Respondent Name
Committee to Recall Snohomish County Sheriff Adam Fortney
Complainant Name
Glen Morgan
Complaint Description

Glen Morgan reported via the portal *(Fri, 7 Aug 2020 at 11:16 AM)*

To whom it may concern,

It has come to my attention that Colin McMahon (WSBA#49152), Brittany Tri (WSBA #49925), Samantha Sommerman (WSBA #49917), and Terry Preshaw (WSBA #18153) are actively, knowingly violating Washington State's campaign finance laws (**RCW 42.17A**). They are all attorneys working on the Adam Fourtney Recall campaign in Snohomish County. The specific details of these violations are as follows:

1) Failure to file a Statement of Organization for this recall campaigns political committee. Attempt to conceal all information about this campaign from the public (Violation of RCW 42.17A.205)

These attorneys have all failed to complete or even attempt to complete a statement of organization and file it with the Public Disclosure Commission as clearly required by **RCW 42.17A.205(1)**. As licensed and practicing attorneys in the State of Washington (please note, their bar licenses are referenced in numerous exhibits attached) they are fully aware of this requirement and capable of complying with this law. They have just chosen to flout and ignore the law.

As you are aware, the Washington State Supreme Court has ruled that legal activity on behalf of initiatives in 2019 (Freedom Foundation case) (and this applies to recall campaigns as well) must be reported to the PDC – even if provided pro-bono. This includes the requirement to report all legal expenses, costs, and the organizations or individuals paying these costs or expenses. Anonymous, secretive, dark money projects like this operation are not legal for these types of activities, even if these attorneys believe they can conceal their costs from public scrutiny.

An argument can be made that the incurred legal costs to file the initial recall petition can be concealed from the public, but in this case, the extensive legal activity in this case ***after*** the initial petition has been filed, which I have documented with a plethora of exhibits which include a variety of legal motions, responses, appeals, transcripts (which should be requested by the PDC staff via subpoena if they refuse to provide them since these would also indicate and support the substantial amount of time invested by these professional attorneys in this matter), hearings, etc have all occurred in total public secrecy as it applies to the requirement by this shadowy dark money group to report to the Public Disclosure Commission.

Of particular note, if this campaign has been funded by one primary outside source, this committee will need to pay attention to **RCW 42.17A.205(5)** and provide that specific sponsorship in the name of the PAC they have created.

2) Failure to identify a campaign treasurer, possible attempt to conceal the identity of this candidate's treasurer (Violation of RCW 42.17A.210)

In addition to concealing all information about this political campaign and committee from the public by not filing a statement of organization, this dark money crew has failed to identify a treasurer for this secretive operation, which is a clear and unambiguous violation of **RCW 42.17A.210**

3). Failure to identify a campaign depository, possible attempt to conceal the campaign depository from the public (Violation of RCW 42.17A.215)

In addition to concealing all information about this organization from the public by not filing a statement of organization, and failing to identify a treasurer, this crew has also willfully chosen to fail to identify a campaign depository for this political campaign, which is a clear and unambiguous violation of **RCW 42.17A.215**

4). Failure to maintain campaign records or provide contact information for a treasurer to enable campaign books and accounts to be inspected (Violation of RCW 42.17A.235(6), see also WAC 390-16-043)

As a result of this candidate's failure to comply with **RCW 42.17A.205**, this also ensures this campaign is in clear and unambiguous violation of **RCW 42.17A.235(6)** which requires all political campaigns (including recall campaigns like this one) provide their treasurer's contact information so that public inspection of their campaign books can be made. This is another clear and unambiguous violation of Washington State's campaign finance laws and part of a pattern of behavior with this group to ignore the statute and presume the laws do not apply to them (or to presume they can get away with violating the law because they will never be held accountable for their lawbreaking due to the political affiliation of their members or the people who finance their efforts).

5) Failure to report expenses and contributions (Violation of RCW 42.17A.235 and 42.17A.240, see WAC 390-16-041, and WAC 390-05-235)

Additionally, it should be noted that this secretive gang of dark money attorneys have also concealed the expenditures and contributions their organization has collected and expended to facilitate a large volume of legal activity as evidenced by the many exhibits I have attached below. If the defendants claim to be doing this activity pro bono, then they must comply with the in-kind contribution vales (see **WAC 390-05-235)** and report this accurately (See **WAC 390-16-207**).

These are professional attorneys, presumably not suspended from the Washington State Bar Association. They are familiar with the law. They are paid to know the law and practice law in Washington State. It is inexcusable they have so willfully and flagrantly and with malice aforethought chosen to break the law in this instance. It appears likely this is only the tip of the iceberg in their lawbreaking, if they are willing to be so flagrantly illegal in this case.

It should also be recognized that this secretive group may be attempting to conceal sources of illegal funding or embarrassing dark money funding sources from the public which would indicate they have chosen to willfully conceal this information from the public for nefarious and very problematic and concerning reasons. If this proves to be the case here, these attorneys could also be sanctioned under **RCW 42.17A.750 (2)(a),** which could lead to criminal or civil prosecution.

Please let me know if you need any additional information or evidence to support these very clear and obvious violations of Washington State's campaign finance laws by this political candidate.

Best Regards,

Glen Morgan

Verification of filing documents to Supreme Court - June 26 - 2020.pdf
24.91 KB

Recall Petition - Filed.pdf
1.78 MB

Recall of Sheriff Fortney re Amended Briefing Schedule Ltr.pdf
46.25 KB

Petitioners' Proposed Ballot Synopsis.pdf
32.1 KB

Motion for Accelerated Review - Supreme Court Doc filings.pdf
39.88 KB

Fortney Recall Motion to strike late filings final.pdf
83.15 KB

Amended 6.2.20.Calendar.Note.pdf
143.98 KB

21476108_web1_M-Zoom-Court-EDH-200603.jpg
115.58 KB

20-2-02972-31 Petitioner Reply.pdf

2.31 MB

6.9.20.Calendar_Note.pdf
133.74 KB

What impact does the alleged violation(s) have on the public?

The public has a right to know what dark money funds are being used and how much resources are being expended (in-kind or otherwise) in an effort to remove duly elected officials and overturn recent election results by the voters. It is particularly problematic when professional lawyers, who know the law and are licensed to practice the law in Washington State are so willing to overtly and maliciously break that same law for their own secretive and undisclosed reasons.

List of attached evidence or contact information where evidence may be found

See attached. Primarily I have attached evidence of the extensive legal efforts and time expended by the violators listed here. This is only a partial list of evidence, as the PDC should exercise their subpoena powers to obtain transcripts and other information would would further document the extensive resources and time dedicated by these professionals (and concealed from the public) in this matter

List of potential witnesses with contact information to reach them

In addition to all the listed attorneys, it is possible the PDC may need to contact opposing counsel and the judges involved in this matter if the listed violators are unwilling or obstruct the PDC from obtaining the information necessary to document and verify the secretive resources utilized in this political campaign and operation.

Certification (Complainant)

I certify (or declare) under penalty of perjury under the laws of the State of Washington that information provided with this complaint is true and correct to the best of my knowledge and belief.

COLIN MCMAHON - FILING PRO SE

June 26, 2020 - 12:51 PM

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	98683-5
Appellate Court Case Title:	In Re Petition for Recall of Adam Fortney
Superior Court Case Number:	20-2-02972-4

The following documents have been uploaded:

- 986835_Motion_20200626124603SC783912_3590.pdf
  This File Contains:
  Motion 1 - Accelerate Review
  The Original File Name was Motion for Accelerated Review.pdf

A copy of the uploaded files will be sent to:

- Rebecca.Guadamud@co.snohomish.wa.us
- Sams@mazzonelaw.com
- brittany.tri@gmail.com
- brittany@alfordlawteam.com
- cmcmahon@snocopda.org
- colinjamesmcmahon@gmail.com
- gahrend@ahrendlaw.com
- kmurray@snoco.org
- mark@northcreeklaw.com
- scanet@ahrendlaw.com
- ssommerm@gmail.com
- terrypreshaw@mac.com

Comments:

Sender Name: Colin McMahon - Email: colinjamesmcmahon@gmail.com
Address:
PO Box 2591
Everett, WA, 98213
Phone: (425) 299-6227

Note: The Filing Id is 20200626124603SC783912

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Snohomish County Auditor

RECALL OF SNOHOMISH COUNTY SHERIFF, ADAM FORTNEY
STATEMENT OF CHARGES
With Supporting Declarations and Exhibits
Pursuant to RCW 29A.56.110, et seq.

Mr. Garth Fell
Snohomish County Auditor
3000 Rockefeller Avenue
Everett, WA 98201

RE: Filing of Statement of Charges for Recall of Adam Fortney, Snohomish County Sheriff

Dear Mr. Fell:

This letter and its attachments constitute the Statement of Charges in support of the Recall of Snohomish County Sheriff, Adam Fortney, pursuant to RCW 29A.56.110 and the Washington State Constitution, article I, sections 33 and 34. Sheriff Adam Fortney has committed acts of malfeasance and misfeasance while in office and has violated his oath of office. This Statement of Charges is verified under oath, states the acts complained of in concise language, gives a detailed description including the approximate date, location and nature of each act complained of, and is signed by the person(s) making the charge.

I. Duties of Snohomish County Sheriff Adam Fortney

Snohomish County is a political subdivision of the State of Washington, established under by the territorial government in 1865, and subsequently made one the original counties of the State of Washington pursuant to article XI, section 1 of the Washington State Constitution. Article XI. section 5 of the Washington State Constitution provides. in relevant part, that:

> The legislature, by general and uniform laws, shall provide for the election in the several counties of boards of county commissioners, sheriffs, county clerks, treasurers, prosecuting attorneys, and other county, township or precinct and district officers, as public convenience may require, and shall prescribe their duties, and fix their terms of office.

RCW 36.28.010 prescribes the Sheriff's general duties:

> The sheriff is the chief executive officer and conservator of the peace of the county. In the execution of his or her office, he or she and his or her deputies:

(1) Shall arrest and commit to prison all persons who break the peace, or attempt to break it, and all persons guilty of public offenses;

(2) Shall defend the county against those who, by riot or otherwise, endanger the public peace or safety;

(3) Shall execute the process and orders of the courts of justice or judicial officers, when delivered for that purpose, according to law;

(4) Shall execute all warrants delivered for that purpose by other public officers, according to the provisions of particular statutes;

(5) Shall attend the sessions of the courts of record held within the county, and obey their lawful orders or directions; [and]

(6) Shall keep and preserve the peace in their respective counties, and quiet and suppress all affrays, riots, unlawful assemblies and insurrections, for which purpose, and for the service of process in civil or criminal cases, and in apprehending or securing any person for felony or breach of the peace, they may call to their aid such persons, or power of their county as they may deem necessary.

RCW 36.28.011 further prescribes the Sheriff's duty to "make complaint of all violations of the criminal law, which shall come to their knowledge, within their respective jurisdictions."

Moreover, RCW 36.28.020 states:

...Persons may also be deputed by the sheriff in writing to do particular acts; including the service of process in civil or criminal cases, and the sheriff shall be responsible on his or her official bond for their default or misconduct.

Adam Fortney was elected as Snohomish County Sheriff on November 5, 2019 with 98,568 votes – 55.38 percent of the 177,973 votes cast for the office.[1] On December 30, 2019, Sheriff Adam Fortney signed and executed his oath of office[2] which states as follows:

I, Adam Fortney, do solemnly swear (or affirm) that I will support the Constitution and Laws of the United States and the Constitution and Laws of the State of Washington and the provisions of the Charter and Ordinances of Snohomish County, and that I will faithfully and impartially discharge

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[1] Snohomish County Elections Office, *Summary Report, Snohomish County, 2019 General, Nov 05, 2019* (Nov. 26, 2019), https://www.snohomishcountywa.gov/DocumentCenter/View/68947/Summary-Report?bidId=.

[2] Oath of Office attached as Exhibit 1.

the duties of the office of Snohomish County Sheriff for a 4-year term according to law to the best of my ability[.]

Adam Fortney commenced duties to the elected position of Snohomish County Sheriff on January 1, 2020.

II. Summary of Charges

Since commencing the duties as sheriff of Snohomish County, Adam Fortney has (1) endangered the peace and safety of the community; (2) failed to defend the county against individuals who endanger the peace and safety of the community; (3) interfered with and obstructed lawful government orders; (4) failed to conduct adequate investigations; and (4) otherwise violated his duties as proscribed by RCW 36.28.010(1), (2) and (6) and RCW 36.28.011.

All the acts committed by Snohomish County Sheriff, Adam Fortney, summarized above and further described below, were performed wrongfully, knowingly, and with intent and constitute malfeasance, misfeasance, and/or a violation of his oath of office.

III. Factual and Legal Sufficiency for Recall of Sheriff Adam Fortney

A. Constitutional Right to Recall

Article 5 of the Snohomish County Charter is entitled "The Powers Reserved by the People." Section 5.90 is entitled "The Recall" and provides, "The fourth power reserved for the people is the recall as provided in the constitution and the laws of the state of Washington."

The right to recall elected officials is a fundamental right of the people guaranteed by article I, sections 33 and 34 (amend. 8) of the Washington State Constitution. *Chandler v. Otto*, 103 Wn.2d 268, 270 (1984). Section 33 contains the substantive right of recall and provides "[e]very elective public officer of the State of Washington . . . is subject to recall and discharge by the legal voters of the state. . ." Section 34 permits the Legislature to "pass the necessary laws" to carry out section 33 "and to facilitate its operation and effect without delay." Pursuant to this authority, the Legislature adopted Chapter 29.82 RCW, which was enacted "to provide the substantive criteria and procedural framework for the recall process." *Matter of Pearsall-Stipek*, 136 Wn.2d 255, 262-63, 961 P.2d 343, 347 (1998). RCW 29.82 has since been re-codified as RCW 29A.56. Recall statutes are construed in favor of the voter, not the elected official. *In re Recall of Washam*, 171 Wn.2d 503, 510 (2011).

Elected officials in Washington may be recalled for malfeasance, misfeasance, or violating their oath of office. Const. art. I, § 33; "Courts act as a gateway to ensure that only charges that are factually and legally sufficient are placed before the voters, but [they] do not evaluate the truthfulness of those charges." *Washam*, 171 Wn.2d at 510 (citing RCW 29A.56.140).

B. The Requirement of Factual Sufficiency

Charges are factually sufficient if "taken as a whole they do state sufficient facts to identify to the electors and to the official being recalled acts or failure to act which without justification would constitute a prima facie showing of misfeasance, malfeasance, or violation of oath of office." *Chandler*, 103 Wn.2d at 274. "Voters may draw reasonable inference from the facts; the fact that conclusions have been drawn by the petitioner is not fatal to the sufficiency of the allegations." *In re Recall of West*, 155 Wn.2d 659, 665 (2005).

"A charge is factually sufficient if the facts establish a prima facie case of misfeasance, malfeasance, or violation of the oath of office and are stated in concise language and provide a detailed description in order to enable the electorate and a challenged official to make informed decisions." *In re Recall of Telford*, 166 Wn.2d 148, 154 (2009) (internal citations omitted, emphasis in original). "In this context, 'prima facie' means that, accepting the allegations as true, the charge on its face supports the conclusion that the official committed misfeasance, malfeasance, or violations of the oath of office." *In re Recall of Wade*, 115 Wn.2d 544, 548 (1990).

RCW 29A.56.110 requires that "the person . . . making the charge . . . have knowledge of the alleged facts upon which the stated grounds for recall are based." There is no requirement that the petitioner have firsthand knowledge of such facts. Rather he or she must have some knowledge of the facts underlying the charges. *In re Recall of Wasson*, 149 Wn.2d 787, 791 (2003); *In re Recall of Ackerson*, 143 Wn.2d 366, 372 (2001). When the charge is violation of law, the Supreme Court has repeated that the petitioner must have knowledge of facts indicating that the official intended to commit an unlawful act. *Pearsall Stipek*, 136 Wn.2d at 263. The courts may use supplemental materials to determine whether there is a factual basis for the charge. *West*, 155 Wn.2d at 665-66.

C. The Requirement of Legal Sufficiency

Charges must allege substantial conduct amounting to misfeasance, malfeasance, or violation of the oath of office to be legally sufficient. *Washam*, 171 Wn.2d at 514-15. This protects officials from being recalled for simply exercising discretion granted to him or her by law. *Chandler*, 103 Wn.2d at 274. "Officials may not be recalled for their discretionary acts absent manifest abuse of discretion." *Id.* at 515.

The definition of misfeasance, malfeasance and violations of oath of office are set forth in RCW 29A.56.110, as follows:

> For the purposes of this chapter:
>
> (1) "Misfeasance" or "malfeasance" in office means any wrongful conduct that affects, interrupts, or interferes with the performance of official duty;

(a) Additionally, "misfeasance" in office means the performance of a duty in an improper manner; and

(b) Additionally, "malfeasance" in office means the commission of an unlawful act;

(2) "Violation of the oath of Office" means the neglect or knowing failure by an elective public officer to perform faithfully a duty imposed by law.

IV. Acts and Omissions Constituting the Statement of Charges

The acts and omissions of Adam Fortney as Snohomish County Sheriff for which this Statement of Charges is brought are divided into the following general factual categories. Together, these charges amount to an indictment against Snohomish County Sheriff, Adam Fortney, that he has conducted himself, while in office, in a manner that constitutes misfeasance, malfeasance and a violation of his oath of office. The charges are summarized as follows:

A. Adam Fortney endangered the peace and safety of the community and violated his statutory duties under RCW 36.28.010 and RCW 36.28.011 when he refused to enforce Governor Inslee's lawful "Stay Home – Stay Healthy" order;

B. Adam Fortney endangered the peace and safety of the community and violated his statutory duties under RCW 36.28.010 and RCW 36.28.011 when he incited members of the public to violate Governor Inslee's lawful "Stay Home – Stay Healthy" order;

C. Adam Fortney endangered the peace and safety of the community and violated his statutory duties under RCW 36.28.010 by failing to institute adequate policies and safety measures for the Snohomish County Jail during a public health emergency;

D. Adam Fortney endangered the peace and safety of the community and violated his statutory duties under RCW 36.28.010 when he rehired deputy sheriffs previously discharged following investigation into their acts of misconduct; and

E. Adam Fortney violated his statutory duties under RCW 36.28.011 and RCW 36.28.020 when he failed to investigate a deputy sheriff who tackled and injured a black female medical assistant for jaywalking.

V. Substance of Acts and Omissions Constituting the Statement of Charges

A. Adam Fortney endangered the peace and safety of the community and violated his statutory duties under RCW 36.28.010 and RCW 36.28.011 when

he refused to enforce Governor Inslee's lawful "Stay Home – Stay Healthy" Order.

On February 29, 2020, Governor Jay Inslee issued Proclamation 20-25, which declared a State of Emergency for the State of Washington due to the spread of the deadly and highly contagious coronavirus. There is currently no vaccine for the coronavirus, which causes a respiratory illness called COVID-19.[3] Governor Inslee then issued a "stay at home" order for the State of Washington wherein people may only leave their homes to participate in an essential activity or employment in providing essential business services.[4] Violation of Proclamation 20-25 is punishable under RCW 43.06.220(5) as a gross misdemeanor.

Shortly following the entry of Proclamation 20-25, Sheriff Fortney posted a message on the public Snohomish County Sherriff's Office Facebook page stating, "I have no intention of carrying out enforcement for a stay-at-home directive."[5] On April 21, 2020, Sheriff Fortney posted on the Snohomish County Sheriff Adam Fortney public Facebook page that Proclamation 20-25 is unconstitutional and would not be enforced.[6] Sheriff Fortney participated in a recorded press conference the next day that was posted to the Snohomish County Sheriff's Office Facebook page in which he repeatedly reiterated his commitment to not enforcing proclamation 20-25.[7]

Sheriff Fortney refused to enforce a lawful order. The governor's authority to issue this proclamation is well-established under Washington law. RCW 43.06.010(12) authorizes the governor to declare a state of emergency after finding that a public disaster exists within the state that affects life, health, property, or the public peace. Once the governor declares a state of emergency, RCW 43.06.220 empowers the governor to issue orders prohibiting certain activities to help preserve and maintain life, health, property, or the public peace. These powers, and executive action taken therein, have been upheld by our Supreme Court. *Cougar Bus. Owners Ass'n v. State*, 97 Wn.2d 466, (1982), abrogated on other grounds by *Yim v. City of Seattle*, 194 Wn.2d 682 (2019).

Likewise, the restrictions imposed by the Stay Home – Stay Healthy ("SHSH") Order have been upheld by the United States Supreme Court repeatedly for more than 100 years. The Court upheld a public health statute regarding compulsory vaccination in the face of the "epidemics of disease." *Jacobson v. Massachusetts*, 197 U.S. 11 (1905). Three

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[3] CDC, *What you need to know about coronavirus disease 2019 (COVID-19)*, https://www.cdc.gov/coronavirus/2019-ncov/downloads/2019-ncov-factsheet.pdf.

[4] *Proclamation by the Governor Amending Proclamation 20-05*, March 23, 2020, available at: https://www.governor.wa.gov/sites/default/files/proclamations/20-25%20Coronovirus%20Stay%20Safe-Stay%20Healthy%20%28tmp%29%20%28002%29.pdf.

[5] March 23, 2020 statement by Adam Fortney posted on verified Snohomish County Sheriff Adam Fortney Public Facebook page attached as Exhibit 2.

[6] April 21, 2020 statement by Adam Fortney posted on verified Snohomish County Sheriff Adam Fortney Public Facebook page attached as Exhibit 3.

