mr. Washam continued, as the agency head, to be involved in or permit conduct [that was] religious in nature." (Enclosure (2), page 9-10)

Example 1: Profane/Lewd Language: In the *third* investigation report, conducted by Mr. Heyrich of Heyrich, Kalish, McGuigan, PLLC dated August 12, 2010, Mr. Heyrich reports, "On May 11, 2009, [Mr. Washam said] that CE1 (Complaining Employee 1) did not get the job [promotion] because he 'stepped on his dick.'" (Enclosure (3), page 7)

Example 2: Angry gestures - In the *second* investigation, "Individual M went to see Mr. Washam, with Mr. Ugas present. S/he wanted to express that s/he was bothered by how he [Mr. Washam] viewed them. [Mr. Washam] told Individual M, pointing his finger at her face, "Where were you when this was going on?" [Physical inspections issue during Madsen's tenure (Enclosure (2), page 38)

Example 3: Questionable and willful disregard of earlier caution from the HR Director not to bring religion into the workplace- In the *second* investigation, Individual G stated, "'At this point, Mr. Washam said 'Lets (sic) go into Albert's office (Mr. Ugas).' I followed his direction and entered into Mr. Ugas's office. At this point I was confused as to what might occur because when we entered into his office they closed the door. Mr. Washam reached out his hand to me and reached out his hand to Mr. Ugas and then Mr. Ugas grabbed my hand and Mr. Washam said 'Albert I will let you say something.' At this point, Mr. Ugas prayed for [redacted identifying information]. Mr. Washam followed up in the prayer in a concurrence for the prayer that Mr. Ugas had already performed. We said Amen.'" (Enclosure (2), page 27)

Example 4: Open display of anger - In the *first* investigation, it is reported that in a January 22, 2009 Management Team Meeting, [Mr. Washam], accused the managers of fraud and not having integrity. He chastised employees for not quitting their jobs or blowing the whistle on then A/T Ken Madsen and Chief Deputy Kathy Fewins because of this policy (Physical Inspection Policy). Those present described Washam as visibly angry, almost yelling, during this meeting." (Enclosure (1), page 10)

Charge 5: Violated Pierce County Code 3.16.080(a) - Deliberate non-participation in Discrimination and Retaliation investigation held on August 7, 2009, May 25, 2010, and August 12, 2010, and RCW 42.20.080, Other Violation by Officers.

1. Ms Diane Hess Taylor investigation *one* writes, "...Dale Washam violated the Pierce County Policy requiring that employees participant in and cooperate fully in the investigation of complaints' by refusing to participate in an interview, refusing to provide requested documents, and refusing to permit a tour of office." (Enclosure (1), page 4)

2. Mr. Kent Nakamura states in the *second* investigation, "Dale Washam's refusal to be interviewed...have resulted in an absence of direct input and information that may have been of relevance to this investigation." (Enclosure (2), page 45)

3. Mr. Donald W. Heyrich states in the *third* investigation, " Assessor-Treasurer Dale Washam offered to participate in this investigation but only upon the submission of written questions and answers. This offer was not accepted because written questions and answers are not conducive to an effective investigation. Written 'interrogatories' provide no opportunity to observe the demeanor of a witness, no opportunity to challenge in-person the veracity and logic of statements by the witness, all of which are key factors in assessing allegations of discriminatory motive." (Enclosure (3), page 2)

VIOLATED HIS OATH OF OFFICE

Charge 6: Mr. Washam violated his Oath of Office by knowingly and purposely violating the RCW 42.20.080 and Pierce County Code 3.14.030(c), 3.14.030(d), 3.14.030(f), 3.15.020(b)(2), 3.16.090 and the intent of the law covered under RCW 42.40.010(5).

In his Oath of Office (Enclosure (4)), Mr. Washam swore or affirmed that he would **support the Constitution and laws of the United States and the State of Washington**; and that he would **faithfully and impartially** discharge the duties of his office to the best of his ability.

As detailed in this document, Mr. Washam violated several laws of the State of Washington and of Pierce County. He demonstrated that he is partial and biased in the discharge of his duties, as evidenced in the consistent nuisance letters he drafted regarding his predecessor, as well as the retaliatory recall effort of the Pierce County Prosecuting Attorney.