[7] April 23, 2020 press conference which can be found at https://www.facebook.com/SnoCoSheriff/videos/2720739621493414/

years prior, the Court made clear that the several states maintain authority to protect the safety of its citizens through quarantine.

> That from an early day the power of the states to enact and enforce quarantine laws for the safety and the protection of the health of their inhabitants has been recognized by Congress, is beyond question. That until Congress has exercised its power on the subject, such state quarantine laws and state laws for the purpose of preventing, eradicating, or controlling the spread of contagious or infectious diseases, are not repugnant to the Constitution of the United States, although their operation affects interstate or foreign commerce, is not an open question.

Compagnie Francaise de Navigation a Vapeur v. Bd. of Health of State of Louisiana, 186 U.S. 380, 387 (1902).

Accordingly, the SHSH Order is the law of the State of Washington, promulgated duly within the Governor's authority, and consistent with both the State and Federal Constitutions. Governor Inslee issued the SHSH Order to address the COVID-19 pandemic. The order is well within the Governor's emergency police powers under RCW 46.06.220. As such, Sheriff Fortney is required by law and his oath of office to enforce the order, this issue is not one of discretion.

Sheriff Fortney's blatant and unapologetic refusal to enforce a lawful order endangers the peace and safety of Snohomish County. Governor Inslee issued Proclamation 20-25 to limit the spread of this deadly virus. Without a vaccine or adequate testing, public health officials across the country have explained that the only way to limit the spread of the coronavirus is to engage in social distancing measures, including self-isolation and actual quarantine.[8] To date, Snohomish County has had 2,509 confirmed cases of COVID-19 and 109 deaths as a result.[9] Snohomish County also borders King County, which has 6,449 confirmed cases and 459 deaths. With over 145,000 Snohomish County residents commuting to King County for work,[10] Sheriff Fortney's refusal to enforce Proclamation 20-25 prevents the only effective means of limiting the spread of the virus and thereby increases the risk that Snohomish County residents will contract the virus and suffer severe health complications.

Sheriff Fortney refused to enforce Proclamation 20-25 in violation of his statutory duties. RCW 36.28.010 charges an elected sheriff with the duty to arrest and commit to prison those persons guilty of public offenses, who break the peace, or who gather unlawfully. Likewise, RCW 36.28.011 places a duty upon an elected sheriff to make complaints of all violations of criminal law that come to their knowledge within their

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[8] *What is 'flatten the curve'? The chart that shows how critical it is for everyone to fight coronavirus spread*, NBCNews, March 11, 2020, available at: https://www.nbcnews.com/science/science-news/what-flatten-curve-chart-shows-how-critical-it-everyone-fight-n1155636.

[9] Washington Department of Health, *2019 Novel Coronavirus Outbreak (COVID-19)*, https://www.doh.wa.gov/Emergencies/Coronavirus (last updated May 13, 2020).

[10] Puget Sound Regional Council, *Where the region's workers live* (March 1, 2019), https://www.psrc.org/whats-happening/blog/where-regions-workers-live.

jurisdiction. Failure of a sheriff to carry out his duties under RCW 36.28.011 constitutes willful neglect. *See State v. Twitchell*, 61 Wn.2d 403, 408 (1963) (holding that the statute places a mandatory non-discretionary duty on the sheriff to make a complaint of any known violation of criminal law). Contrary to well-settled Washington precedent, Sheriff Fortney has determined his own opinion on the constitutionality of a particular law shall control whether he will enforce it.

As he noted in his Facebook post, "[a]long with other elected Sheriffs around our state, the Snohomish County Sheriff's Office will not be enforcing an order preventing religious freedoms or constitutional rights." Even if the sheriff were permitted to decide which laws will and will not be enforced, his general refusal to enforce the SHSH Order extends beyond those acts which could be construed as "religious freedoms" or "constitutional rights." Sheriff Fortney has stated that the SHSH Order intrudes on the business owners of Snohomish County's ability to exercise their rights to life, liberty, and the pursuit of happiness and that he will protect constitutional rights. Not only is the SHSH Order lawful under the Revised Code of Washington, generally, but the regulation, limitation, or restraint of business within the state is provided for within the state constitution itself. *See* Const. art. XII, § 1.

Moreover, Sheriff Fortney's refusal violates his Oath of Office. Sheriff Fortney swore and signed an Oath of Office to support the laws and constitution of the state of Washington. He is willfully violating the law and his oath by repeatedly and unequivocally stating his refusal to enforce the SHSH Order, and is actively inciting and allowing business owners to violate the order.[11] A barber in Snohomish opened his shop, "The Stag Barbershop" in late April 2020, specifically citing to Sheriff Fortney's statement that the order is unconstitutional and that it would not be enforced.[12] The shop is not practicing social distancing and is not taking precautionary measures through use of PPE. A photo taken on or around May 1, 2020 shows a line of roughly 15 people outside the shop waiting for haircuts.[13] This is a direct result of Sheriff Fortney's incitement and refusal to enforce the SHSH Order.

Sheriff Fortney's refusal to enforce Proclamation 20-25 is not only a violation of his oath and statutory duties, but it endangers the health, peace, and safety of citizens of Snohomish County. While the Sheriff enjoys appropriate discretion in enforcing the laws, by the terms and bounds set by our political branches, he is not entitled to usurp the judicial function, declare a law unconstitutional, and refuse to enforce it.

B. Adam Fortney endangered the peace and safety of the community and violated his statutory duties under RCW 36.28.010 and RCW 36.28.011 when he incited members of the public to violate Governor Inslee's lawful "Stay Home – Stay Healthy" order.

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[11] Eric Wilkinson, *Snohomish barber openly defies Washington's stay-home orders*, King 5 News (May 1, 2020), https://www.king5.com/article/news/health/coronavirus/snohomish-barber-openly-defies-washingtons-stay-home-orders/281-61bada1a-109d-47bf-867d-ad24a0b5b59d.

[12] *Id.*

[13] Photo of Stag Barbershop attached as Exhibit 4.

In a statement released on May 4, 2020, Sheriff Fortney claimed that he "never encouraged defiance of the law," stating that, rather, he has only encouraged business owners to exercise their rights under the law and contact their elected officials. However, Sheriff Fortney has gone beyond merely declining to enforce Governor Inslee's order and his public statements made on his official "Snohomish County Sheriff Adam Fortney" Facebook page, and in subsequent media appearances, were designed to, and in fact did, incite members of the public to willfully violate the SHSH Order. Understanding there would be no criminal legal repercussions, business owners in Snohomish County have openly disregarded and defied the SHSH Order. A review of Sheriff Fortney's own statement is sufficient to establish that reasonable law enforcement officials would believe the Sheriff's Fortney's comments would lead to a public's response that could rightfully be described as a rallying cry of rebellion. On April 21, 2020, Sheriff Fortney posted the following on the Snohomish County Sheriff Adam Fortney public Facebook page:

> Snohomish County Residents and Business Owners,
>
> I just watched the Governor's speech to Washingtonian's regarding our approach to getting Washington back in business and I am left to wonder if he even has a plan? To be quite honest I wasn't even sure what he was trying to say half of the time. He has no plan. He has no details. This simply is not good enough in times when we have taken such drastic measures as the suspension of constitutional rights. I wrote most of this about two weeks ago but I decided to wait out of respect for the Governor and my own misguided hope that each day he did a press conference he would say something with some specificity on getting Washington back to work. After what I witnessed tonight I can no longer stay silent as I'm not even sure he knows what he is doing or knows what struggles Washingtonian's face right now.
>
> ...
>
> If this Coronavirus is so lethal and we have shut down our roaring economy to save lives, then it should be all or nothing. The government should not be picking winners or losers when it comes to being able to make an income for your family. If the virus is so lethal it shouldn't matter whether you are building a school for the government, building a new housing development, restaurant owner, or you happen to be an independent contractor. To the contrary, if the virus is proving to not be as lethal as we thought, maybe it's time for a balanced and reasonable approach to safely get our economy moving again and allowing small businesses to once again provide an income for their families and save their businesses. This is what I hoped for from the Governor tonight but he is not prepared or ready to make these decisions. If we are going to allow government contractors and pot shops to continue to make a living for their families, then it is time to open up this freedom for other small business owners who are comfortable operating in the current climate. This is the great thing about freedom. If you are worried about getting sick you have the freedom to choose to stay home. If you need

to make a living for your family and are comfortable doing so, you should have the freedom to do so.

As I have previously stated, I have not carried out any enforcement for the current a stay-at-home order. As this order has continued on for well over a month now and a majority of our residents cannot return to work to provide for their families, I have received a lot of outreach from concerned members of our community asking if Governor Inslee's order is a violation of our constitutional rights.

As your Snohomish County Sheriff, yes I believe that preventing business owners to operate their businesses and provide for their families intrudes on our right to life, liberty and the pursuit of happiness. I am greatly concerned for our small business owners and single-income families who have lost their primary source of income needed for survival.

As your elected Sheriff I will always put your constitutional rights above politics or popular opinion. We have the right to peaceably assemble. We have the right to keep and bear arms. We have the right to attend church service of any denomination. The impacts of COVID 19 no longer warrant the suspension of our constitutional rights.

Along with other elected Sheriffs around our state, the Snohomish County Sheriff's Office will not be enforcing an order preventing religious freedoms or constitutional rights.

. . . This is not a time to blindly follow, this is a time to lead the way.

Sheriff Adam Fortney

On April 22, 2020 Sheriff Fortney participated in a press conference that was recorded and posted to the Snohomish County Sheriff's Office public Facebook page in which he continuously reiterates his commitment to not enforcing the SHSH Order throughout the roughly 30 minute long event. Consistent with his Facebook post and other public statements, Sheriff Fortney, and the office he runs, have in fact allowed business owners to violate the order, such as the owner of the Stag Barbershop.

Fortney has urged the public to violate the SHSH Order, risking the health and safety of Snohomish County's citizens. The petitioners echo the words of Snohomish County Prosecutor Adam Cornell when he wrote, on April 28, 2020, he believed that:

> [Fortney's] Facebook post of April 21, 2020, can reasonably be read as a call to defy public health officials and a declaration that Governor Inslee's Stay At Home order is unconstitutional. It can also be read as a pronouncement that the medical science and current statistical modeling relied upon by the Governor, and others, is flawed and not to be trusted; that

> citizens – particularly those who look to [Fortney] for guidance as our County's chief law enforcement officer – have [his] permission to disregard orders that intrude on their rights to life, liberty, the pursuit of happiness, the exercise of religious freedom, or other constitutional entitlements, on the promise that [he] will not enforce any violation of those orders. By directly or indirectly encouraging people to disobey data-driven, science-based lawful orders handed down expressly to limit the spread of COVID-19 and to protect our health and well-being during this pandemic emergency, [his] statement is fairly construed to support behavior that puts all citizens at greater risk of harm and death. Put simply, [his] words were akin to yelling 'fire' in a crowded theater.[14]

Sheriff Fortney is prescribing active rebellion against a legitimate public health order and, in doing so, has abdicated his right to hold the office of Snohomish County Sheriff. His comments are not only gross violations of his oath and statutory duties, but they endanger the health, peace, and safety of the public during a pandemic.

C. Adam Fortney endangered the peace and safety of the community and violated his statutory duties under RCW 36.28.010 by failing to institute adequate policies and safety measures for the Snohomish County Jail during a public health emergency

The Snohomish County Sheriff is responsible for overseeing the Snohomish County Corrections Bureau, which is in charge of "all adult correctional institutions and programs of the county." SCC 2.15.010-.030. There is one adult correctional institution run by the County, the Snohomish County Jail ("the Jail").[15] "Washington courts have long recognized a jailer's special relationship with inmates, particularly the duty to ensure health, welfare, and safety." *Gregoire v. City of Oak Harbor*, 170 Wn.2d 628, 635 (2010). A sheriff running a county jail owes the direct duty to a prisoner in his custody to keep him in health and free from harm. *Kusah v. McCorkle*, 100 Wn. 318, 325 (1918). Standards of operation are required for all county-run jails and those standards "shall be the minimums necessary to meet federal and state constitutional requirements relating to health, safety, and welfare of inmates and staff, and specific state and federal statutory requirements, and to provide for the public's health, safety, and welfare." RCW 70.48.071.

Sheriff Fortney's leadership of the Jail has been called into question during the COVID-19 Pandemic. While some booking restrictions were imposed in March 2020 in an attempt to limit the exposure through booking traffic, the Jail continued to book non-violent offenders contributing to high "jail churn" and failed to implement proper health procedures. The booking restrictions were lifted in mid-April in an effort to increase the inmate population.

i. *Adam Fortney promulgated COVID-19 protocols in the Jail that exacerbated the crisis and endangered the community.*

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[14] Prosecutor Adam Cornell's letter to Sheriff Fortney is attached as Exhibit 5.

[15] https://snohomishcountywa.gov/178/Corrections

While the criminal defense bar was able to draft and argue hundreds of bail review motions working with Snohomish County Prosecutor's Office to drastically reduce the Jail population, Sheriff Fortney's administration fostered policies resulting in high jail churn, failed to follow policies it claimed were in effect, and ignored simple and effective directives from Public health officials. On top of these failures, Sheriff Fortney lifted what limited booking restrictions that had been in place on April 21, 2020 with the express purpose of increasing the jail population while the pandemic raged on.[16]

Congregate environments like cruise ships and long-term care facilities have become epicenter of the several outbreaks of COVID-19. [17] Like nursing homes and cruise ships, correctional facilities are also congregate environments, where residents live, eat, and sleep in close contact with one another. Consequently, infectious diseases are more likely to spread rapidly between individuals in this environment.[18] This is particularly true for airborne diseases, such as COVID-19, which makes this virus particularly dangerous in a correctional facility.[19]

(1) Adam Fortney's policies created constant jail churn during the COVID-19 pandemic.

Despite the relatively low number of jail beds that were being utilized on any given night in March and April, the jail continued to receive and release a high number of individuals from the community whose exposure to the virus, and infection status, is virtually unknown beyond self-reporting of inmates. For example, during the two-week period of April 2 through April 16, 344 new inmates were booked into the Snohomish County Jail.[20] Of those 344, only 39 remained in custody on April 20th.[21] The remaining 305 individuals were released back into the community.[22] For many of these individuals, the risk of exposure due to being booked into the Jail was unnecessary as the Snohomish County Prosecutor had imposed a temporary policy designed to minimize the inmate population and many individuals who were booked into the Jail were released at their very next hearing. In fact, a not insignificant number of inmates were released on agreed orders before ever even being seen by a judge.

This particular needless risk of exposure is mandated by the Sheriff's booking policies during the pandemic. Knowing the Prosecuting Attorney's Office would agree to release of nearly all inmates accused of nonviolent offenses, Sheriff Fortney continued to instruct his deputies to arrest and hold those accused of nonviolent offenses, such as minor

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[16] Sheriff Fortney's memorandum re: lifting booking restrictions is attached as Exhibit 6.
[17] Ana Sandoiu, *COVID-19 Quarantine of Cruise Ship May Have Led to More Infections*, Medical News Today (Mar. 3, 2020).
[18] Anne C. Spaulding, *Coronavirus and the Correctional Facility*, Emory Center for the Health of Incarcerated Persons, Emory Rollins School of Public Health, 17 (Mar. 9, 2020).
[19] *Id.*
[20] The Jail's self-reported booking/release data is attached as Exhibit 7.
[21] *Id.*
[22] *Id.*

drug possession.[23] For instances where an agreed order on release could not be presented to the court in advance of the hearing, some inmates were required to wait in jail anywhere from 24 to 48 hours, or more, after arrest. One of the confirmed positive cases of COVID-19 came from a man arrested on a warrant for failure to pay court fines stemming from a judgement issued in 2000.[24] That man was released 24 hours later after encountering an indeterminate number of staff and inmates.[25]

It was proposed that the sheriff refuse to book anyone into the jail on warrants issued for failure to pay court fines, but Sheriff Fortney's administration rejected that proposal. At the time of the proposal, it is estimated that there was one new inmate per day who was booked on a "failure to pay" warrant.

The velocity of jail churn accelerated on April 21 when Sheriff Fortney lifted temporary booking restrictions and ordered his deputies to also bring those accused of simple misdemeanor offenses into the jail. With the number of daily releases down and the number of people booked going up, this decision increased the overall jail population starting in late April.[26] Sheriff Fortney did this with the express purpose of increasing the inmate population, claiming the jail was ready for the increase.[27]

(2) Basic public health guidelines were not implemented or enforced in the jail.

Within the medically vulnerable inmate module at the Jail, social distancing was not implemented or enforced, and inmates were not provided appropriate person protective equipment ("PPE"). Inmates housed in the medically vulnerable inmate module have been held in solitary cells, permitted to leave their cells, and congregate in the common area in small groups without PPE and without social distancing protocols being enforced. Despite CDC guidelines inmates were not provided with PPE even if medically vulnerable. Some inmate workers were sporadically supplied with masks and gloves.

Perhaps the most alarming report coming from the Jail is that asthmatic inmates have been required to share inhalers, something that has happened both in the general population and within modules of medically vulnerable inmates. The inhaler is stored in a drawer within the module at the jail and there appears to be no sanitation protocol or system in place to keep distance between the mouthpieces to avoid cross-contamination. Reports of shared inhalers are coming from completely independent areas of the jail.

Additionally, high risk inmates continue to be incarcerated in conditions that do not comply with public health recommendations. Despite the reduced jail population, numerous medically vulnerable people are still among those incarcerated at the Snohomish County Jail. As of May 8, 2020, the jail identified 15 individuals as 'vulnerable.'

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[23] The Prosecutor's memorandum re: temporary release standards is attached as Exhibit 8.
[24] Chief Kane's daily update and vulnerable inmate email is attached as Exhibit 9.
[25] *Id.*
[26] Exhibit 7.
[27] https://www.heraldnet.com/news/snohomish-county-sheriff-ready-to-increase-jail-population/

Unfortunately, the number of inmates that fall into a high-risk category is much larger. The jail has produced criteria to be used to determine whether an inmate is medically vulnerable to COVID-19. In order to be placed on the Jail's "vulnerable inmate list," one must either be: (1) 65 years or older, or (2) have a serious underlying medical condition like heart disease, diabetes, or lung disease.[28] This list does not include for example, people under 65 with asthma or hypertension. Inmates with a history of high blood pressure, hypertension, seizures, and other medical symptoms resulting in greater susceptibility to the negative effects of the virus are not listed as vulnerable under the Jail's criteria.

Sheriff Fortney has failed to adopt standards that provide for the public's health, safety, and welfare. Additionally, he has breached his duty of care to the inmates of the Snohomish County Jail. These actions amount to misfeasance, malfeasance, and violation of oath of office, as proscribed by RCW 29A.56.110.

D. Adam Fortney endangered the peace and safety of the community and violated his statutory duties under RCW 36.28.010 when he rehired deputy sheriffs previously discharged following investigation into their acts of misconduct.

i. The reinstatement of Deputy Art Wallin after Deputy Wallin was terminated by former Snohomish County Sheriff Ty Trenary was an act of misfeasance.

Deputy Art Wallin was discharged from the Snohomish County Sheriff's Office after an internal investigation found he had violated Snohomish County Sheriff's Office policy by initiating a vehicle pursuit that culminated in the deputy shooting and killing Nickolas Michael Peters in October 2018. Deputy Wallin engaged in a vehicle pursuit of Mr. Peters after attempting a traffic stop for reckless driving and he, along with other law enforcement officers, eventually were able to stop the vehicle. After the vehicle was stopped, Deputy Wallin stood at the passenger side of Mr. Peters' vehicle while another deputy climbed onto the hood. Deputy Wallin then opened fire and shot Mr. Peters to death.

Former Snohomish County Sheriff Ty Trenary had an investigation conducted into the use of deadly force in the incident. This investigation concluded that Deputy Wallin's shooting of Mr. Peters was an unnecessary and unjustified use of deadly force. Deputy Wallin was fired from the Sheriff's Office in October 2019. Sheriff Fortney was a sergeant with the Sheriff's Office and was Deputy Wallin's supervisor at the time of the pursuit. Then-Sergeant Fortney was reprimanded for not taking action to call off the pursuit of Mr. Peters, even though it was against departmental policy.

In January 2020, Sheriff Fortney reinstated Deputy Wallin into his old position, with full backpay for the time during which he had been terminated. Despite the result of a year-long investigation into Deputy Wallin's actions, the findings of that investigation, and the settlement paid by the County, Sheriff Fortney described the termination as an error. Snohomish County paid a $1 million settlement to the family of Mr. Peters in a federal lawsuit filed as a result of the killing. The reinstatement of Deputy Wallin displays

[28] Snohomish County Sheriff Office, Vulnerable Inmate Criteria attached as Exhibit 10.

poor judgment, reckless decision making, and a complete lack of accountability within Sheriff Fortney's department.

ii. The reinstatement of Deputies Evan Twedt and Matthew Boice after each was terminated following misconduct investigations was an act of misfeasance.

On November 1, 2019 Deputy Evan Twedt and Deputy Matthew Boice were fired from the Snohomish County Sheriff's Office after an internal investigation found each to have violated departmental policy, knowingly conducted an illegal search, and engaged in dishonesty and untruthfulness. These findings were made following an internal investigation. Despite the results of the investigation, Sheriff Fortney has stated the terminations were political in nature and reinstated both deputies in January 2020.

The search violated the constitutional rights of the vehicle owner by being warrantless and conducted without the consent of the driver. (cite to termination letter). Along with its unconstitutional nature, the search was determined to be contrary to departmental policy. Deputy Twedt wrote narratives regarding the arrest of this suspect, but at no point did he disclose or mention the warrantless search. A search warrant was submitted to a Judge requesting permission to search the car, again without mention of the prior warrantless search. After investigation, Sheriff Trenary found that the lack of mention in any reports showed an intention to be dishonest and cover up an illegal warrantless search.

Deputy Boice was also at the scene during the illegal vehicle search. He also wrote narratives detailing the events of this stop and failed to mention his observation of the warrantless search, or that anything had been found in the vehicle based on that undisclosed search. Notably, Deputy Boice was a "Field Training Officer" at the time of this incident, meaning he was responsible for supervising and teaching new law enforcement officers how to properly do their jobs and provide feedback and supervision to new hires. During the investigation into this incident, some of Deputy Boice's former trainees were interviewed. Two indicated they received instruction from Deputy Boice to conduct warrantless searches of vehicles being towed pending a search warrant in violation of department policy and the constitutional rights.

The reinstatement of deputies having been found to have engaged in unlawful searches of property and dishonesty to cover up their unlawful behavior presents a serious disregard for the constitutional rights of the citizens of Snohomish County. Sheriff Fortney's decision to reinstate Deputy Twedt and Deputy Boice diminishes public trust in law enforcement and places a shadow on the Snohomish County Sheriff's Office and amounts to nothing more than cronyism. These actions were an improper performance of Sheriff Fortney's official duties, a misfeasance pursuant to RCW 29A.56.110.

E. Adam Fortney violated his statutory duties under RCW 36.28.011 and RCW 36.28.020 when failed to investigate a deputy sheriff who tackled and injured a black female medical assistant for jaywalking.

On March 21, 2020, Sharon Wilson, a black, female medical assistant, was tackled and injured by a white, male Snohomish County Sheriff's deputy for allegedly jaywalking. Sheriff Fortney cleared the deputy involved of all wrongdoing within 24 hours of the incident becoming public. As a result, Sheriff Fortney performed his duty in an improper manner and neglected or knowingly failed to perform faithfully a duty imposed by law. Sheriff Fortney's duty to properly investigate allegations of misconduct by his deputies arises by statute, the constitution, and the Snohomish County Sheriff's Office written policies.

The Washington Constitution delegated authority to the legislature to determine the duties of county sheriffs:

> The legislature, by general and uniform laws, shall provide for the election in the several counties of .... Sheriffs...and shall prescribe their duties...

Const. art. XI, § 5. The legislature provided that a Sheriff has a duty under RCW 36.28.011 to make a complaint of all violations of the criminal law that comes to his or her attention and is responsible under RCW 36.28.020 for the misconduct of his or her deputies.

The Snohomish County Sheriff's Office police manual includes Policy 1019 which outlines the policies and procedures for investigating deputy misconduct.[29] The policy manual requires the investigation of personnel complaints including that "[s]upervisors shall initiate a complaint based upon observed misconduct or receipt from any source alleging misconduct that, if true, could result in disciplinary action."[30]

The responsibility of a supervisor includes ensuring that a complaint form is completed when receiving a personnel complaint, responding in a courteous and professional manner, following up with complainants within 24 hours, notification of roles in addressing a complainant related to racial discrimination, investigating a complaint by obtaining witness information, following procedural rights of the accused deputy, and ensuring interviews of the complainant are conducted at reasonable hours.[31] Upon completion of the proper investigation, the policy manual provides for the format for the report of investigation including an introduction, synopsis, evidence, conclusion, exhibits, and a disposition of unfounded, exonerated, non-sustained, sustained, or undetermined.[32]

In Sharon Wilson's case, Sheriff Fortney failed to perform his duty to properly investigate a complaint of a deputy's misconduct and any superficial effort on his part was a failure to perform his duty in a proper manner. The complaint was made public by Attorney James Bible on March 26, 2020. This complaint of misconduct triggered the duties proscribed by Policy 1019.

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[29] Snohomish County Sheriff's Office Policy Manual, Policy 1019, page 480 attached as Exhibit 11.
[30] *Id.* at 1019.4.1(c), page 481.
[31] *Id.* at 483.
[32] *Id.* at 485.

Instead of discharging the duties required by his oath and the Snohomish County Sheriff's Office policy manual, Sheriff Fortney disregarded his duty, failed to perform any investigation, and cleared the deputy of any wrongdoing the next morning. Rather than conducting an adequate investigation, Sheriff Fortney issued a public statement clearing the deputy of wrongdoing:

> I was notified of the arrest of Ms. Sharon Wilson earlier today. I have since had the opportunity to review the pertinent case reports from the incident. While I understand the community concern that has gained much attention on social media, as is so often the case with social media, it is not the whole story. I think this would be a good opportunity to hear directly from me and a reminder to all about the legal requirements of Washington State law.
>
> This incident began when a deputy sheriff was driving in the 21700 block of SR 99, Edmonds. As the deputy was driving northbound he observed Ms. Wilson cross from the west to the east in a marked crosswalk. Although this was a marked crosswalk, Ms. Wilson chose to disregard the red stop pedestrian signal and cross while the traffic light was green for north and south traffic to continue. The deputy observed that at least one other vehicle had to slow down to allow Ms. Wilson to cross even though the vehicle traffic had the green light.
>
> The deputy in this case chose to stop Ms. Wilson and talk to her about this infraction. To be clear this is a violation of law, the deputy has every right to stop and talk to the person no matter who it is or what they are wearing, and request their identification for purposes of a citation. In nearly ALL cases of this type that I have experienced over 23 years of service it is a 5-10 min (at most) interaction with law enforcement and it may end with a citation or warning.
>
> Unfortunately, this case took a different direction. Ms. Wilson refused to identify herself. While the deputy was speaking with Ms. Wilson she made the decision to get up from a seated position and run from the deputy. At this point in the contact, the deputy had no way to know why Ms. Wilson made the decision to get up and run but he felt he had an obligation to try and stop her. Our deputies face these split second decisions every day and this deputy was placed in this position by the actions of Ms. Wilson. He ran after her, tackled her, and arrested her.
>
> Law enforcement is judged based on whether their actions are objectively reasonable under the totality of the circumstances. Ms. Wilson chose to cross a major highway against a red pedestrian light. At least one vehicle had to slow down in order to not hit her. This was witnessed by a deputy sheriff in a marked patrol car and in full uniform. Ms. Wilson refused to identify herself after a lawful order to do so and then made the situation

> worse by getting up from a seated position and running. Based on these circumstances, the deputy's actions are reasonable.
>
> While this entire incident is unfortunate, it is unfortunate because of the actions of Ms. Wilson. It would simply be unreasonable to have an expectation of law enforcement to simply watch people who decide to suddenly get up and run from the police and watch them run away.
>
> I have worked in south Snohomish County, along the Hwy 99 corridor for over two decades. There have been many, many pedestrian car crashes with people who try to illegally cross the multi-lane highway. So while this may seem like a "low level" infraction, there is a safety and education component to it as well. If Ms. Wilson would have cooperated with this lawful stop, she would have been to her destination without any problems at all. The deputy sheriff even offered to drive her to her destination once the contact was over.

Of note, the claim that Ms. Wilson had been offered a ride to her destination is, at best, an indication of Sheriff Fortney's lack of knowledge regarding the incident. When reviewing the Jail's own database, it cannot be disputed that Ms. Wilson was booked into the jail immediately following the incident and was not released for over 24 hours.[33] It was impossible for Sheriff Fortney to complete a proper investigation as required of him by the Snohomish County Sheriff's Office policy manual within 24 hours. He did not ensure a complaint was reduced to writing, he did not assign a supervisor to investigate the complaint, he did not ensure a supervisor obtained witness information, he did not ensure an interview of the complainant, he did not ensure a report of investigation was written, and he did not ensure a proper finding was made based on the investigation.

Instead, Sheriff Fortney continued his pattern to defend his deputies against any and all allegations of misconduct in the apparent belief that his deputies are incapable of misconduct. This failure to discharge his duties required by law and his department's own policies promote the very corruption the well-written policies were intended to prevent.

VI. Conclusion

Within months of taking office, Snohomish County Sheriff Adam Fortney: (1) refused to enforce Governor Jay Inslee's "Stay Home – Stay Healthy" order – an order lawfully issued under RCW 43.06.220; (2) encouraged members of the public to violate Governor Inslee's lawful "Stay Home – Stay Healthy" order; (3) failed to institute adequate policies and safety measures for the Snohomish County Jail; (4) rehired deputy sheriffs who committed acts of misconduct; and (5) failed to investigate a deputy sheriff who tackled and injured a black female medical assistant for jaywalking.

Adam Fortney's actions and conduct resulting in these charges constitutes misfeasance, malfeasance, and a violation of his oath of office. The factual basis for these

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[33] Jail inmate inquiry page related to Sharon Wilson attached as Exhibit 12.

charges includes the information contained in the attached exhibits, which are incorporated by reference.

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

Signed in Everett, WA this 15th day of May 2020.

Colin McMahon

Samantha Sommerman

Brittany Tri

Terry Preshaw

RCVD

MAY 15 '20 AM 10:44

Snohomish County Auditor

Exhibit 1

OATH OF OFFICE

STATE OF WASHINGTON)
)ss
COUNTY OF SNOHOMISH)

I, _____, do solemnly swear (or affirm) that I
name
will support the Constitution and Laws of the United States and the Constitution and Laws of the State of Washington, and that I will faithfully and impartially perform and discharge the duties of the office of _____
jurisdiction or district

_____, _____ for
office position

a _____ term according to law to the best of my ability.
term length

_____
Signature of elected or appointed official

Note: The following can administer the oath: judges, notary publics, county auditors or deputies, city/town clerks, school officials, county commissioners, and clerks of the court.

Subscribed and sworn to before me this _____ day of _____, _____

Signature _____

Official Title _____

Return to: Snohomish County Auditor/Elections, 3000 Rockefeller Ave #505, Everett WA 98201
Email: elections@snoco.org Fax: 425-259-2777

Exhibit 2

Snohomish County Sheriff's Office
March 23 ·

A message from Sheriff Fortney about Gov. Inslee's announcement to stay home:

Our local dispatchers are receiving a record number of calls to 911 with Snohomish County residents wanting more information about Gov. Inslee's announcement today for Washington residents to stay home. I want to clarify that the governor is NOT asking law enforcement to enforce a statewide stay-at-home order. To preserve public health and safety, the goal of today's announcement is to encourage people to self-regulate their behavior and home isolate, protect themselves and go about only the essential activities, while practicing social distancing and common sense. Please do NOT call 911 if you just want information. You can visit https://coronavirus.wa.gov/ to read all about the order and what is considered essential services.

As your elected sheriff, I have no intention of carrying out enforcement for a stay-at-home directive. For the most part, our communities have already shown they understand the severity of the situation we are all experiencing and are doing all they can already to keep themselves, their families and neighbors safe and healthy.

Our deputies are not going to be going around neighborhoods to check to see if people are out when they shouldn't be. There are a lot of people in Snohomish County that we rely on to carry out essential duties. And we understand county residents need to carry out certain essential errands to keep their families and households safe. If you need to go to the pharmacy and pick up your medication, that's OK. If you're out in the grocery store to pick up food, that's fine. We will not actively be seeking people out that may be in violation of this directive. We will not ask for badges, identification, or a letter that certifies why you are out. We just want people to listen to the order and stay home if they don't need to be out.

The Snohomish County Sheriff's Office will not make any arrests or take anybody to jail for violations. We view our role more as one of education: educating people how to keep themselves safe, how to keep their families safe and most importantly, to keep the rest of the community safe, especially our elderly and other vulnerable populations.

-Sheriff Adam Fortney

800 Comments 1.8K Shares

Exhibit 3

Snohomish County Sheriff Adam Fortney
April 21 at 8:36 PM ·

Snohomish County Residents and Business Owners,

I just watched the Governor's speech to Washingtonian's regarding our approach to getting Washington back in business and I am left to wonder if he even has a plan? To be quite honest I wasn't even sure what he was trying to say half of the time. He has no plan. He has no details. This simply is not good enough in times when we have taken such drastic measures as the suspension of constitutional rights. I wrote most of this about two weeks ago but I decided to wait out of respect for the Governor and my own misguided hope that each day he did a press conference he would say something with some specificity on getting Washington back to work. After what I witnessed tonight I can no longer stay silent as I'm not even sure he knows what he is doing or knows what struggles Washingtonian's face right now.

I want to start by saying this virus is very real and sadly, it has taken 97 lives in Snohomish County. This is a very serious issue and the appropriate precautions need to be taken to protect our most vulnerable populations. However, our communities have already shown and continue to show they understand the severity of the situation and are doing all they can already to keep themselves, their families and neighbors safe and healthy.

I am worried about the economy and I am worried about Washingtonian's that need to make a living for their family. As more data floods in week by week and day by day about this pandemic I think it is clear that the "models" have not been entirely accurate. While that is okay, we cannot continue down the same path we have been on if the government reaction does not fit the data or even worse, the same government reaction makes our situation worse.

As elected leaders I think we should be questioning the Governor when it makes sense to do so. Are pot shops really essential or did he allow them to stay in business because of the government taxes received from them? That seems like a reasonable question. If pot shops are essential, then why aren't gun shops essential? Our Governor has told us that private building/construction must stop as it is not essential, but government construction is okay to continue. So let me get this right, according to the Governor if you are employed or contracted by the government to build government things you can still make a living for your family in spite of any health risk. If you are a construction worker in the private sector you cannot make a living and support your family because the health risk is too high. This contradiction is not okay and in my opinion is bordering on unethical.

As I arrive to work at the courthouse, I see landscapers show up each day to install new landscape and maintain our flowerbeds. How has Governor Inslee deemed this essential work? However, a father who owns a construction company and works alone while outdoors is not allowed to run his business to make a living to provide for his wife and children? How has Governor Inslee deemed thousands of Boeing employees who work inside a factory building airplanes essential? But building residential homes is not essential? If a factory with 20,000+ employees each day can implement safe practices to conduct normal business operations, I am entirely confident that our small business owners and independent contractors are more than capable of doing the same.

If this Coronavirus is so lethal and we have shut down our roaring economy to save lives, then it should be all or nothing. The government should not be picking winners or losers when it comes to being able to make an income for your family. If the virus is so lethal it shouldn't matter whether you are building a school for the government, building a new housing development, restaurant owner, or you happen to be an independent contractor. To the contrary, if the virus is proving to not be as lethal as we thought, maybe it's time for a balanced and reasonable approach to safely get our economy moving again and allowing small businesses to once again provide an income for their families and save their businesses. This is what I hoped for from the Governor tonight but he is not prepared or ready to make these decisions. If we are going to allow government contractors and pot shops to continue to make a living for their families, then it is time to open up this freedom for other small business owners who are comfortable operating in the current climate. This is the great thing about freedom. If you are worried about getting sick you have the freedom to choose to stay home. If you need to make a living for your family and are comfortable doing so, you should have the freedom to do so.

As I have previously stated, I have not carried out any enforcement for the current a stay-at-home order. As this order has continued on for well over a month now and a majority of our residents cannot return to work to provide for their families, I have received a lot of outreach from concerned members of our community asking if Governor Inslee's order is a violation of our constitutional rights.

As your Snohomish County Sheriff, yes I believe that preventing business owners to operate their businesses and provide for their families intrudes on our right to life, liberty and the pursuit of happiness. I am greatly concerned for our small business owners and single-income families who have lost their primary source of income needed for survival.

As your elected Sheriff I will always put your constitutional rights above politics or popular opinion. We have the right to peaceably assemble. We have the right to keep and bear arms. We have the right to attend church service of any denomination. The impacts of COVID 19 no longer warrant the suspension of our constitutional rights.

Along with other elected Sheriffs around our state, the Snohomish County Sheriff's Office will not be enforcing an order preventing religious freedoms or constitutional rights. I strongly encourage each of you to reach out and contact your councilmembers, local leaders and state representatives to demand we allow businesses to begin reopening and allow our residents, all of them, to return to work if they choose to do so.

The great thing about Snohomish County government is we have all worked very well together during this crisis. I'm not saying we agree all of the time, I'm saying we have the talent and ability to get this done for Snohomish County! This is not a time to blindly follow, this is a time to lead the way.

Sheriff Adam Fortney

10K Comments 16K Shares

Exhibit 4

Exhibit 5

Snohomish County
Prosecuting Attorney

Adam Cornell
Prosecuting Attorney

Robert J. Drewel Bldg., 7th Floor
3000 Rockefeller Ave., M/S 504 | Everett, WA
98201-4046
(425) 388-7002 | Fax (425) 388-6333
www.snoco.org

April 28, 2020

Snohomish County Sheriff Adam Fortney
3000 Rockefeller Avenue
Everett, WA 98201

Via Electronic Mail: Adam.Fortney@snoco.org

Re: Response to your request for counsel at public expense pursuant to RCW 4.96.041

Dear Sheriff Fortney,

On April 23, 2020, a charge was filed by a citizen seeking your recall. On April 27, 2020, pursuant to RCW 4.96.041, you requested the charge be defended by the County at taxpayer expense. The decision to grant such a request rests with, and requires the consent of, both the legislative authority of Snohomish County (the County Council) and the Prosecuting Attorney. Our state Supreme Court has recognized that one of the purposes of RCW 4.96.041 "is to protect elected officials from being subjected to the financial and personal burden of recall elections *based on false and frivolous charges*." Recall of Persall-Stipek, 129 Wn.2d 399, 402, 918 P.2d 493 (1996) (*emphasis added*).

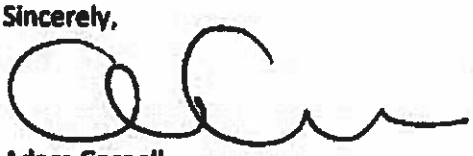
After considerable thought, it is my determination that the public statements made by you on a personal Facebook page, which serve as the basis of the charge, do not warrant a defense at public expense. Without commenting on the ultimate merits of the charge, the petition sets forth a colorable a question as to whether your public comments evidence misfeasance, neglect, or a knowing failure to perform faithfully the duties imposed on you by law. At a minimum, the record before me is insufficient to conclude that the petition is false or frivolous.

This exercise of my statutory discretion is informed by my belief that your Facebook post of April 21, 2020, can reasonably be read as a call to defy public health officials and a declaration that Governor Inslee's Stay At Home order is unconstitutional. It can also be read as a pronouncement that the medical science and current statistical modeling relied upon by the Governor, and others, is flawed and not to be trusted; that citizens—particularly those who look to you for guidance as our County's chief law enforcement officer—have your permission to disregard orders that intrude on their rights to life, liberty, the pursuit of happiness, the exercise of religious freedom, or other constitutional entitlements, on the promise that you will not enforce any violation of those orders. By directly or indirectly encouraging people to disobey data-driven, science-based lawful orders handed down expressly to limit the spread of COVID-19 and to protect our health and well-being during this

pandemic emergency, your statement is fairly construed to support behavior that puts all citizens at greater risk of harm and death. Put simply, your words were akin to yelling "fire" in a crowded theater.

The above notwithstanding, if after judicial review of the charge it is determined that the petition is false and frivolous, upon request, I will revisit my determination that any costs associated with defending the petition should be covered at taxpayer expense. At that time, the matter would also require independent review and approval by the County Council.

Sincerely,



Adam Cornell
Snohomish County Prosecuting Attorney

Cc: Nate Nehring, Chair, Snohomish County Council
Stephanie Wright, Vice Chair, Snohomish County Council
Sam Low, Snohomish County Councilmember
Megan Dunn, Snohomish County Councilmember
Jared Mead, Snohomish County Councilmember
Geoffrey Thomas, Chief of Staff, Snohomish County Council

Criminal Division
Matthew D. Baldock, Chief Deputy
Mission Building, 1st Floor
(425) 388-3333
Fax (425) 388-3572

Civil Division
Jason J. Cummings, Chief Deputy
Robert J. Drewel Bldg., 8th Floor
(425) 388-6330
Fax (425) 388-6333

Family Support Division
Jennifer Tourje, Chief Deputy
Robert J. Drewel Bldg., 6th Floor
(425) 388-7280
Fax (425) 388-7295

Exhibit 6

• ADAM FORTNEY
SHERIFF

SNOHOMISH COUNTY
SHERIFF'S OFFICE

• JEFF BRAND
UNDERSHERIFF

M E M O R A N D U M

DATE: April 21, 2020

TO: **To Whom It May Concern**

FROM: **Sheriff Adam Fortney**

RE: **Release of Jail Restrictions**

The intent of this memo is to notify all applicable police agencies that I am lifting the booking restrictions at the Snohomish County Jail, effective immediately. Because of the unique set of circumstances surrounding our current working conditions, I thought an explanation was appropriate.

Several months ago when the potential impacts of COVID 19 hit all of us extremely hard, we all worked tirelessly to plan for the worse possible outcome as that is what we are here to do. This was no different for Snohomish County Corrections. Corrections worked with all of the pertinent stakeholders (courts, public defenders, prosecutors) to mitigate the impacts of COVID 19 and to make every effort to reduce exposure in our jail while protecting the rights of our inmates. I am proud to say we have been successful thus far and we are confident in our ability to screen, detect, isolate, and provide appropriate treatment for inmates in our custody, and new bookings admitted to our facility. It would not be an overstatement to say that all of Snohomish County Corrections Bureau has been a shining light during this pandemic. We are in a good place.