SUMMARY

An elected official is required and expected to:

- Demonstrate the highest standards of conduct, personal integrity and honesty in all activities in order to gain the confidence and trust of the public they serve.
- According to the Oath of Office, a public official is required to undertake all duties in a fair and impartial manner, refraining at all times from discrimination or the dispensation of special privileges.
- Strive to maintain a workplace that facilitates the growth and performance of employees; maintain a workplace that is free from hostility or harassment in any form. [Note 1]

Mr. Washam demonstrated a pattern of misconduct by (i) violating the laws of the State of Washington and of Pierce County; (ii) discrediting and disgracing the Pierce County Assessor-Treasurer's office; and (iii) degrading the public's trust. As the Chairman for the Committee to Recall Dale Washam, I respectfully request to petition the Pierce County voters to Recall Dale Washam.

I declare under penalty of perjury under the laws of the State of Washington, that the foregoing is true and correct to the best of my knowledge, and that I have sufficient knowledge of the alleged facts upon which the stated grounds for recall are based.



Robin Farris
Chairman, Committee to Recall Dale Washam
412 2nd St NW
Puyallup, WA 98371

Date: November 17, 2010

Note 1: Adapted by Robin Farris from the Rapid City Resolution under the title, Rapid City Code of Conduct for Elected Officials, date unknown.

Index of Referenced Statutes and Codes

***RCW 42.40.020(5)** - "Gross waste of funds" means to spend or use funds or to allow funds to be used without valuable result in a manner grossly deviating for the standard of care or competence that a reasonable person would observe in the same situation.

* RCW 42.40.020(5) is referred to in some enclosures as RCW 42.40.010. The statute was revised and the code is worded exactly the same in both revisions.

RCW 42.20.080 - Every officer or other person mentioned in Chapter 42.20.070, who shall willfully disobey any provision of law regulating his official conduct in cases other than those specified in said section, shall be guilty of a gross misdemeanor.

* Persons identified in RCW 42.20.070 are "Every public officer, and every other person receiving money on behalf or for or on account of the people of the state or of any department of the state government or of any bureau or fund created by law in which the people are directly or indirectly interested, or for or on account of any county, city, town, or any school, diking, drainage, or irrigations district.

Pierce County Code 3.14.030(c) - Reporting Improper Government Action - Employee Protection. "This section does not authorize a County officer...to report information that is subject to applicable privilege against disclosure by law unless waived, or to make disclosure where prohibited by law."

Pierce County Code 3.14.030(d) - Retaliatory Action Prohibited. It is unlawful for any County official or employee to take retaliatory action against an employee because he or she (or acting pursuant to his or her request): Provided information in good faith in accordance with the provisions of this Chapter that an improper governmental action occurred; or Cooperated in a lawful investigation related to improper governmental action; or 3. Testified in a proceeding or prosecution arising out of a complaint of improper governmental action.

Pierce County Code 3.14.030(e) - The identity of any person filing a complaint under this Chapter shall be treated as confidential* to the extent possible under law unless the employee authorizes the disclosure of his or her identity in writing.

*Confidential information is defined in RCW 42.52.010(7). "Confidential information" means (a) specific information, rather than generalized knowledge, that is not available to the general public on request or (b) information made confidential by law.

Pierce County Code 3.14.030(f) - No County officer or employee shall use his or her official authority or influence, directly or indirectly, to threaten, intimidate or coerce an employee for the purpose of interfering with that employee's right to disclose information concerning an improper governmental action in accordance with the provisions of this Chapter [3.14.030].

Pierce County Code 3.15.020(b)(2) - Acts of Violence Include, but are not limited to, any deliberate act of behavior which: 2. Constitutes a directly or indirectly communicated or reasonably perceived threat to cause harm, injure, intimidate or frighten another individual.

Pierce County Code 3.16.080(a) - Duty to Participate. All employees, including the complainant, co-workers, potential witnesses, and others must participate in and cooperate fully in the investigation of complaints. Failure to do so may result in disciplinary action.

Pierce County Code 3.16.090 - Retaliation Prohibited. Retaliation is an adverse employment action, taken against an individual because they have exercised a right protected under the law such as complaining about discrimination or harassment or assisting with or participating in the resolution or investigation of such a complaint in the workplace. Any form of retaliation against a person who participates in a complaint or investigation is specifically prohibited, will not be tolerated, and will be subject to severe disciplinary action up to an (sic) including termination of employment.