The average daily jail population prior to COVID 19 was around 950 inmates. As of April 20th, 2020 at 1547 hours, the population at the Snohomish County Jail is 290 inmates. This reflects a 69% decrease in our average population. Now we can all agree that these measures had to be taken early on in the COVID 19 pandemic but we are now at a different place. Thankfully, the pandemic has slowed, the survival rate is currently at approximately 98%, and cities and counties across the nation are looking at a slow but steady ramp up to normal business with protections in place. I am very confident in saying that those protections are in place within Snohomish County Corrections and we are beginning our slow and steady course to normalcy!

Snohomish County Jail can currently house a moderate increase in population and keep them isolated in single cells to maintain social distancing. We can do so with zero impacts to our current staffing model as we have modules already staffed with empty cells in them. We have the capacity to do this safely! Snohomish County Corrections EXCEEDS all recommendations made for correctional facilities by the Center for Disease Control and we will continue to do so. While the booking decision(s) lie with the individual departments, we are ready to increase our

daily population and we are working hard at on creating a plan to continue to gradually increase our inmate population over the next few weeks. As we increase population we will continually monitor the overall population and if needed put short term restrictions in place on a limited basis in order to ensure we are still exceeding best practices.

This is not about getting to any specific number in our jail, this is about public safety. This is about giving some discretion back to officers, troopers, and deputies to make a physical arrest when they think it is necessary to protect the public. With an average daily jail population down about 69% that means those criminals that would normally be incarcerated are now free to commit other crimes. It is only a matter of time before this goes bad and it will not be for lack of effort on our part to house these offenders within Snohomish County Corrections. It is time to get back to enforcing the law and ensuring the safety of our community.

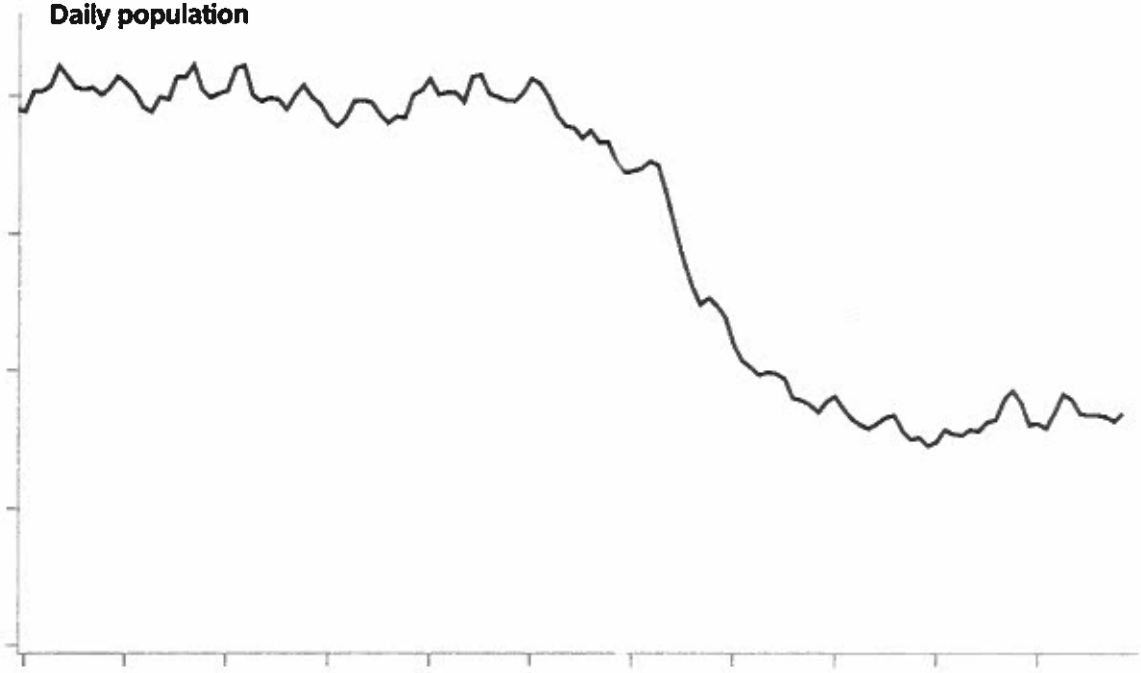
Please don't hesitate to call or email with questions.

Sheriff Adam Fortney
425-388-3414

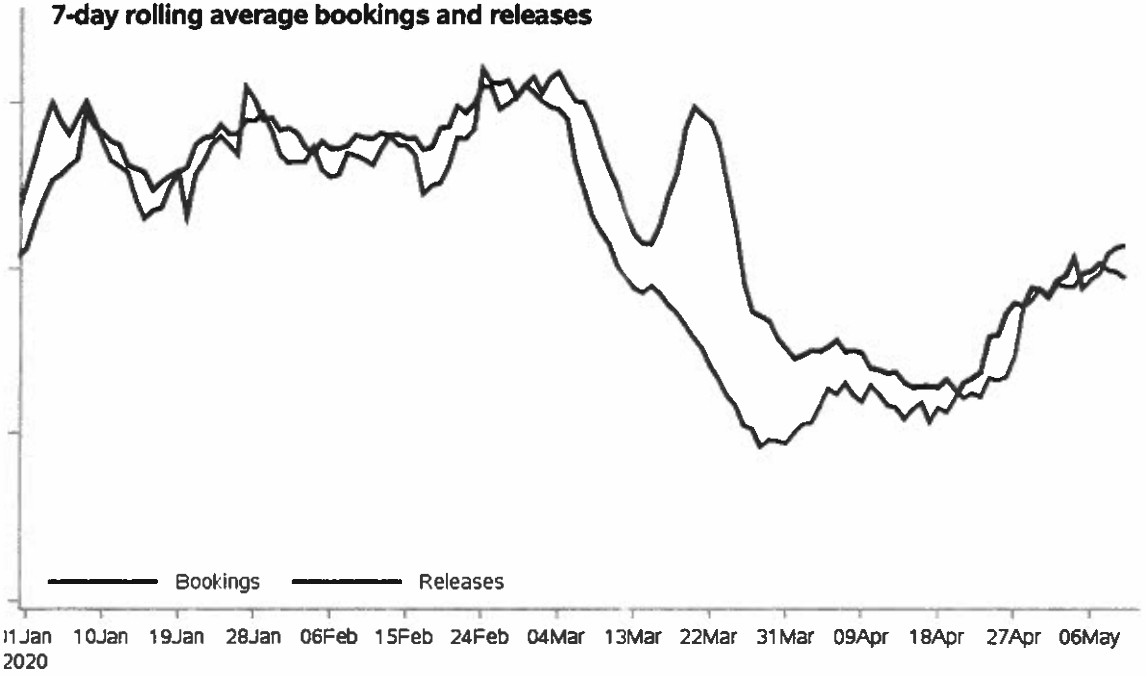
Exhibit 7

ıomish County Corrections Bureau
ıings, Releases and Population - between 01/01/2020 and 05/10/2020

Daily population



7-day rolling average bookings and releases



Daily and rolling average detail - last seven weeks

	Daily			7-day Average	
Date	Population	Bookings	Releases	Bookings	Releas
05/10/2020	337	36	40	38.9	42.9
05/09/2020	325	40	25	39.6	42.6
05/08/2020	332	37	49	39.9	41.9
05/07/2020	334	34	42	40.7	39.4
05/06/2020	334	48	45	39.7	38.7
05/05/2020	336	41	40	39.4	37.6
05/04/2020	356	36	59	37.9	41.4
05/03/2020	364	41	38	37.9	39.1
05/02/2020	338	42	20	38.1	38.6
05/01/2020	315	43	32	36.4	36.7
04/30/2020	322	27	37	37.4	37.6
04/29/2020	320	46	37	37.7	36.1
04/28/2020	351	30	67	35.4	35.3
04/27/2020	369	36	43	35.9	29.3
04/26/2020	356	43	34	34.6	26.9
04/25/2020	327	30	7	31.9	26.4
04/24/2020	324	50	38	31.7	26.7
04/23/2020	311	29	27	27.4	24.4
04/22/2020	313	30	31	26.7	24.9
04/21/2020	305	33	25	26.1	24.3
04/20/2020	307	27	26	24.3	25.3
04/19/2020	313	24	31	22.6	26.6
04/18/2020	295	29	9	23.1	25.6
04/17/2020	290	20	22	21.4	25.7
04/16/2020	302	24	30	23.7	25.7
04/15/2020	299	26	27	23.0	25.6
04/14/2020	311	20	32	21.7	26.1
04/13/2020	334	15	35	23.1	27.4
04/12/2020	331	28	24	23.4	27.3
04/11/2020	322	17	10	24.7	27.7
04/10/2020	315	36	22	25.9	27.9
04/09/2020	320	19	29	23.9	29.7
04/08/2020	329	17	31	24.6	30.0
04/07/2020	343	30	41	26.1	29.9
04/06/2020	361	17	34	24.7	31.3
04/05/2020	353	37	27	25.4	30.4
04/04/2020	338	25	11	23.3	29.9
04/03/2020	349	22	35	21.3	30.0
04/02/2020	355	24	31	21.1	29.4
04/01/2020	358	28	30	20.1	29.0
03/31/2020	387	20	51	18.9	30.3
03/30/2020	394	22	28	19.1	31.4
03/29/2020	396	22	23	19.3	33.6
03/28/2020	392	11	12	18.4	34.1
03/27/2020	403	21	31	20.6	34.7
03/26/2020	413	17	28	21.0	38.3
03/25/2020	436	19	39	23.4	45.0
03/24/2020	477	22	59	24.6	50.0
03/23/2020	493	23	43	26.6	55.0
03/22/2020	505	16	27	28.1	57.6

Note: daily population based in inmate counts at 0700

Exhibit 8

From: Cornell, Adam
Sent: Thursday, March 12, 2020 6:20 PM
To: SPA-Criminal <SPA-Criminal@co.snohomish.wa.us>
Cc: Held, Michael <Michael.Held@co.snohomish.wa.us>; Cummings, Jason <jcummings@co.snohomish.wa.us>; Kane, Jamie <Jamie.Kane@co.snohomish.wa.us>
Subject: Judge Weiss Order / Impact + Solutions Re: Pre-Trial Defendants
Importance: High

Colleagues,

Earlier this afternoon, Chief Criminal Deputy Matt Baldock and I met with Corrections Bureau Chief Jamie Kane, Corrections Captain Dave Hall, Director of OPD Jason Schwarz, and Public Defender Director Kathy Kyle. The purpose of the meeting was to address the impact of Judge Weiss's Order on jail staff, inmates, and other criminal justice participants.

Bureau Chief Kane and Captain Hall expressed deep concern for the health and safety of his staff and the health and safety of vulnerable defendants in the custody of our jail. He also shared concern regarding anticipated limited jail resources. Matt and I were joined by Jason and Kathy in sharing those concerns. Notwithstanding those concerns, Matt and I are mindful of our obligation to protect our community and hold offenders accountable—which we will continue to be focused on. Nevertheless, in light of our pending health emergency, we have to balance that obligation with the health needs of inmates in categories of high-level susceptibility to the virus per Center for Disease Control guidelines. Matt and I also have to consider increasingly limited jail resources that are likely to get more limited in light of the Governor's recent decision to cancel school in Snohomish County until April 24th. For the reasons stated above, and with the wholehearted support of the Corrections Bureau, I am adopting a temporary policy limited to **some defendants charged with non-violent and non-sex offenses who do not have pending warrants**. The policy is as follows:

For pre-trial defendants who are charged with a non-violent and non-sexual assault offense and have no other pending warrants, there should be a presumption of agreed release of the defendant with offense-related conditions—upon proper notice and filing by defense counsel—in the following circumstances:

--Defendant has compromised health as determined by Corrections Bureau medical staff.

--Defendant is in a high-risk age group as defined by the Central for Disease Control guidelines.

--Defendant is charged with a misdemeanor or gross misdemeanor that is not a DUI or a DV-related offense.

--Defendant is charged with simple Possession of a Controlled Substance and has limited prior felony charges.

--Defendant would presumptively be eligible for one of our alternative justice programs.

Every case is different and the laboring oar is on counsel for the defendant to make their case. You may exercise your thoughtful discretion by agreeing to release in other cases of those not charged with a

violent or sex offense or DUI. Please direct questions to your Lead or Chief Criminal Deputy Matt Baldock.

On another note, late this afternoon, in a meeting with other criminal justice stakeholders that I convened to address COVID-19 related issues, Matt and I learned that as a part of his emergency Order, Presiding Judge Weiss intends to strike all out of custody matters to be held in C-304 the week of 3/16. There was discussion about whether this practice would be extended, but for now it's just one week. Obviously, this means we will have to resummons defendants as new hearings are scheduled—and re-subpoena witnesses. To make sure that necessary hearings do not fall through the cracks, please be diligent about communicating with staff and including relevant notes in JustWare.

I am including staff and victim advocates in this email because it will inevitably result in a spike in bail review motions and other work related to rescheduling hearings.

Adam

Adam Cornell
Prosecuting Attorney

Snohomish County
3000 Rockefeller Avenue, MS 504
Everett, WA 98201
Office: 425.388.3333

Administrative Assistant: Heather Hottinger | heather.hottinger@snoco.org | 425.388.7002

Exhibit 9

From: Kane, Jamie
Sent: Wednesday, April 8, 2020 7:23 AM
To: Weiss, Bru[redacted]; Larsen, Cind[redacted] Cornell, Ada[redacted]; Baldock, Matthe[redacted]; Fair, Dougla[redacted]; Bui, Tam [redacted]; Howard, Anthon[redacted] Rachel Ford[redacted] Kathleen Kyle[redacted]; Schwarz, Jaso[redacted]
Cc: SCR-Command Sta[redacted] SCR-Command Staff[redacted]; Ray, Amand[redacted]; Bellinger, Debbi[redacted]; Johnston, Marc [redacted]
Subject: SCR COVID-19 Inmate

All,

On 04/07/2020 at about 0930hrs, a 55 year old male subject was booked into the Snohomish County Jail by Marysville Police for two outstanding felony warrants (see attached Snohomish County Superior Court warrants). Prior to booking and at their own prompting, Marysville PD brought this subject to Providence where a COVID-19 test was administered (test results were not immediately available). Upon arrival at our jail, this information was relayed to our jail Booking registered nurse who met the arresting officer and arrestee in the outdoor triage tent within the vehicle sally port. The subject complained of a mild cough, though there was no fever, other symptoms, or complaint of a previous COVID-19 exposure. In accordance with jail protocol, our nurse placed the subject on medical isolation status immediately (pending the results of the test), before the subject was ever brought inside the Snohomish County Jail booking area. Once inside the jail booking area, staff interacted with this subject in full PPE and the subject was given a surgical mask to wear when out of their assigned single occupant cell for processing. In my initial review of this event, it appears our jail COVID-19 screening, containment, and medical care protocols worked as designed.

After being processed for booking, the subject was transferred to the jail's medical unit where they were housed in a designated single occupant medical isolation cell. On 04/08/2020 at about 0400hrs, we learned that this subject tested positive for COVID-19.

This individual is not in medical distress and is being monitored by security and medical staff 24/7. We do not believe there have been any inmate or staff exposures by this subject within the Snohomish County Jail. This subject will not attend court and remain on medical isolation status until they are symptom free for at least 72 hours, as determined by a jail medical provider (ARNP or MD) and the designated health authority of the Snohomish Health District. If the subject remains in custody, I am fully confident in our ability to continue medical isolation, care, and supervision of this individual within our jail.

If this subject is released prior to that occurring, we will facilitate possible transfer to the Angel of the Winds Isolation and Quarantine site in consultation with Dr. Spitters of the Snohomish Health District. If the subject does not qualify, we will work with Dr. Spitters to develop a safe release plan.

Please contact me if you have any questions or concerns. Please forward to appropriate personnel as needed and appropriate.

Respectfully,
Jamie

SHERIFF
Community First

Jamie Kane
Bureau Chief of Corrections
Snohomish County Sheriff's Office
3000 Rockefeller Ave. M/S 509
Everett, WA 98201
(425) 388-3616

Exhibit 10

Coronavirus Disease 2019 (COVID-19) - Vulnerable Inmate Criteria

In order to identify inmates as being vulnerable to significant illness or death if exposed to COVID-19, the Corrections Bureau Health Services Division has compiled a screening protocol for inmates who meet set criteria as established by the Centers for Disease Control:

- Older Adults (65 and older)
- People who have serious underlying medical conditions like:
    - Heart disease
    - Diabetes
    - Lung disease

The CDC does not have data to support a significant risk to pregnant women or new mothers at this time. However, the Snohomish County Jail will take this into account when providing an individualized medical assessment of pregnant inmates and new mothers regarding the risks of exposure to COVID-19.

The CDC also states that individuals with asthma (pre-existing respiratory issues) or HIV may be at higher risk for significant illness if exposed to COVID-19.

New Inmates: During the booking medical screening process, Corrections Medical staff will assess and determine if the subject meets the criteria. If so, they will be placed on the COVID-19 Vulnerable Inmate List.

Existing Inmates: Designated Corrections Medical staff will compile a list daily of inmates who meet the established high risk criteria and remove those who have been released. They will also add the "New Inmates" names to this list daily, creating one comprehensive list per day.

The COVID-19 Vulnerable Inmate List will be provided to Health Services Administrator Jacob Taylor, Major Scott Robertson, and Bureau Chief Jamie Kane. The Bureau Chief, or designee, will in turn provide this list to the Office of Public Defense, the Public Defender's Association, the Prosecutors Office, and court administration daily.

The list is not a "release request" from the Snohomish County Sheriff's Office. Instead, this list is strictly objective information gathered for stakeholders (i.e. attorney's, prosecutor, the court) to be used for criminal justice purposes relating to an inmate's incarceration status.

In the event the Snohomish County Sheriff's Office Corrections Administration seeks the release of an individual inmate for medical reasons, that request will be separate and clearly denoted as our request.

Additionally, Corrections Bureau medical staff will only be providing names on the COVID-19 Vulnerable Inmate list. The Corrections Bureau medical staff will not provide information as to why an inmate is on the list, or associated medical diagnosis.

Exhibit 11

Personnel Complaints

1019.1 PURPOSE AND SCOPE

This policy provides guidelines for the reporting, investigation and disposition of complaints regarding the conduct of members of the Snohomish County Sheriff's Office. This policy shall not apply to any questioning, counseling, instruction, informal verbal admonishment or other routine or unplanned contact of a member in the normal course of duty, by a supervisor or any other member, nor shall this policy apply to a criminal investigation.

1019.2 POLICY

The Snohomish County Sheriff's Office takes seriously all complaints regarding the service provided by the Office and the conduct of its members.

The Office will accept and address all complaints of misconduct in accordance with this policy and applicable federal, state and local law, municipal and county rules and the requirements of any memorandum of understanding or collective bargaining agreements.

It is also the policy of this Office to ensure that the community can report misconduct without concern for reprisal or retaliation.

1019.3 EARLY IDENTIFICATION AND INTERVENTION SYSTEM (EIIS)

The primary goal of the Early Identification and Intervention System (EIIS) is to allow management to intervene, utilizing counseling or training, when an employee has been identified as having problematic behavior. As an early response, management will intervene before such an employee is in a situation that warrants formal disciplinary action. The EIIS will alert management to those individuals who have three indicators in a quarter, or four or more in a year.

Indicators, such as citizen complaints, (including sustained, non-sustained, and undetermined findings), firearms discharge, use-of-force reports, civil litigation, resisting arrest incidents, and vehicle damage may be selection criteria for identifying problematic pattern behavior. Including non-sustained and undetermined citizen complaints in the EIIS will give management a broader base to help identify potential employees for early intervention. The intervention is not discipline, but counseling, provided in order to correct behavior before the employee's conduct merits formal discipline. Many non-sustained complaints are inconclusive, especially when the citizen is the only witness and there is no corroborating evidence.

Intervention should consist of a counseling session or training class provided by the employee's immediate supervisor. The counseling or training should be documented on a Performance Incident Report (PIR) in accordance with the Performance Evaluation Standard Operating Procedure.

Post intervention monitoring should take place following any counseling or training session. The post intervention meetings between the employee and their immediate supervisor shall take place at 14, 30, and 60 days after the intervention and documented on a PIR.

1019.4 PERSONNEL COMPLAINTS

Personnel complaints include an allegation of circumstances describing act(s) or failure(s) to act, that if proven true, would constitute a violation of office policy or of federal, state or local law, policy or rule. Personnel complaints may be generated internally or by the public.

Inquiries about conduct or performance that, if true, would not violate office policy or federal, state or local law, policy or rule may be handled informally by a supervisor and shall not be considered a personnel complaint. Such inquiries generally include clarification regarding policy, procedures or the response to specific incidents by the Office.

1019.4.1 SOURCES OF COMPLAINTS

The following applies to the source of complaints:

(a) Individuals from the public may make complaints in any form, including in writing, by email, in person or by telephone.

(b) Any office member becoming aware of alleged misconduct shall immediately notify a supervisor.

(c) Supervisors shall initiate a complaint based upon observed misconduct or receipt from any source alleging misconduct that, if true, could result in disciplinary action.

(d) Anonymous and third-party complaints should be accepted and investigated to the extent that sufficient information is provided.

(e) Tort claims and lawsuits may generate a personnel complaint.

1019.5 AVAILABILITY AND ACCEPTANCE OF COMPLAINTS

1019.5.1 COMPLAINT FORMS

Personnel complaint forms will be maintained in a clearly visible location in the public area of the sheriff's facility and be accessible through the office website. Forms may also be available at other County facilities. Personnel complaint forms in languages other than English may also be provided, as determined necessary or practicable.

1019.5.2 ACCEPTANCE

All complaints will be courteously accepted by any office member and promptly given to the appropriate supervisor. Although written complaints are preferred, a complaint may also be filed orally, either in person or by telephone. Such complaints will be directed to a supervisor. If a supervisor is not immediately available to take an oral complaint, the receiving member shall obtain contact information sufficient for the supervisor to contact the complainant and initiate the personnel complaint form. The supervisor, upon contact with the complainant, shall complete and submit a complaint form as appropriate.

Although not required, complainants should be encouraged to file complaints in person so that proper identification, signatures, photographs or physical evidence may be obtained as necessary.

1019.6 DOCUMENTATION

Supervisors shall ensure that all personnel complaints are documented on a complaint form. The supervisor shall ensure that the nature of the complaint is defined as clearly as possible.

Copies of all complaints shall be sent to OPA for logging and tracking in a data base . The log shall include the nature of the complaint and the actions taken to address the complaint. On an annual basis, the Office should audit the log and send an audit report to the Sheriff or the authorized designee.

1019.7 ADMINISTRATIVE INVESTIGATIONS

Allegations of misconduct will be administratively investigated as follows.

1019.7.1 SUPERVISOR RESPONSIBILITIES

In general, the primary responsibility for the investigation of a personnel complaint shall rest with the member's immediate supervisor, unless the supervisor is the complainant, or the supervisor is the ultimate decision-maker regarding disciplinary action or has any personal involvement regarding the alleged misconduct. The Sheriff or the authorized designee may direct that another supervisor investigate any complaint.

A supervisor who becomes aware of alleged misconduct shall take reasonable steps to prevent aggravation of the situation.

The responsibilities of supervisors include, but are not limited to:

(a) Ensuring that upon receiving or initiating any personnel complaint, a complaint form is completed.

1. The original complaint form will be directed to the supervisor of the accused member, via the chain of command, who will take appropriate action and/or determine who will have responsibility for the investigation.
2. In circumstances where the integrity of the investigation could be jeopardized by reducing the complaint to writing or where the confidentiality of a complainant is at issue, a supervisor shall orally report the matter to the member's Bureau Commander or the Sheriff, who will initiate appropriate action.

(b) Responding to all complaints in a courteous and professional manner.

(c) Follow-up contact with the complainant should be made within 24 hours of the Office receiving the complaint,if possible, or as soon thereafter.

1. If the matter is resolved and no further action is required, the supervisor will note the resolution on the complaint form and forward the form to their supervisor for concurrance and closure.

(d) Ensuring that upon receipt of a complaint involving allegations of a potentially serious nature, the Under Sheriff and Sheriff are notified via the chain of command as soon as practicable.

(e) Notification through the chain of command direction regarding their roles in addressing a complaint that relates to sexual, racial, ethnic or other forms of prohibited harassment or discrimination.

(f) Informing the complainant of the investigator's name and contact information.

(g) Investigating a complaint as follows:

1. Making reasonable efforts to obtain names, addresses and telephone numbers of witnesses.

2. When appropriate, ensuring immediate medical attention is provided and photographs of alleged injuries and accessible uninjured areas are taken.

(h) Ensuring that the procedural rights of the accused member are followed in accordance with policy and current labor agreements. .

(i) Ensuring interviews of the complainant are generally conducted during reasonable hours.

1019.7.2 ADMINISTRATIVE INVESTIGATION PROCEDURES

Whether conducted by a supervisor or a member of the Office of Professional Accountability, the following applies to employees:

(a) Interviews of an accused employee shall be conducted during reasonable hours and preferably when the employee is on-duty. If the employee is off-duty, he/she shall be compensated as per their labor agreement.

(b) Unless waived by the employee, interviews of an accused employee shall be at the Snohomish County Sheriff's Office or other reasonable and appropriate place.

(c) No more than two interviewers should ask questions of an accused employee.

(d) Prior to any interview, an employee should be informed of the nature of the investigation.

(e) All interviews should be for a reasonable period and the employee's personal needs should be accommodated.

(f) No employee should be subjected to offensive or threatening language, nor shall any promises, rewards or other inducements be used to obtain answers. Any employee refusing to answer questions directly related to the investigation may be ordered to answer questions administratively and may be subject to discipline for failing to do so.

(g) The interviewer should audio record all interviews of employees and witnesses, whenever possible. The employee may also record the interview. If the employee has been previously interviewed, a copy of that recorded interview shall be provided to the employee prior to any subsequent interview.

(h) All employees subjected to interviews that could result in discipline have the right to have an uninvolved representative present during the interview. However, in order to maintain the integrity of each individual's statement, involved employees shall not consult or meet with a representative or attorney collectively or in groups prior to being interviewed.

(i) All employees shall provide complete and truthful responses to questions posed during interviews.

(j) No employee may be compelled to submit to a polygraph examination, nor shall any refusal to submit to such examination be mentioned in any investigation.

(k) An employee covered by civil service shall be provided a written statement of all accusations with a duplicate statement filed with the civil service commission if the employee is facing disciplinary removal, suspension, demotion or discharge. (RCW 41.12.090; RCW 41.14.120).

1019.7.3 EMPLOYEE RIGHTS AND RESPONSIBILITIES

(a) All employees are required to cooperate in any internal investigation. Employees shall answer all questions truthfully and completely.

(b) Employees must submit to any lineup, photo, ballistics, chemical or other tests (excluding polygraph) legally requested by a supervisor or member of the Office of Professional Accountability.

(c) Employees who fail to cooperate in any internal investigations are subject to disciplinary action.

(a) When any employee is under investigation and subjected to interrogation, such interrogation shall be conducted under the following conditions:

(a) All interrogations shall be conducted at a reasonable hour, preferably when the employee is on duty, or during the normal waking hours for that employee, unless the seriousness of the investigation requires otherwise. If such interrogation does occur during the employee's off duty time, the employee shall be compensated in accordance with the prevailing labor agreement.

(b) All employees shall be advised of the nature of the investigation prior to any interrogation.

(c) The employee shall be advised of the name and rank of the officer in charge of the interrogation and the names and ranks of all persons present during the interrogation.

(d) All interrogations shall be for a reasonable period of time, taking into consideration the seriousness and complexity of the issue being investigated. The employee shall be allowed access to a telephone, reasonable meal breaks and rest periods.

(e) In the course of any interrogation or questioning, the employee has the right to be accompanied by a representative of the bargaining unit, if requested. If the employee decides not to have a union representative, they may have any one adult of the employee's choosing. This person may attend for the purpose of providing counsel to the employee.

(b) The Office shall not cause the employee under investigation to be subjected to visits by the press or news media without the employee's consent.

(c) The employee's home address, telephone number, and/or photograph shall not be given to the media without the employee's consent.

1019.7.4 ADMINISTRATIVE INVESTIGATION FORMAT

Formal investigations of personnel complaints shall be thorough, complete and essentially follow this format:

Introduction - Include the identity of the members, the identity of the assigned investigators, the initial date and source of the complaint.

Synopsis - Provide a brief summary of the facts giving rise to the investigation.

Summary - List the allegations separately, including applicable policy sections, with a brief summary of the evidence relevant to each allegation. A separate recommended finding should be provided for each allegation.

Evidence - Each allegation should be set forth with the details of the evidence applicable to each allegation provided, including comprehensive summaries of member and witness statements. Other evidence related to each allegation should also be detailed in this section.

Conclusion - A recommendation regarding further action or disposition should be provided.

Exhibits - A separate list of exhibits (e.g., recordings, photos, documents) should be attached to the report.

1019.7.5 DISPOSITIONS

Each personnel complaint shall be classified with one of the following dispositions:

Unfounded - The complainant admits to making a false allegation, the accused employee was not involved in the incident, or the incident did not occur.

Exonerated - When the investigation discloses that the alleged act occurred but that the act was justified, lawful and/or proper.

Non sustained -

(a) Cleared: there is sufficient evidence to provide the allegation is false or is not supported by the facts.

(b) Inconclusive: There is insufficient evidence to either prove or disprove the allegation.

(c) The investigation revealed that the employee committed a violation(s) other than the original allegation(s). A new allegation would be alleged and findings made.

Sustained - When the investigation discloses sufficient evidence to establish that the employee committed one or more of the alleged act(s) and that the employees act(s) constituted misconduct.

Undetermined This may involve but is not limited to the following;

(a) The complainant withdraws the complaint

(b) The complainant cannot be located

(c) The complainant is uncooperative

(d) The accused member separates from the office before the conclusion of the investigation.

1019.7.6 COMPLETION OF INVESTIGATIONS

Every investigator or supervisor assigned to investigate a personnel complaint or other alleged misconduct shall proceed with due diligence in an effort to complete the investigation within four (4) working days at each level of review, unless an extension is granted by the Bureau Chief in the employee's chain of command. A completed investigation must be accomplished within the time lines established by the accused members current labor contract, unless the Sheriff or his designee grants an extension.

Once the investigation process has been completed the assigned investigator or supervisor shall notify the complainant of the disposition of their complaint.If possible, the notification should be in writing.

1019.8 ADMINISTRATIVE SEARCHES

Assigned lockers, storage spaces and other areas, including desks, offices and vehicles, may be searched as part of an administrative investigation upon a reasonable suspicion of misconduct, excluding personal items/containers, except as provided by law. The employee should be notified of such a search in a reasonable period of time.

Such areas may also be searched any time by a supervisor for non-investigative purposes, such as obtaining a needed report, radio or other document or equipment.

1019.9 ADMINISTRATIVE LEAVE

When a complaint of misconduct is of a serious nature, or when circumstances indicate that allowing the accused to continue to work would adversely affect the mission of the Office, the Sheriff or the authorized designee may temporarily assign an accused employee to administrative leave. Any employee placed on administrative leave:

(a) May be required to relinquish any office badge, identification, assigned weapons and any other office equipment.

(b) Shall be required to continue to comply with all policies and lawful orders of a supervisor.

(c) May be temporarily reassigned to a different shift, generally a normal business-hours shift, during the investigation. The employee may be required to remain available for contact at all times during such shift, and will report as ordered.

1019.10 CRIMINAL INVESTIGATION

Where a member is accused of potential criminal conduct, a separate supervisor or investigator shall be assigned to investigate the criminal allegations apart from any administrative investigation. Any separate administrative investigation may parallel a criminal investigation.

The Sheriff shall be notified as soon as practicable when a member is accused of criminal conduct. The Sheriff may request a criminal investigation by an outside law enforcement agency.

A member accused of criminal conduct shall be provided with all rights afforded to a civilian.

The Snohomish County Sheriff's Office may release information concerning the arrest or detention of any member, including a deputy, that has not led to a conviction. No disciplinary action should be taken until an independent administrative investigation is conducted.

1019.11 POST-ADMINISTRATIVE INVESTIGATION PROCEDURES

The purpose of the review process is to ensure that the supervisor charged with proper authority to decide the finding and impose discipline has had their decision reviewed by the next higher level. The listed steps shall be followed:

(a) The supervisor investigating the allegations shall provide a summary of facts and make a recommendation of finding.

(b) If sustained, the supervisor shall make a recommendation of discipline based on culpability standards and the discipline matrix. Supervisors shall be required to investigate prior discipline imposed by contacting the OPA sergeant. Prior incidents will be considered when consulting the discipline matrix.

(c) Completed investigation and recommendation shall be forwarded to the next supervisor in the chain of command for review and concurrence.

(d) Before discipline is imposed the supervisor with authority to administer discipline shall have the concurrence of their immediate supervisor.

(e) Completed investigations and discipline shall be forwarded through the chain of command. The completed case shall be sent to the OPA for filing.

The Office of Professional Accountability shall be responsible for investigating alleged significant or complex cases of misconduct by employees. The Office of Professional Accountability shall be responsible for review of all employee involved shooting or other incidents where potential lethal force was used. All Internal Investigations shall be conducted in accordance with the Internal Investigations Standard Operating Procedure. Upon completion, the final report shall be forwarded, without recommendation, to the appropriate Bureau Chief. The Bureau Chief shall ensure the investigation is complete then forward it to the Undersheriff.

1019.11.1 BUREAU COMMANDER RESPONSIBILITIES

Upon receipt of any completed personnel investigation, the Bureau Commander of the involved member shall review the entire investigative file, the member's personnel file and any other relevant materials.

The Bureau Commander may make recommendations regarding the disposition of any allegations and the amount of discipline, if any, to be imposed.

Prior to forwarding recommendations to the Sheriff, the Bureau Commander may return the entire investigation to the assigned investigator or supervisor for further investigation or action.

When forwarding any written recommendation to the Sheriff, the Bureau Commander shall include all relevant materials supporting the recommendation. Actual copies of a member's existing personnel file need not be provided and may be incorporated by reference.

1019.11.2 SHERIFF RESPONSIBILITIES

Upon receipt of any written recommendation for disciplinary action, the Sheriff or his designee shall review the recommendation and all accompanying materials. The Sheriff may modify any recommendation and/or may return the file to the Bureau Commander for further investigation or action.

Once the Sheriff is satisfied that no further investigation or action is required by staff, the Sheriff or his designee shall determine the amount of discipline, if any, that should be imposed. In the event disciplinary action is proposed, the Sheriff or his designee shall provide the member with a written notice and the following:

(a) Access to all of the materials considered by the Sheriff in recommending the proposed discipline.

(b) An opportunity to respond orally or in writing to the Sheriff within five days of receiving the notice.

    (a) Upon a showing of good cause by the member, the Sheriff may grant a reasonable extension of time for the member to respond.

    (b) If the member elects to respond orally, the presentation may be recorded by the Office. Upon request, the member may be provided with a copy of the recording.

Once the member has completed his/her response or if the member has elected to waive any such response, the Sheriff shall consider all information received in regard to the recommended discipline. The Sheriff shall render a timely written decision to the member and specify the grounds and reasons for discipline and the effective date of the discipline. Once the Sheriff has issued a written decision, the discipline shall become effective.

1019.12 PRE-DISCIPLINE EMPLOYEE RESPONSE

The pre-discipline process is intended to provide the accused employee with an opportunity to present a written or oral response to the supervisor making the disciplinary decision on the matter, after having had an opportunity to review the supporting materials and prior to imposition of any recommended discipline. The supervisor holding a pre-disciplinary review shall consider the following:

(a) The response is not intended to be an adversarial or formal hearing.

(b) Although the employee may be represented by an uninvolved representative or legal counsel, the response is not designed to accommodate the presentation of testimony or witnesses.

(c) The employee may suggest that further investigation could be conducted or the employee may offer any additional information or mitigating factors for the Sheriff to consider.

(d) In the event that the Sheriff elects to cause further investigation to be conducted, the employee shall be provided with the results prior to the imposition of any discipline.

(e) The employee may thereafter have the opportunity to further respond orally or in writing to the Sheriff on the limited issues of information raised in any subsequent materials.

1019.13 RESIGNATIONS/RETIREMENTS PRIOR TO DISCIPLINE

In the event that a member tenders a written resignation or notice of retirement prior to the imposition of discipline, it shall be noted in the file. The tender of a resignation or retirement by itself shall not serve as grounds for the termination of any pending investigation or discipline.

1019.14 PROGRESSIVE DISCIPLINE PHILOSOPHY

(a) When discipline is deemed appropriate, it is the policy of this Office to use a progressive system. The steps of progressive discipline are listed below, however, the principles of progressive discipline do not require that every step in the continuum be administered, or that discipline be initiated at any particular step. For example, in the event of an employee committing a crime, the Sheriff or his designee may find suspension or termination as the only appropriate sanction and not administer any lesser form of discipline.

(b) Discipline shall be for cause and shall follow the basic concepts of due process as established elsewhere by administrative procedures and labor agreements and shall be in accordance with RCW 41.14.110, 41.14.120, and Snohomish County Civil Service Rules 12.1, 12.2.

(c) In the interest of fairness, an employee's work history and performance shall be considered in conjunction with any information presented by the employee in a pre-disciplinary hearing. For these reasons, the level of discipline administered to one employee may not be identical to the level of discipline administered to another under similar circumstances.

(d) Complaints involving possible criminal violations may be referred to the Prosecutor's Office for criminal charges.

(e) Employees are subject to office disciplinary action as well as sanctions imposed by any court of competent jurisdiction.

1019.14.1 STEPS OF PROGRESSIVE DISIPLINE

(a) Verbal Reprimand.

(b) Written Reprimand.

(c) Loss of leave.

(d) Suspension without pay.

(e) Demotion (if applicable).

(f) Termination.

1019.14.2 ADMINISTERING DISIPLINE

Verbal reprimands may be issued by a person holding the rank of Sergeant or equivalent civilian position, or above.

Written reprimands may be issued by a person holding the rank of Lieutenant or equivalent civilian position, or above.

Loss of leave or suspensions without pay (up to three days) may be issued by a person holding the rank of Captain or equivalent civilian position, or above.

Loss of leave or suspension without pay (in excess of three days) may be issued by a person holding the rank of Bureau Chief, or above.

Discipline involving demotion or termination shall be issued by the Sheriff or his designee.

Prior to the issuance of a suspension, demotion or termination, the supervisor with the authority to impose discipline shall take the following action:

(a) The supervisor shall serve a pre-disciplinary letter on the subject employee.

(b) The pre-disciplinary letter shall describe the allegations against the subject employee and the potential discipline.

(c) The pre-disciplinary letter shall notify the subject employee of the date, time and location of the hearing. Attempts should be made to have the hearing at a time and date close to the employees work schedule.

(d) The supervisor shall consider information provided by the employee at the pre-disciplinary hearing prior to imposing discipline. (To avoid the appearance of predisposition, discipline should be imposed at a separate hearing)

Supervisors with the authority to impose a written reprimand are encouraged to take the above steps.

1019.15 DISCIPLINE MATRIX

Public Trust is a paramount objective of the Sheriff's Office. A violation of this trust affects our ability to provide service to our communities. Discipline serves as a tool for conformance to policy

and procedures. The Discipline Matrix is used as a guide to ensure fairness and consistency. The severity of the conduct should be consistent with the discipline imposed.

The Matrix is divided into three Grades that represent severity of conduct and number of offenses over a 24 month period. Within each Grade is a range of discipline. The result of the employees conduct will be the determinant of the Grade. Culpability Factors will be utilized to determine the discipline imposed within the Grade.

In cases with multiple offenses, the most serious offense will determine the grade.

Definitions:

Grade 1. Minor policy violations: No potential for loss of life, injury or property damage, loss of reputation, criminal charges, or civil litigation. Collisions found to be preventable in which there is no or minor injury and/or minor damage should be considered to fall within this grade.

Grade 2. Moderate policy violations: Potential loss of life, injury or property damage, loss of reputation, criminal charges or civil litigation. Collisions found to be preventable with significant injuries and/or significant property damage should be considered to fall within this grade.

Grade 3. Major policy violations: Actual loss of life, injury, significant property damage, loss of reputation, insubordination, criminal charges, or civil litigation. Collisions found to be preventable are excluded from this grade as a stand-alone violation.

	Any single event or combination of events in 24 consecutive months		
	1st Offense	2nd Offense	3rd Offense
Grade 1	Verbal Reprimand to One Year Written Reprimand	One Year Written Reprimand to Three Year Written Reprimand	Two Year Written Reprimand to Five Year Written Reprimand

Grade 2	One Year Written Reprimand to Three Days Loss of Leave/Suspension	Two Year Written Reprimand to Seven Day Loss of Leave/ Suspension	Five Year Written Reprimand to 14 Day Loss of Leave/Suspension
Grade 3	Two Year Written Reprimand to Demotion / Termination	Three Days Loss of Leave / Suspension to Demotion / Termination	30 Day Loss of Leave/Suspension to Demotion / Termination

The matrix above will determine the range of discipline for sustained allegations.

Depending on the employees disciplinary record, the new allegation(s) may fall within the first offense of the next higher Grade as defined in the Office of Professional Accountability SOP.

1019.16 POST-DISCIPLINE APPEAL RIGHTS

Non-probationary employees have the right to appeal discipline. The employee has the right to appeal using the procedures established by any collective bargaining agreement, memorandum of understanding and/or personnel rules.

In the event of punitive action against an employee covered by civil service, the appeal process shall be in compliance with RCW 41.12.090 and RCW 41.14.120.

1019.17 PROBATIONARY EMPLOYEES AND OTHER MEMBERS

At-will and probationary employees and members other than non-probationary employees may be disciplined and/or released from employment without adherence to any of the procedures set out in this policy, and without notice or cause at any time. These individuals are not entitled to any rights under this policy. However, any of these individuals released for misconduct should be afforded an opportunity solely to clear their names through a liberty interest hearing, which shall be limited to a single appearance before the Sheriff or the authorized designee.

Unless otherwise defined in a collective bargaining agreement, any probationary period may be extended at the discretion of the Sheriff in cases where the individual has been absent for more than a week or when additional time to review the individual is considered to be appropriate.

1019.18 RETENTION OF PERSONNEL INVESTIGATION FILES

All personnel complaints shall be maintained in accordance with state law and the established records retention schedule and as described in the Personnel Files Policy.

1019.19 NOTIFICATION TO CRIMINAL JUSTICE TRAINING COMMISSION (CJTC) CERTIFICATION BOARD

Upon termination of a peace officer for any reason, including resignation, the Office shall, within 15 days of the termination, notify the CJTC on a personnel action report form provided by the commission. The Office shall, upon request of the CJTC, provide such additional documentation or information as the commission deems necessary to determine whether the termination provides grounds for revocation of the peace officer's certification (RCW 43.101.135).

Exhibit 12

Welcome to the Snohomish County Corrections Jail Inmate Inqu

To access the Snohomish County Corrections *Jail Register Classic View* please click here
To access the Lynnwood Municipal Jail Inmate Inquiry please click here
To access the Marysville Municipal Jail Inmate Inquiry please click here

Back to Search

Inmate Detail - WILSON, SHARON R

Demographic Information

Name: **WILSON, SHARON R**
Subject Number: **2367479**

Booking History

Booking 2020-00004411

Booking Date: **3/21/2020 4:53 PM**
Release Date: **3/22/2020 6:44 PM**
Housing Facility:
Total Bond Amount: **$0.00**
Total Bail Amount: **$0.00**
Booking Origin: **Snohomish County Sheriff's Office**

Bond Number
2020-00008789
2020-00008790

Charges	Court D
1, 2	3/22/2(

Number	Charge Description	Offense Date	Docket Number	Sentence Date	Disposition	Disposition Dat
2	OBSTRUCT LAW ENFORCEMENT OFFICER	3/21/2020 4:15 PM			Court Order	3/22/2020
1	RESISTING ARREST	3/21/2020 4:15 PM			Court Order	3/22/2020

SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR SAN JUAN COUNTY

Kathryn C. Loring
Judge

Jane M. Severin
Court Administrator

May 26, 2020

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AMENDED

Re: Petition for Recall of Adam Fortney, Snohomish County Sheriff
Superior Court Cause 20-2-02972-31

Dear Counsel, Petitioners, and Respondent:

Please find below an **amended** briefing schedule for the hearing re: Recall Charges set for Tuesday, June 2, at 9:00 am.

Respondent shall have until **Friday, May 29, 2020 at 12:00 pm (noon)** to file a response to the Petition for Hearing to Determine Sufficiency of Recall Charge and Adequacy of Ballot Synopsis, should he wish to do so.

Petitioners shall have until **Monday, June 1, 2020, at 4:00 pm** to file a reply to any response filed by Respondent, should they wish to do so.

Judge's working copies shall be submitted via email to janes@sanjuanco.com at the same time responses/replies are filed with the County Clerk.

Sincerely,

/s/ Jane M. Severin (e-signature due to COVID 19)

Jane M. Severin, CCM,
Superior Court Administrator

:jms

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

IN RE: PETITION FOR RECALL OF ADAM FORTNEY, SNOHOMISH COUNTY SHERIFF.	Case No.: 20-2-02972-31 BALLOT SYNOPSIS

I. BALLOT SYNOPSIS OF RECALL CHARGES AGAINST ADAM FORTNEY, SNOHOMISH COUNTY SHERIFF

Shall Adam Fortney, Snohomish County Sheriff, be recalled from public office for the following reasons:

- Adam Fortney committed malfeasance, misfeasance, or violation of oath of office by endangering the peace and safety of the community and violating his statutory duties under RCWs 36.28.010 and 36.28.011 when he refused to enforce the lawful "Stay Home – Stay Healthy" Order;
- Adam Fortney committed misfeasance or violation of oath of office by endangering the peace and safety of the community and violating his statutory duties under RCWs 36.28.010 and 36.28.011 when he incited members of the public to violate the lawful "Stay Home – Stay Healthy" Order;

- Adam Fortney committed misfeasance or violation of oath of office by endangering the peace and safety of the community and violating his duties under RCW 36.28.010 by rehiring three deputies previously terminated after one deputy had used unjustified excessive force resulting in the death of a citizen and the two other deputies violated individual constitutional rights and attempted to cover it up;
- Adam Fortney committed misfeasance or violation of oath of office, exercising his discretion in a manifestly unreasonable manner, by failing to investigate a complaint and absolving a deputy accused of tackling and injuring a black woman?

RESPECTFULLY SUBMITTED this 4th day of June 2020.

s/Colin J. McMahon
Colin J. McMahon

s/Sam Sommerman
Sam Sommerman

s/Brittany Tri
Brittany Tri

s/Terry Preshaw
Terry Preshaw

Supreme Court No. 98683-5

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

IN RE PETITION OF RECALL FOR ADAM FORTNEY

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR SNOHOMISH COUNTY

MOTION FOR ACCELERATED REVIEW

COLIN MCMAHON
SAMANTHA SOMMERMAN
BRITTANY TRI
TERRY PRESHAW
Respondents

Now come the respondents, Colin McMahon, Samantha Sommerman, Brittany Tri, and Terry Preshaw, and hereby move the Court to accelerate the review of Sheriff Fortney's Recall Petition.

Washington Rules of Appellate Procedure (RAP) allow for accelerated review upon a motion establishing the emergent nature of the case. RAP 17.4(b); RAP 18.12. Statute provides for 30-day timeline for the review of recall petitions. RCW 29A.56.270. While the Rules of Appellate Procedure supersede this statute, the legislature has established that a recall petition is an "emergency matter of public concern and take precedence over other cases, and be speedily heard and determined." *Id*.; RAP 18.22. This urgent matter is deserving of accelerated review. *In re Recall of West*, 156 Wn.2d 244, 251 n.2 (2006) ("The legislature has recognized the emergency nature of recall appeals").

The respondents propose the following accelerated schedule:

FILING OF REPORT OF PROCEEDINGS: As of the time of this motion, the Court is already in receipt of Volume I of the Report of Proceedings which is the Ballot Synopsis Hearing that took place on June 9, 2020. Respondents propose that the Report of Proceedings for

the initial hearing, which took place on June 2, 2020, be filed immediately.

APPELLANT'S BRIEF: July 10, 2020 by end of business day.

RESPONDENT'S BRIEF: July 20, 2020 by end of business day.

APPELLANT'S REPLY BRIEF: July 24, 2020 by end of business day.

By its very nature, a Recall proceeding is emergent. Sheriff Fortney has been charged with endangering the public health and safety of the community he has sworn to protect. The emergent nature of this proceeding is accentuated by the fact that we find ourselves in the midst of a global pandemic. "The legislature shall pass the necessary laws to carry out the provisions of section thirty-three (33) of this article, and to facilitate its operation and effect **without delay**. . . Const. art. I, § 34. (**emphasis added**).

This motion is respectfully submitted to flag this emergency request to the Court. Respondents seek decision on this preliminary issue prior to this Court considering the underlying Petition in the ordinary course on the merits. The Court's time and attention to this urgent matter is greatly appreciated.

Respectfully submitted,

/s/ Colin McMahon
Colin McMahon

/s/ Samantha Sommerman
Samantha Sommerman

/s/ Brittany Tri
Brittany Tri

/s/ Terry Pershaw
Terry Pershaw

CERTIFICATION OF SERVICE

We, the respondents, hereby swear under penalty of perjury that on June 25, 2020, the foregoing document was electronically filed via the Washington Appellate Courts, which will effect service on all attorneys of record.

Signed in Everett, Washington this 25th day of June

/s/ Colin McMahon
Colin McMahon

/s/ Samantha Sommerman
Samantha Sommerman

/s/ Brittany Tri
Brittany Tri

/s/ Terry Preshaw
Terry Preshaw

COLIN MCMAHON - FILING PRO SE

June 26, 2020 - 12:51 PM

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	98683-5
Appellate Court Case Title:	In Re Petition for Recall of Adam Fortney
Superior Court Case Number:	20-2-02972-4

The following documents have been uploaded:

- 986835_Motion_20200626124603SC783912_3590.pdf
  This File Contains:
  Motion 1 - Accelerate Review
  The Original File Name was Motion for Accelerated Review.pdf

A copy of the uploaded files will be sent to:

- Rebecca.Guadamud@co.snohomish.wa.us
- Sams@mazzonelaw.com
- brittany.tri@gmail.com
- brittany@alfordlawteam.com
- cmcmahon@snocopda.org
- colinjamesmcmahon@gmail.com
- gahrend@ahrendlaw.com
- kmurray@snoco.org
- mark@northcreeklaw.com
- scanet@ahrendlaw.com
- ssommerm@gmail.com
- terrypreshaw@mac.com

Comments:

Sender Name: Colin McMahon - Email: colinjamesmcmahon@gmail.com
Address:
PO Box 2591
Everett, WA, 98213
Phone: (425) 299-6227

Note: The Filing Id is 20200626124603SC783912

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

IN RE: PETITION FOR RECALL OF ADAM FORTNEY, SNOHOMISH COUNTY SHERIFF.	Case No.: 20-2-02972-31 PETITIONERS' MOTION TO STRIKE

MOTION

COMES NOW the petitioners, Colin McMahon, Samantha Sommerman, Brittany Tri, and Terry Preshaw, and moves this Honorable Court to strike the following declarations and exhibits filed on June 4, 2020 by Sheriff Fortney: Declaration of David Bowman; Declaration of Courtney O'Keefe; Declaration of Sheriff Adam Fortney and accompanying exhibits; Declaration of Sergeant Glenn Dewitt. These filings have no relevance to the ballot synopsis memorandum and are an attempt to relitigate counts four and five of the Petition after the court had ruled.

ARGUMENT

As the Court is well aware, counsel for Sheriff Fortney requested to brief the language of the ballot synopsis after the Court's ruling and requested argument on the ballot synopsis language. The Court neither approved nor requested supplemental information regarding counts 4 or 5. The Court did not grant respondent leave to submit any supplemental materials. For the respondent to be representing that this was explicitly requested, approved by

the court, and not objected to by the petitioners is blatantly misleading and seeks to rewrite history as to what occurred on the record on June 3, 2020. In fact, opposing counsel specifically requested leave during argument to provide additional reports regarding charge 5 and to have Sheriff Fortney provide additional facts to the Court, presumably in the form of testimony mid-hearing; the court specifically declined these requests, stating that the decision would be made on the materials previously filed and provided.

The petitioners agreed to additional briefing and argument *on the ballot synopsis issue alone*. In addition to ballot synopsis language and a memorandum in support, opposing counsel filed four declarations at 4:55pm on June 4, 2020. Nothing in these late-filed materials pertains to the language of the synopsis. These declarations and attached exhibits were only generically cited in opposing counsel's introduction section of their memorandum to support his incorrect assertion that the Court wished to entertain further decision-making on its "underlying substantive decision" with respect to counts 4 & 5. This is a brazen attempt to introduce new evidence for the purpose of an appellate record *after* the court had already made its ruling. Sheriff Fortney had every opportunity to submit this untimely filed information in his original response brief. In fact, Sheriff Fortney himself drafted a declaration detailing his personal knowledge of the counts in the petition in the prior response brief but chose not to include this information. The briefing and argument agreed to by the parties was *not* a CR 59 "motion to reconsider" and the Court should not allow Sheriff Fortney to shoehorn these materials into the appellate record.

After a petition for recall is presented to the Court, a determination on the sufficiency of that petition must be made within 15 days. RCW 29A.56.140. In this case, that deadline was June 3, 2020. Citing to this deadline, the Court took care to issue a ruling on the

day of the hearing after reviewing the materials previously filed by the parties. Again, Sheriff Fortney had every opportunity to submit these materials before the day of the hearing but chose instead to surprise the Court and opposing parties with it after the fact.

Appellate Courts "do not accept evidence on appeal that was not before the trial court." State vs. Curtiss, 161 Wn. App. 673, 703, 250 P.3d 496, 511 (2011) (citing RAP 9.11). As recognized in Snedigar vs. Hoddersen, 114 Wn.2d 153, 164, 786 P.2d 781, 786 (1990), "a record on appeal may not be supplemented by material which has not been included in the trial court record." Pursuant to RAP 10.3, "the brief of the appellant or petitioner should contain . . . [t]he argument in support of the *issues presented for review*, together with citations to legal authority and references to relevant parts of the record." RAP 10.3(a)(6) (emphasis added). In this case, Respondent attempts to supplement the record with materials not provided to the Superior Court nor considered in the underlying proceedings. This is improper.

The attempt to shoehorn in supplemental materials after the Court's ruling is akin to Boyer v. Morimoto. 10 Wash.App.2d 506, 449 P.3d 285 (Div. 3 2019). In that case, the trial court granted summary judgement for the defendant in a medical malpractice suit. Id. at 512. The court heard oral argument on the summary judgement motion after reviewing briefing from both parties and then requested a curriculum vitae from the plaintiff's expert. Id. at 515. The plaintiff promptly provided it. Id. Ten days later to court issued a memorandum informing the parties of its decision to grant summary judgement and the reasoning. After the court issued the memorandum but before signing a formal order on summary judgement, the plaintiff filed supplemental material concerning its expert. Id. The appellate court held that it could not consider the late filed material given that the plaintiff provided no good cause for the late filing,

did not request leave of the court to submit the late filing, and did not file for a motion to reconsider. Id. at 535.

The same reasoning applies here. Sheriff Fortney did not file for a motion to reconsider, did not ask leave of the court the file supplemental materials, nor did he provide good cause for the once again late filing. Additionally, the problem of the late filing is further compounded by RCW 29A.56.140, which requires the Court to have made a decision by June 3rd. While petitioners agreed to allow time for the Court to consider argument on ballot synopsis language, we did not waive our right to a decision within 15 days.

CONCLUSION

The Petitioners object to the inclusion of these late-filed materials and respectfully request this Court to strike them from the record.

Dated this 5th of June, 2020.

/s/ Samantha Sommerman
Samantha Sommerman

/s/ Colin McMahon
Colin McMahon

/s/ Brittany Tri
Brittany Tri

/s/ Terry Preshaw
Terry Preshaw

Superior Court of Washington
County of Snohomish

In Re:

PETITION FOR RECALL OF ADAM FORTNEY, SNOHOMISH COUNTY CLERK

Case No. 20-2-02972-31

AMENDED CALENDAR NOTE: (NTC)
CIVIL MOTIONS - JUDGES' CALENDARS

VISITING JUDGE ASSIGNED

HEARING VIA "ZOOM"

Unless otherwise provided by applicable rule or statute, this form and the motion must be filed with the Clerk not later than five (5) court days preceding the date requested. CR 6(d)

**SEE "WHERE TO NOTE VARIOUS MATTERS" ON PAGE 2, TO DETERMINE WHAT MOTIONS ARE TO BE SET BEFORE THE CIVIL MOTIONS JUDGE VERSUS THE CIVIL MOTIONS COMMISSIONER VERSUS THE PRESIDING JUDGE.

TO: The Clerk of Court:

A. PRESIDING JUDGE'S CALENDAR

Monday – Friday @ 9:00 a.m.
Department as assigned

Date Requested (mm/dd/yyyy): _____
Nature of Hearing: _____
**Confirm court hearing by noon two (2) court days prior to the requested date by calling (425) 388-3587

B. JUDGE'S CIVIL MOTIONS CALENDAR

Tuesday through Friday @ 9:30 a.m.
Department as assigned

Date Requested (mm/dd/yyyy): _____
Nature of Hearing: _____

**Confirm court hearing by noon two (2) court days prior to the requested date by calling (425) 388-3587

C. RALJ HEARINGS

Wednesday @ 10:30 a.m.
Department C304 – Criminal Hearings Courtroom

Date Requested (mm/dd/yyyy): _____
Nature of Hearing: _____

**RALJ hearings are automatically confirmed by the Clerk's Office. No confirmation is necessary.

The following motions are heard on Presiding Judge's Calendar: trial continuance, pre-assignment, expedited trial date, jury trial (untimely demand), motion to waive mediation requirement.

RALJ HEARINGS
RALJ hearings are noted on the Wednesday morning criminal hearings calendar @ 10:30 a.m. in room C304.

All other civil motions are heard on the Judge's Civil Motions Calendar

EXTENDED MOTIONS BEFORE A COMMISSIONER: Extended motions are set by the Court Commissioner, not by a party or by counsel.

Calendar Notes should be filed at:
Snohomish County
Superior Court Clerk's Office
3000 Rockefeller Ave M/S 605
Everett, WA 98201

All Motions Heard At:
Snohomish County
Superior Court
3000 Rockefeller Ave
Everett, WA 98201

Please print the names, addresses etc. of all other attorneys in this case and/or all other parties requiring notice.

Name: Mark Lamb, Attorney
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Bothell, WA 98011
WSBA#: 30134
425.368.4238
Email mark@northcreeklaw.com
Attorney for: (CHECK ONE)
☐ Petitioner/Plaintiff ☑ Respondent/Defendant
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☑ Petitioner/Plaintiff ☐ Respondent/Defendant
☐ Pro Se

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Mukilteo, WA 98275

WSBA#: 18153

Email terrypreshaw@mac.com Ext.

Attorney for: (CHEC

☑ Petitioner/Plaintiff ☐ Respondent/Defendant

☐ Pro Se

Name: Adam Fortney

Address: 3000 Rockefeller Ave.
Everett, WA 98201

WSBA#:

Email Adam.Fortney@snoco.org Ext.

Attorney for: (CHEC

☑ Petitioner/Plaintiff ☐ Respondent/Defendant

☐ Pro Se

List all documents mailed: Civil Motions Calendar Note for Telephonic Hearing; Petition for Hearing to determine sufficiency of Recall Charges re: Adam Fortney Snohomish County Sheriff; Ballot Synopsis; Declaration of Garth Fell; Declaration of Rebecca Guadamud; Legal Memorandum of Sno.Co.; Proposed Order

D. JUDGE'S PERSONAL CALENDAR
(Special set hearings to be heard by a specific Judge)

Hearing date and time must be scheduled through the Judge's law clerk

Judge's calendar/contact information can be found at: http://www.co.snohomish.wa.us/documents/Departments/Superior_Court/judgeschedule.pdf

Date Requested (mm/dd/yyyy): **June 2, 2020, at 9:00 a.m. before visiting Judge Kathryn C. Loring** (San Juan County Superior Court)
Nature of Hearing: **Recall Charges re: Adam Fortney, Snohomish County Sheriff. The parties shall appear via "Zoom"**

**Confirm court hearing by noon two (2) court days prior to the requested date by calling the Judge's law clerk

NOTE: DO NOT schedule your hearing for a court holiday. Please check with the Clerk if you are uncertain when court holidays occur.

This calendar note must be filed with the Clerk not later than five (5) court days preceding the hearing date requested.

WARNING CONFIRMATION REQUIRED:

All matters set on the Judge's Civil Motion Calendar, Presiding Judge's Trial Continuance Calendar or Court Commissioner Calendars must be confirmed at 425-388-3587 two (2) court days prior to the hearing BEFORE 12:00 noon.

All RALJ hearings are automatically confirmed by the Clerk's Office. No confirmation is necessary.

Any hearings such as adoptions, reasonableness hearings and minor settlements which are specially set in front of a specific Judge on the Judge's Personal Calendar must be confirmed two (2) court days in advance through the Judge's law clerk. For more information on the Judge's schedules, you may call Court Administration at 425-388-3421 or information can be found on the internet at:
http://www.co.snohomish.wa.us/documents/Departments/Superior_Court/judgeschedule.pdf

Failure to notify the Court of a continuance or strike of a confirmed matter may result in sanctions and/or terms. SCLCR 7(b)(2)(H).

THIS FORM CANNOT BE USED FOR TRIAL SETTINGS. SCLMAR 2.1 AND SCLCR 40(b).

CERTIFICATE OF SERVICE BY MAIL:
I hereby certify that a copy of this document and all documents listed on page 4 have been mailed to the attorneys/parties listed on page 3, postage prepaid on the:

Date (mm/dd/yyyy): 5/26/20

(Signature)

Kathy Murray
(Printed name)

Noted by:

(Signature)

REBECCA J. GUADAMUD
(Printed name)

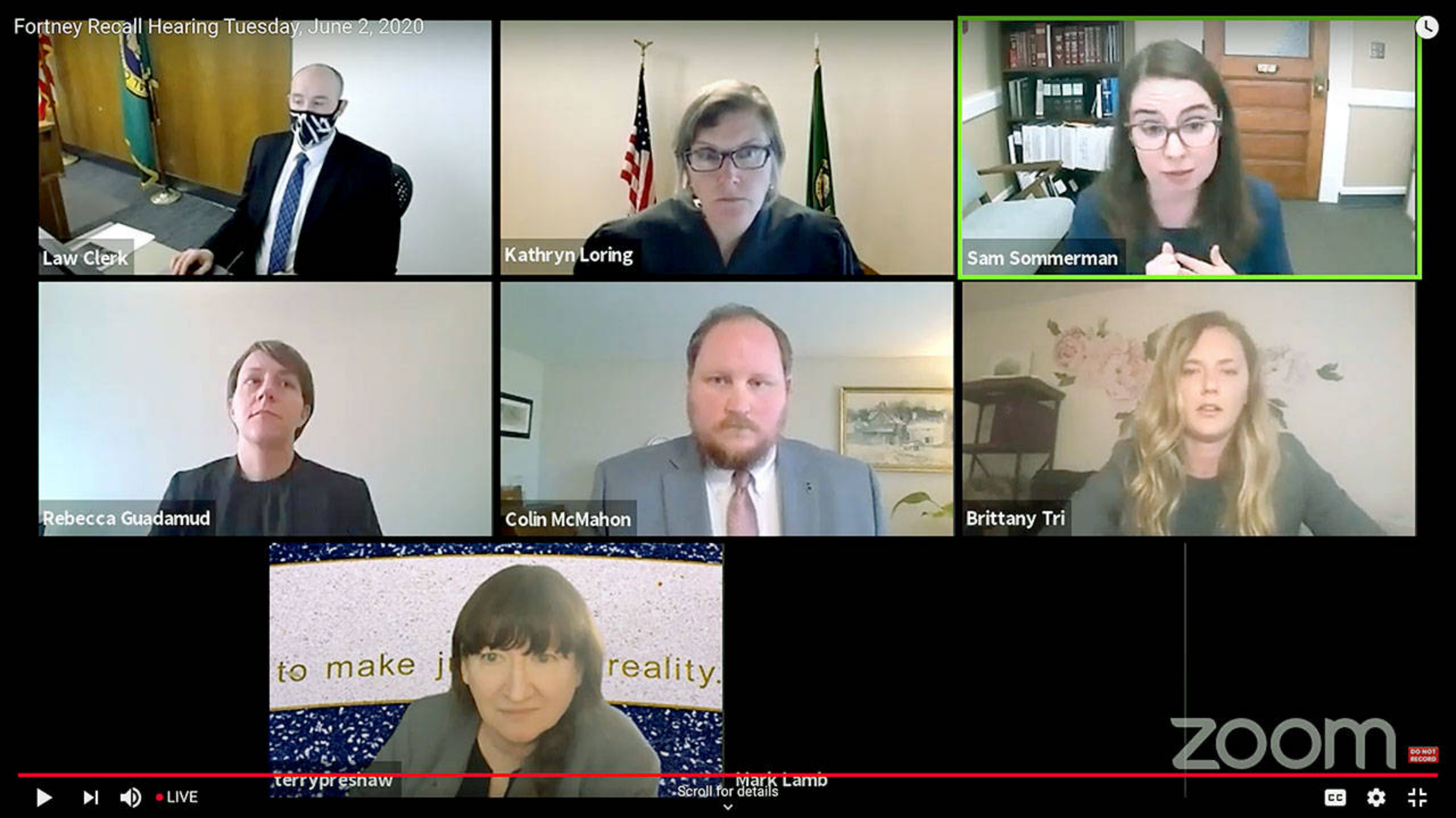
39718
WSBA#

Attorney for: (CHECK ONE)
☑ Petitioner/Plaintiff ☐ Respondent/Defendant
☐ Pro Se

WHERE TO NOTE VARIOUS MATTERS:

COMMISSIONER CIVIL MOTIONS:
The following are heard on the Court Commissioner's Civil Motion Calendar: Defaults, Discovery Motions and enforcement thereof; Supplemental Proceedings; Unlawful Detainer or Eviction & Receiver actions; Motions to Amend Pleadings and Petitions for Restoration of the Right to Possess Firearms. Probate and Guardianship matters are set on the Probate/Guardianship calendar.

PRESIDING JUDGE'S CALENDAR:


Fortney Recall Hearing Tuesday, June 2, 2020
Law Clerk
Kathryn Loring
Sam Sommerman
Rebecca Guadamud
Colin McMahon
Brittany Tri
terrypreshaw
Mark Lamb
zoom
LIVE
Scroll for details

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

IN RE: PETITION FOR RECALL OF ADAM FORTNEY, SNOHOMISH COUNTY SHERIFF.	Case No.: 20-2-02972-31 PETITIONERS' MOTION TO STRIKE AND REPLY IN SUPPORT OF RECALL PETITION

I. INTRODUCTION

On May 15, 2020, the petitioners filed their Petition for Recall of Adam Fortney, Snohomish County Sheriff. The matter was assigned to the Honorable Judge Kathryn Loring. A briefing schedule was set, which required the Respondent to file his response no later than May 28, 2020 at 4:00 PM. Attorney for the respondent requested additional time to file the response and suggested a new deadline of May 29, 2020 at 12:00 PM. This request was granted.

The respondent filed his response on May 29, 2020 at 3:53 PM, nearly four hours late. This reply follows.

II. MOTION TO STRIKE

"Trial courts have discretion whether to accept untimely filed documents." *Colorado Structures, Inc. v. Blue Mountain Plaza, LLC*, 159 Wn. App. 654, 660 (2011) (citing *O'Neill*

v. Farmers Ins. Co., 124 Wn. App. 516, 521 (2004)). The Amended briefing schedule in this matter was filed on May 26, 2020 and indicates, "Respondent shall have until **Friday, May 29, 2020 at 12:00 pm (noon)** to file a response. . . should he wish to do so." As stated above, this deadline was an extension of the initial deadline set by the Court pursuant to the Respondent's request.

The Respondent then failed to meet his own deadline. The untimely filing of the response was not accompanied by any motion explaining the delay or any other basis for why the Court should consider any of the information filed nearly four hours after the deadline. Instead, this late filing accentuates the Respondent's contempt for the authority of anyone other than himself. To borrow a term from the response, allowing the Respondent to present his pleadings in an unjustified violation of the Court's briefing schedule would render the schedule itself "superfluous." *See* Response at 13.

This Court has the discretion to strike and disregard any pleadings that have been untimely filed. The petitioners respectfully request that the Court exercise that discretion and strike Sheriff Fortney's response and each declaration and exhibit related thereto.

III. SUFFICIENCY

The charges in the Petition are both factually and legally sufficient. This Court is only tasked with considering the sufficiency, rather than the truth, of the charges. RCW 29A.56.140. As stated in the Response, this Court also should not strike the petition "on merely technical grounds, as long as the charges, read as a whole, give [Sheriff Fortney] enough information to respond to the charges and the voters enough information to evaluate them." Response at 4 (citing *Recall of Kast*, 144 Wn.2d 807, 813-14 (2001)).

Nonetheless, Sheriff Fortney argues that the charges are insufficient because they do not contain facts indicating that he intentionally violated the law. The Petitioners, however, are only required to meet this burden to support a charge of malfeasance, which is just one of three nonexclusive means to petition for an official's recall under RCW 29A.56.110. *In re Recall of Lindquist*, 172 Wn.2d 120, 134 (2011). This burden does not exist for the Petitioners' charges that Sheriff Fortney's conduct amounted to misfeasance and a violation of his oath of office. See *Matter of Lee*, 122 Wn.2d 613, 617 (1993) (finding the recall charges sufficient without a showing of the official's intent).

1. Sheriff Fortney's argument against the sufficiency of Charge 1 collapses against itself.

The Respondent argues that his statements indicating a refusal to enforce the Stay Home – Stay Healthy order were merely "political" statements made on "campaign social media" that do not amount to a prima facie case of misfeasance, malfeasance, or violation of oath of office. The charge is factually and legally sufficient.

First, the matter is settled. This Court already decided that Sheriff Fortney's conduct underlying this charge constituted sufficient grounds for a recall vote. Collateral estoppel bars re-litigation on this point.

Collateral estoppel bars re-litigation of any issue that was litigated in a prior lawsuit. *Pederson v. Potter*, 103 Wn. App. 62, 69 (2000) (citing *Hanson v. City of Snohomish*, 121 Wn.2d 552, 561 (1993)). The doctrine "is intended to prevent retrial of one or more of the crucial issues or determinative facts determined in previous litigation." *Christensen v. Grant County Hosp. Dist. No. 1*, 152 Wn.2d 299, 306 (2004).

In deciding whether collateral estoppel applies, the court examines: (1) whether the identical issue was decided in a prior action; (2) whether the first action resulted in a final judgment on the merits; (3) whether the party against whom preclusion is asserted was a party to that action; and (4) whether application of the doctrine will work an injustice. Hanson, 121 Wn.2d at 562.

Charge 1 raised in the petition is identical in nature and scope to charges 1a, 1c, and 1d in Snohomish County Cause Number 20-2-01828-31[1], where the court made a final judgment on the merits.[2] The issue was heard in Snohomish County Superior Court on May 15, 2020. The Respondent here was the respondent in that matter and was represented by the same counsel. The court, following briefing and oral argument, held that the issues also alleged as Charge 1 of the instant petition were factually and legally sufficient. Moreover, it appears the Respondent has opted to forego his right to appeal the judgment in that case, making the issue final.

As the factual and legal issues presented in Charge 1 of the instant Petition are identical to those previously litigated by the Respondent, he is precluded from attempting to relitigate them here. The Petitioners respectfully request this Court find Charge 1 to be factually and legally sufficient and approve the ballot synopsis as to that charge pursuant to the doctrine of collateral estoppel.

Further, the Respondent's statements were not simply political in nature or made on a campaign social media page. While his Facebook page may have once been the center of his

[1] Petition for hearing and Ballot Synopsis in Snohomish County Cause Number 20-2-01828-31 is attached as Appendix A.

[2] Order on Snohomish County Cause Number 20-2-01828-31 is attached as Appendix B.

campaign on social media, the Respondent now, and at the time the statements were made, utilizes this page as Sheriff to share stories, messages, and calls to action with the people of Snohomish County. The page is titled "Snohomish County Sheriff Adam Fortney" and did not, until faced with a recall, include any campaign-related information within its description or recent posts. Even if the page and its posts could be described as merely political statements, the Respondent has repeated those statements time and time again during press conferences and interviews in his capacity as Sheriff.[3]

The Respondent also argues that the only enforcement of the Stay Home – Stay Healthy Order is arrest.[4] This assertion implies that law enforcement officials do not have any discretion whatsoever regarding enforcement of the order and must arrest any violators. This argument appears to indicate that the Respondent is under the impression he or his deputies must arrest any person they believe to have engaged in any level of criminal activity.

However, the respondent's own argument later shifts to discuss the level of discretion a law enforcement officer has in how to enforce the law. On page 12 of the Response, the Respondent discusses the discretion law enforcement has to enforce a particular law. He cites to an RCW describing how domestic violence offenses are the only misdemeanor crimes requiring arrest, strongly inferring that deputies have other mechanisms for enforcement, such as issuing citations or filing charges with the prosecutor's office. This entire position is

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[3] *See* Bob Throndsen, *Snohomish County Sheriff faces recall campaign after judge says that signature gathering can begin*, MY EDMONDS NEWS (May 18, 2020), https://myedmondsnews.com/2020/05/snohomish-county-sheriff-faces-recall-campaign-after-judge-says-that-signature-gathering-can-begin/; Zachariah Bryan et al, *Sheriff calls governor's stay-home order unconstitutional*, HeraldNet (April 23, 2020), https://www.heraldnet.com/news/snohomish-county-sheriff-questions-governors-stay-home-order/ (Sheriff Fortney stated, "You're not going to see backtracking here," after Governor Inslee condemned his Facebook comments).

[4] "Under the Proclamation, the only enforcement action that could be taken by the Sheriff is arrest for a gross misdemeanor." Response at 3.

predicated on the actual enforcement of the law in various circumstances, the exact thing the respondent has refused to do with the Stay Home – Stay Healthy Order, and it defeats his own argument.

A law enforcement officer, especially the county's chief law enforcement officer, indicating in no uncertain terms that he will not enforce the law of the State of Washington because he has declared it unconstitutional is not a political statement. Instead, through his repeated statements regarding the constitutionality of the Order, the Respondent has positioned himself has the arbiter of the law in Snohomish County. The consequences of his conduct, in the aggregate, are nothing short of a breakdown in the rule of law. This is a direct violation of RCWs 36.28.010 and 36.28.011, as alleged in the petition.

2. Charge 2 is sufficient as the First Amendment does not provide absolute immunity from recall when inciting members of the public to violate a lawful order.

The Respondent claims that Charge 2 is factually and legally insufficient because it is simply "political speech," going as far to say, "[t]o adopt the position that an elected official can be recalled for the implications of his words is to say there is no limit whatever [sic] on the recall process and the sufficiency hearings are superfluous." Response at 13. Though no supportive authority is cited, the Respondent describes his declaration as political speech in order to garner absolute immunity from recall under the guise of First Amendment protection.

The refusal to enforce the Stay Home – Stay Healthy Order is not political speech and, even if it could be described as such, it would not be protected speech under the First Amendment or any of its progeny. The Respondent would like the Court to believe that it is

just the criminal defense bar of the County who "disagrees" with his actions.[5] However, as Snohomish County Prosecutor Adam Cornell put it, the statement is akin to yelling "fire" in a crowded theater. The prosecutor's words were undoubtedly chosen carefully to highlight the point that such speech creates chaos and is not protected under the law.

Assuming for the sake of argument that these are simply social media rantings, the Respondent ignores the clear legal limits on such use of social media as an elected official. As the federal courts have acknowledged, a government official's speech rights are curtailed when he uses social media as a communicative arm of his office. *Knight First Amendment Inst. at Columbia Univ. v. Trump*, 928 F.3d 226, 236 (2d Cir. 2019). A public servant's freedom of speech is at its lowest ebb when it threatens the proper functioning of government. *Connick v. Myers*, 461 U.S. 138, 154 (1983).

The Petitioners have alleged sufficient facts to show that the Respondent's statements that the Stay Home – Stay Healthy Order was unconstitutional incited members of the public to violate the order. As it is the statutory duty of the Sheriff to enforce the law and protect public safety, such incitement is a violation of RCWs 36.28.010 and 36.28.011, as well as a violation of his oath of office.

3. Sheriff Fortney's inadequate policies and safety measures at the Snohomish County Jail during a public health emergency, as alleged in Charge 3, were manifestly unreasonable.

The Respondent argues that Charge 3 regarding his inadequate policies and safety measures at the Snohomish County Jail ("Jail") is factually and legally insufficient because

[5] Two of the Petitioners, Brittany Tri and Terry Preshaw, are not criminal defense attorneys.

the Petitioners failed to articulate a standard of care and his decisions were discretionary. He also claimed that Chief Kane's declaration shows his decisions were not an abuse of discretion.

Much like his policies for the jail, Sheriff Fortney's argument fails to acknowledge the standard of care outlined in the Petition, which includes his "duty to ensure [the inmates] health, welfare, and safety." *Gregoire v. City of Oak Harbor*, 170 Wn.2d 628, 635 (2010). While policy decisions may be discretionary, the Petition articulates how his policies were manifestly unreasonable because they violated his duty of care. Moreover, Chief Kane's declaration only addresses the truthfulness of the charge, which is the voter must decide – not this Court. RCW 29A.56.140. This Court is not resolving factual disputes, but instead is only deciding whether the alleged facts are sufficient.

Accordingly, the Petitioners have alleged sufficient facts to show that the Respondent's failure to enact adequate policies and safety measures at the Jail constitutes an act of misfeasance and a violation of his oath of office.

4. Charge 4 is sufficient because the Respondent's rehiring of deputies who lied under oath and unjustifiably killed a citizen were manifestly unreasonable.

The Respondent argues that Charge 4, pertaining to his rehiring of deputies previously fired for serious misconduct, is factually and legally insufficient because it was an exercise of reasonable discretion. He reasons that he made the decision after carefully reviewing "the terminations of [the deputies] represented by a union that had filed grievances on their behalf." Response at 15.

This argument lacks merit. After all, Sheriff Fortney was previously the president of the union that filed grievances on the deputies' behalf.[6] He was also the deputies' supervisor at the time they were fired for misconduct. Two of the deputies – Matthew Boice and Evan Twedt – even donated to Sheriff Fortney's election campaign.[7] The Respondent did not "carefully" review the deputies' terminations – he quickly hired them back because they were his friends.[8] He neglected to consider how rehiring deputies who committed serious acts of misconduct would jeopardize public trust and the safety of the community. He neglected to consider how rehiring deputies who committed serious acts of misconduct that violated civil rights of Snohomish County residents would jeopardize public trust, as well as the safety of the community that is his statutory duty to uphold.

The third deputy rehired, Arthur Wallin, was fired after a finding that he violated use of force polices when he shot and killed a man. This was following several years of him being reprimanded for numerous issues, including improper use of force.[9] The Respondent was himself involved in the incident that resulted in Deputy Wallin being terminated.[10]

For Sheriff Fortney to now claim that he was simply resolving a labor dispute completely ignores his clear conflict of interest in these particular personnel decisions and highlights exactly how that conflict can lead to manifestly unreasonable decisions that place the entire community in danger. Thus, the Respondent's rehiring of these deputies was

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[6] The "Biography" section of the Facebook page "Snohomish County Sheriff Adam Fortney" indicates the Respondent was president of the Deputy Sheriffs Association for "the last 12 years."

[7] *See* Mike Carter, *New Snohomish County sheriff reinstates two more fired deputies who had supported him during his campaign*, THE SEATTLE TIMES (Jan. 28, 2020), https://www.seattletimes.com/seattle-news/crime/new-snohomish-sheriff-reinstates-two-more-fired-deputies-who-had-supported-him-during-his-campaign/.

[8] Investigation memo of Chief Johnson attached as Appendix C.

[9] Selected reprimand letters attached as Appendix D.

[10] In fact, Sheriff Fortney pulled the female passenger from the vehicle by her hair shortly before the driver was shot and killed through the open passenger door.

manifestly unreasonable. This unreasonable conduct amounts to misfeasance and a violation of his oath of office as it is an improper performance of his official duties.

5. Sheriff Fortney fails to address the sufficiency of Charge 5 that he violated his duties under RCW 36.28.011 and RCW 36.28.020 when he did not investigate a deputy who tackled and injured a black medical student for jaywalking.

Lastly, Sheriff Fortney argues that his failure to investigate a deputy who tackled and injured a black female for jaywalking, as alleged in Charge 5, is factually and legally insufficient because "there is no legal duty for [him] to act in any other manner than the way he did." Response at 16. He supports his argument with an assertion that the charge supports a "false narrative about the incident." *Id.*

While the Petition sufficiently details how he committed misfeasance when he failed to investigate the deputy's conduct, Sheriff Fortney's Response only addresses the truthfulness of the charge. As previously stated, the voter is responsible for judging the truthfulness of the charge, not the court. RCW 29A.56.140.

IV. CONCLUSION

For the foregoing reasons, the Petitioners respectfully request this court to find that all the charges for recall are sufficient and enter an order for the ballot synopsis that reflects the same.

RESPECTFULLY SUBMITTED this 1st day of June 2020.

s/Colin J. McMahon
Colin J. McMahon

s/Sam Sommerman
Sam Sommerman

Brittany Tri

s/Terry Preshaw
Terry Preshaw

APPENDIX A

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

In Re:

PETITION FOR RECALL OF ADAM FORTNEY, SNOHOMISH COUNTY SHERIFF

No. 20 2 02818 31

PETITION FOR HEARING TO DETERMINE SUFFICIENCY OF RECALL CHARGE AND ADEQUACY OF BALLOT SYNOPSIS

COMES NOW Adam Cornell, Snohomish County Prosecuting Attorney, by and through his deputy, Rebecca J. Guadamud, and pursuant to Chapter 29A.56 RCW petitions this Court to determine the sufficiency of the recall charge against Adam Fortney, Snohomish County Sheriff, and the adequacy of the ballot synopsis formulated from those charges.

I. RECALL CHARGES

On April 23, 2020, recall charges against Snohomish County Sheriff Adam Fortney (hereinafter "Respondent Fortney") were filed with the Snohomish County Auditor's Office by Lori Shavlik (hereinafter "Petitioner Shavlik"). *See Declaration of Garth Fell,* ¶ 2. A true and correct copy of the recall charge is attached hereto as Exhibit "A" and is incorporated herein by this reference.

II. LEGAL VOTER

Garth Fell, the Snohomish County Auditor, has determined that Petitioner Shavlik is a legal voter in Snohomish County and registered as a resident of the City of Monroe. *See Declaration of Garth Fell,* ¶ 4.

///

Snohomish County
Prosecuting Attorney – Civil Division
Robert J. Drewel Bldg., 8th Floor, M/S 504
3000 Rockefeller Ave
Everett, Washington 98201-4060
(425)388-6330 Fax: (425)388-6333

III. FORMULATION OF BALLOT SYNOPSIS

On April 23, 2020, the Snohomish County Prosecuting Attorney's Office received the recall charges filed with the Auditor's Office. *See Declaration of Rebecca J. Guadamud,* ¶3. Pursuant to RCW 29A.56.130(1)(b) and (2), Rebecca J. Guadamud, Deputy Prosecuting Attorney, has formulated a ballot synopsis based on the recall charge filed against Respondent Fortney. A true and correct copy of the ballot synopsis is attached hereto as Exhibit "B" and is incorporated herein by this reference.

IV. CERTIFICATION AND TRANSMISSION OF THE BALLOT SYNOPSIS TO THE PERSON FILING THE CHARGE AND TOTHE OFFICER SUBJECT TO RECALL

Pursuant to RCW 29A.56.130(2), Rebecca J. Guadamud, Deputy Prosecuting Attorney, has certified and transmitted the exact language of the ballot synopsis to Petitioner Shavlik and to Respondent Fortney. *See Declaration of Rebecca J. Guadamud,* ¶4.

V. CERTIFICATION AND TRANSMISSION TO THE SUPERIOR COURT

Pursuant to RCW 29A.56.130(2), the Snohomish County Prosecuting Attorney, by and through his deputy, hereby certifies and transmits the charge and the ballot synopsis to the Superior Court of Snohomish County.

WHEREFORE, the Snohomish County Prosecuting Attorney, by and through his deputy, petitions this court to conduct, within fifteen (15) days after receiving this Petition, a hearing to determine the sufficiency of the recall charges and the adequacy of the ballot synopsis, without costs to any party pursuant to RCW 29A.56.140. A proposed order is included for the Court's convenience.

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Snohomish County
Prosecuting Attorney – Civil Division
Robert J. Drewel Bldg., 8th Floor, M/S 504
3000 Rockefeller Ave
Everett, Washington 98201-4060
(425)388-6330 Fax: (425)388-6333

DATED this 6 day of May, 2020.

ADAM CORNELL
Snohomish County Prosecuting Attorney

By: _____
Rebecca J. Guadamud, WSBA #39718
Deputy Prosecuting Attorney
Attorney for Snohomish County

Snohomish County
Prosecuting Attorney – Civil Division
Robert J. Drewel Bldg., 8th Floor, M/S 504
3000 Rockefeller Ave
Everett, Washington 98201-4060

EXHIBIT A

To: Snohomish County Auditor **April 22, 2020**

Re: Petition to Recall Snohomish County Sheriff Adam Fortney

From: Lori Shavlik

Snohomish County Auditor
RCVD 2W
APR 23 '20 AM10:45

I. Introduction

Snohomish County Sheriff Adam Fortney is subject to recall. He has committed an act or acts of malfeasance, misfeasance, or violation of oath of office. The following recall petition is being submitted in accordance with RCW 29A.56.110.

II. Basis of the Complaint:

Snohomish County Sheriff Adam Fortney's refusal to perform the duties of his office, and his conduct in interfering with State, City, emergency management, local and state public health, and hospital officials in their efforts to protect the public during a worldwide pandemic constitutes malfeasance, misfeasance, and violation of oath of office under RCW 29A.56.110. Snohomish County Sheriff Adam Fortney has stated that he will not enforce the State of Washington's emergency, mandatory, non-discretionary stay-at-home proclamation, which he unilaterally declared to be "Unconstitutional" and has encouraged violations of Governor Inslee's Emergency Proclamation No. 20-25 "Stay Home – Stay Healthy" may be subject to criminal penalties in accordance with RCW 43.06.220(5).

To the extent any of his refusals to enforce the law or recommendations to defy a state and local stay-at-home order were discretionary acts, they were manifestly unreasonable.

III. Procedural Basis:

The opportunity to seek the recall of elected officials is a right guaranteed to the people by the state constitution. *In re Recall of Olsen*, 154 Wn2d 606, 609, 116 P.3d 378 (2005). Recall is a process by which an elected public officer is removed from office before the expiration of his term. *Chandler v. Otto*, 103 Wn. 2d 268, 270, 693 P.2d 71 (1984). The recall process in Washington is unusual in that the state constitution requires a showing of cause in superior court before recall can proceed. *In re Recall of Telford*, 166 Wn.2nd 148, 159 206 P.3d 1248 (2009) (construing Wash. Const. art. I, § 33, and upholding the constitutionality of statute.)

The fundamental requirements in judicial review of the charges are that they must be factually and legally sufficient. *In re Recall of Sandhaus*, 134 Wn2d 662, 668, 953 P.2d 82 (1998). The court is required to review the charges to determine whether they are sufficient to support a recall and whether the proponent has a basis in knowledge for bringing the charge. RCW 29A.56.140.

Any voter can initiate a recall by filing a typewritten charge pursuant to RCW 29A.56.110. The typewritten charge must provide (1) the name and office of the officer subject to recall (2) a recitation that the office who is subject to recall has committed an act or acts of malfeasance, misfeasance, or

violation of oath of office, or that such person has been guilty of any two or more of the acts specified in the constitution as grounds for recall (3) a concise statement of the act or acts forming the basis of the complaint; and (4) a detailed description of each of those acts(s). RCW 29A56.110.

The statement is then filed with the election officer whose duty it is to receive and file a declaration of candidacy for the office at issue. The elections officer must then promptly (1) serve a copy of the charge upon the officer whose recall is demanded, and (2) certify and transmit the charge to the preparer of the ballot synopsis provided in RCW 29A.56.130. RCW 29A.56.120.

The officer who formulated the ballot synopsis shall petition the superior court to approve the ballot synopsis and to determine the sufficiency of the charges. RCW 29A.56.130.

Within 15 days after receiving the petition, the superior court is directed to conduct a hearing and determine, without cost to any party, (1) whether or not the acts stated in the charge are sufficient and (2) whether or not the ballot synopsis is adequate. RCW 29A.56.140. If the court finds the charges are sufficient, then the recall proponent may begin collecting the signatures of voters that are required in order to place the recall onto the ballot. RCW 29A.56.150(2). Alternatively, if the court finds that the charges are not sufficient, then the recall may not proceed. Either decision can be appealed directly to the Supreme Court, although the superior court's decision with regard to the ballot synopsis is final. RCW 29A.56.140.

IV. Facts:

On January 31, 2020, the U.S. Secretary of Health and Human Services, Alex Azar, declared a public health emergency regarding the novel corona virus.

On February 29, the State of Washington declared a State of Emergency in order to combat the spread of COVID-19, via the Governor's Emergency Proclamation 20-05. Governor Inslee declared the "worldwide outbreak" of COVID-19 a "public disaster...creating an extreme public health risk that may spread quickly."

The World Health Organization [WHO] has declared the COVID-19 contagion to be a worldwide pandemic.

The Centers for Disease Control and Prevention [CDC] states that "the best way to prevent illness is to avoid being exposed," and "some recent studies have suggested that COVID-19 may be spread by people who are not showing symptoms." The following about COVID-19 and its transmission is found on the CDC's website under "Know How it Spreads:"

There is currently no vaccine to prevent coronavirus disease 2019 (COVID-19). **The best way to prevent illness is to avoid being exposed to this virus.** [Emphasis in original] The virus is thought to spread mainly from person-to-person between people who are in close contact with one another (within about 6 feet).

Through respiratory droplets produced when an infected person coughs, sneezes or talks. These droplets can land in the mouths or noses of people who are nearby or possibly be inhaled into the lungs.

By March 12, Governor Inslee and the State Superintendent of Schools made the decision, on the advice of public health officials and scientists, to begin closing schools to combat and contain the spread of COVID-19. Although few children have died from COVID-19, except those with underlying health conditions, according to health authorities they can spread the disease, even asymptomatically. All schools remain closed until the end of the school year, mid-June, in order to contain this dangerous virus.

On March 16, Governor Inslee amended emergency proclamation 20-05, closing restaurants and bars for inside service. Unlike the Yakima Health Authority's order, adherence to the Governor's order was and is mandatory. Citizens retain no authority to simply re-open their restaurants, nor do public officials (other than the Governor) have the authority to instruct others to do so. The Attorney General's office maintains a form on its website to investigate non-compliance with the order, and local and state officials can punish non-compliance with fines and charges of a criminal gross misdemeanor.

On March 25, Governor Inslee amended the emergency proclamation again. The Governor's amended emergency order, "Stay Home - Stay Healthy," mandates compliance. Its enforcement is discretionary, but violation of the order can be punishable as a gross misdemeanor. RCW 43.06.220(5). According to the amended proclamation, Washington residents are only to leave home for essential trips and for essential job duties. This order is still in effect at the time of this petition and will not be lifted until May 4, 2020, at the earliest.

The Snohomish County Health Officer has also issued similar protective and guidance Orders, including the Order of March 31, 2020 and a Quarantine Directive and Isolation Order.

Snohomish County Sheriff Adam Fortney's oath of office requires adherence to the law. It reads as follows:

OATH OF OFFICE

STATE OF WASHINGTON)
)ss
COUNTY OF SNOHOMISH)

I, **Adam Fortney**, do solemnly swear (or affirm) that I will support the Constitution and Laws of the United States and the Constitution and Laws of the State of Washington and the provisions of the Charter and Ordinances of Snohomish County, and that I will faithfully and impartially discharge the duties of the office of **Snohomish County Sheriff** for a **4-year term** according to law to the best of my ability

Signature of elected or appointed official

Subscribed and sworn to before me this 30 day of December, 2019

Signature of oath administrator

Superior Court Judge
Official Title Anna G Alexander

Officials may retain a copy for their records Return original to Snohomish County Elections
Mail 3000 Rockefeller Ave M/S 505, Everett WA 98201 Email: elections@snoco.org Fax. 425-259-2777

On April 21, 2020, with knowledge and intent, encouraged the public to violate the Governor's stay-at-home order. In one of his many posts on the matter[1], he wrote:

"As I have previously stated, I have not carried out any enforcement for the current a stay-at-home order...The impacts of COVID 19 no longer warrant the suspension of our constitutional rights. ...the Snohomish County Sheriff's Office will not be enforcing an order preventing religious freedoms or constitutional rights."

The Statement concludes: "...this is a time to lead the way." "Sheriff Adam Fortney"

COVID-19 is particularly deadly to seniors, those with compromised immune systems such as cancer patients, those with high blood pressure, heart disease, diabetes, or asthma, pregnant women, and vulnerable children and babies. COVID-19 can and has killed healthy people with no underlying health conditions as well. The WHO website explains:

People of all ages can be infected by the new coronavirus (2019-nCoV). Older people, and people with pre-existing medical conditions (such as asthma, diabetes, heart disease) appear to be more vulnerable to becoming severely ill with the virus. WHO advises people of all ages to take steps to protect themselves from the virus...

To date, there is no specific medicine recommended to prevent or treat the new coronavirus (2019-nCoV). [https://www.who.int/emergencies/diseases/novel- coronavirus-2019/advice-for-public/myth-busters Last visited 4/13/20.]

The U.S. Centers for Disease Control and Prevention (CDC) identified Washington's asthma prevalence as among the highest in the nation, making residents at risk to COVID-19. which attacks lung tissue.

The Snohomish County Health Officer has also issued protective Orders, including the Order of March 31, 2020 and a Quarantine Directive and Isolation Order.

V. Charges:

Under RCW 36.28.010, a County Sheriff has the following duties:

General duties.

The sheriff is the chief executive officer and conservator of the peace of the county. In the execution of his or her office, he or she and his or her deputies:
(1) Shall arrest and commit to prison all persons who break the peace, or attempt to break it, and all persons guilty of public offenses;

[1] See Statement of Sheriff Forney of April 19, attached Appendix A

(2) Shall defend the county against those who, by riot or otherwise, endanger the public peace or safety;
(3) Shall execute the process and orders of the courts of justice or judicial officers, when delivered for that purpose, according to law;
(4) Shall execute all warrants delivered for that purpose by other public officers, according to the provisions of particular statutes;
(5) Shall attend the sessions of the courts of record held within the county, and obey their lawful orders or directions;
(6) Shall keep and preserve the peace in their respective counties, and quiet and suppress all affrays, riots, unlawful assemblies and insurrections, for which purpose, and for the service of process in civil or criminal cases, and in apprehending or securing any person for felony or breach of the peace, they may call to their aid such persons, or power of their county as they may deem necessary.

Snohomish County Sheriff Adam Fortney failed to perform these duties, including but not limited to those set forth in RCW 36.28.10 (1), (2), (3), and (6) as well as the duty to make reports in RCW 36.28.011.

Snohomish County Sheriff Adam Fortney's conduct in interfering with and refusing to enforce lawful State Orders and State and local Health Official's Orders interfered with emergency management, public health, and hospital officials constitutes malfeasance, misfeasance, and violation of oath of office under RCW 29A.56.110.

Snohomish County Sheriff Adam Fortney used his position as an elected official to encourage citizens to defy the law and violate the Governor's Emergency Proclamations, and local health directives, which ordered non-essential businesses to close, and ordered citizens to stay at home, except for essential trips and essential jobs. Malfeasance also includes the commission of an unlawful act. RCW 29A.56.110(1)(b). Violation of the Governor's Order is punishable as a gross misdemeanor.

Snohomish County Sheriff Adam Fortney has intentionally undermined the public's trust in his fellow county officers, public health officials, and State officials. He puts others at risk, including public health officials, and emergency management teams. This was Malfeasance, Misfeasance an d a violation of his Oath of Office.

Regardless of whether the platform that he used was a personal or public Facebook page, Snohomish County Sheriff Adam Fortney discussed county business and indicated his refusal to comply with his oath of office. Snohomish County. Sheriff Adam Fortney lacks such repute and medical/public health education and training. His recommendations to ignore public health officials were irresponsible, unconscionable, and manifestly unreasonable.

Snohomish County Sheriff Adam Fortney's conduct on April 21 and 22 demonstrated acts of malfeasance, misfeasance, unlawful conduct, and/or violation of his oath of office. (See RCW

29A.56.110). His malfeasance and misfeasance included "wrongful conduct that affects, interrupts, or interferes with the performance of official duty." (See RCW 29A.56.110(1)). Snohomish County Sheriff Adam Fortney's misfeasance and malfeasance additionally includes "the performance of a duty in an improper manner." (See RCW 29A.56.110(1)(a)).

Snohomish County Sheriff Adam Fortney's statement encouraged residents to violate the emergency efforts of the County, state law, and the public health official's orders, were "reckless", and endangered the rest of the community. In a responsive statement. Snohomish County Prosecutor Adam Cornell said the governor has legal authority to issue a stay-home order, and that anyone who violated it could be punished under the law.

> "Any attempt to undermine that authority is both irresponsible. unhelpful in these difficult times, and contrary to the rule of law," he said. "I fear that the recent statements of Sheriff Fortney will be interpreted by some citizens around the state to grant license to willfully and blatantly violate the law. Let me be clear: actions have consequences."

Health officials in Snohomish County on Wednesday. April 22nd issued a statement in response to Sheriff Fortney's social media post urging residents to "stay the course" and continue following social distancing and hygiene guidelines contained in the governor's emergency orders.

> "We all want to open businesses back up as soon as possible, but now is not yet that time," the district said in a statement, noting that "social distancing and temporary mitigation measures will likely be a part of our new normal for months and years to come."

David Postman. Inslee's chief of staff. said Wednesday April 22nd that neither Fortney nor Franklin County Sheriff Jim Raymond — who has also refused to enforce the emergency restrictions — have the authority to countermand the state's chief executive and wonders why they would want to.

> "People should not be looking to the sheriff's Facebook page either for constitutional analysis or health advice," said David Postman, Gov. Inslee's chief of staff. "Now is not the time to get distracted or let up on what we're doing. It's working."

In a prepared statement, Snohomish County Executive Dave Somers also seemed to push back against Fortney, without explicitly mentioning him. Somers, a fisheries biologist by trade, said that the county has been able to slow the spread of the virus precisely because of the restrictions that have been put in place.

> "This isn't about the opinions of any single elected official," Somers said. "It's about the health and safety of all the people we serve – not the few. Snohomish County will continue to make data-driven, science-based policy decisions. Anything less would be a disservice to the residents of Snohomish County and be playing Russian roulette with the lives of those we are charged to protect."

Despite all of these well reasoned statements from County and State officials, Sheriff Fortney staged a Press Conference on April 22, 2020, where he reiterated and doubled down on his previous statements and expressed a shocking lack of concern in regard to the potential of his statements to encourage unlawful behavior such as the recent lethal threats directed at Governor Inslee.

Snohomish County Sheriff Adam Fortney's wrongful conduct interferes with and interrupts the attempts of the rest of the County and County health officials to get people to stay home to prevent the spread of COVID-19.

Snohomish County Sheriff Adam Fortney's wrongful conduct violates WAC 246-100-070 and RCW 43.20.050 and 70.05.120 as they pertain to enforcement of local health officer orders.

> (1) An order issued by a local health officer in accordance with this chapter shall constitute the duly authorized application of lawful rules adopted by the state board of health and must be enforced by all police officers, sheriffs, constables, and all other officers and employees of any political subdivisions within the jurisdiction of the health department in accordance with RCW 43.20.050.
>
> (3) Any person who shall fail or refuse to obey any lawful order issued by any local health officer shall be deemed guilty of a misdemeanor punishable as provided under RCW 70.05.120

Snohomish County Sheriff Adam Fortney's use of his position as a public official for private gain to support his private business interests, and to urge residents to disobey state and local emergency proclamations constituted a violation of RCW 42.23.070(1), that states: No municipal officer may use his or her position to secure special privileges or exemptions for himself, herself, or others.

All of the acts and omissions described herein constituted "the performance of a duty in an improper manner." Despite his oath of office to uphold local and state law, Sheriff Fortney publicly states that the Orders of the Governor and State and local Health authorities are "Unconstitutional", downplays the severity of the virus, and incites others to ignore the will of the State, the County and the State and Local Departments of Health.

Additionally, Snohomish County Sheriff Adam Fortney has committed violations of his oath of office including "the neglect or knowing failure by an elective public office to perform faithfully a duty imposed by law." (See RCW 29A.56.110(2)) Snohomish County Sheriff Adam Fortney has a duty to faithfully obey emergency orders imposed by the State of Washington and the County of Snohomish. He also has a duty to ensure he is not encouraging the public to disobey these directives. Unfortunately, Snohomish County Sheriff Adam Fortney has knowingly and intentionally failed to perform his duties as both a Sheriff and a public official, putting the public at great risk during an extraordinary global health crisis, and undermining the Rule of Law in our Democratic Republic

VI. Sufficiency of the Charges:

The superior court shall consider only the sufficiency of the charges. RCW 29A.56.140. The voters, rather than the court, consider the truth of the charges if the recall proceeds to the ballot. *In re Recall of West, 155* Wn. 2nd 767, 773, 592 P.2d 1096 (1979). The court will not consider the motives of the persons filing the charges. *Janovich v. Herron,* 91 Wn. 2d 767, 773, 592 P.2d 1096 (1979).

Charges in a recall action, however, must be both factually and legally sufficient. *In re Recall of Lee*, 122 Wn.2d 613, 616, 859 P.2d 1244 (1993). "Charges are factually sufficient when, 'taken as a whole they...state sufficient facts to identify to the electors and to the official being recalled acts or failure to act which without justification would constitute a *prima facie* showing of malfeasance.'" In re Recall of *West*, 155 Wn. 2d. at 665 (quoting *Chandler v. Otto*, 103 Wn.2d 268, 274, 693 P.2d 71 (1984).

"Where a discretionary act is the focus of the controversy, recall petitioners must show that the official exercised discretion in a manner which was manifestly unreasonable." *Greco v. Parsons*, 105 Wn2d 669, 672, 717 P.2d 1368 (1986). To the extent, if any, Sheriff Fortney was not compelled by law to obey stay-at-home orders, or was not compelled by law to dissuade others from violating the orders of public health officials and the Governor in the midst of a worldwide pandemic, Sheriff Fortney discretionary acts were manifestly unreasonable.

The petitioner has personal knowledge of the facts and circumstances surrounding the charges. Much of the evidence rests on Snohomish County Sheriff Adam Fortney's social media announcement of April 21 and the public Press Conference of April 22. The charges also rely on the accounts of the articles set forth in the links below, (incorporated herein by reference) including Fox News, The Everett Herald, The Seattle Times, and The Daily Mail.

https://www.foxnews.com/us/washington-county-sheriff-wont-enforce-governors-stay-at-home-order

https://www.heraldnet.com/news/snohomish-county-sheriff-questions-governors-stay-home-order/

https://www.seattletimes.com/seattle-news/snohomish-county-sheriff-says-he-wont-enforce-inslees-stay-home-order/

https://www.dailymail.co.uk/news/article-8245923/Snohomish-County-sheriff-says-wont-enforce-Washingtons-unconstitutional-stay-home-order.html

https://q13fox.com/2020/04/22/snohomish-county-sheriff-says-he-wont-enforce-inslees-stay-home-order/

https://www.king5.com/article/news/health/coronavirus/coronavirus-stay-at-home-order-snohomish-county-sheriff-adam-fortney/281-cbabdfcc-1d6a-45be-8d14-555c980f3ecd

https://www.kiro7.com/news/local/sheriff-eastern-washington-says-he-wont-enforce-stay-at-home-order/N5LX5OIUAJGONC7UJO5IULIRIA/

https://www.usnews.com/news/best-states/washington/articles/2020-04-22/snohomish-county-sheriff-wont-enforce-stay-at-home-order

https://komonews.com/news/coronavirus/franklin-county-sheriff-wont-enforce-stay-at-home-order

https://www.washingtonpost.com/politics/2020/04/23/why-constitutional-sheriffs-wont-enforce-coronavirus-restrictions/

https://www.miamiherald.com/news/article242200046.html

https://www.columbiabasinherald.com/news/2020/apr/22/snohomish-county-sheriff-wont-enforce-stay-2/

https://www.bellinghamherald.com/latest-news/article242200046.html

https://www.dailyherald.com/business/20200422/many-wary-of-virus-reopenings-as-some-us-states-loosen-rules

https://www.ncwlife.com/inslee-ferguson-warn-residents-not-to-listen-to-local-officials-on-ignoring-stay-home-order/

Media accounts are "not *per se insufficient* to show some form of knowledge of the facts." *In re Recall of Kelley*, 185 Wn.2d 158, 170. 369 P.3d 494 (2016). Furthermore, the facts of this case are generally known and subject to Judicial Notice under ER 201.

Overall, to be legally sufficient, the charges in a recall petition must clearly state conduct that, if true, would constitute malfeasance, misfeasance, or a violation of the officer's oath of office. *In re Recall of Beasley*, 128 Wn. 2d 419, 426, 908 P.2d 878 (1996). That standard is met here.

VII. Special Circumstances for Gathering Signatures during a Global Pandemic to Prevent the Mortal Hazard of Local Officials Acting with Impunity During a State of Emergency:

In order to place the recall of Sheriff Fortney on the ballot, it is required to collect "signatures of legal voters equal to thirty-five percent of the total number of votes cast for all candidates for the office to which the officer whose recall is demanded was elected at the preceding election." RCW 29A.56.180(2).

In addition to evaluating the sufficiency of the charges of this recall petition, petitioner respectfully requests that signatures be permitted to be gathered electronically. However, petitioner requests that the issue of method of signature collecting remain separate from the issue of determining the sufficiency of the charges itself, so that the signature gathering and certification process can proceed independently of any ruling or appeal on the issue of the method signature collection.

Sheriff Fortney may be emboldened in his behavior because he understands the difficulties of signature gathering during a pandemic. At the state level, RCW 29A.72.170 allows the Secretary of State to

reject an initiative or referendum for lack of signatures. "In case of such refusal, the Secretary of State shall endorse on the petition the word 'submitted' and the date, and retain the petition pending appeal." RCW 29A.72.170(3); *see also Wyman v. Ball*, ORDER No. 96191-3 Thurston County No. 18-2-03747-3.

However, the presiding officer in this petition is not the Secretary of State, and the process for removing a local official is found in a code section separate from traditional initiatives and referendums, entitled "Special Circumstances Elections." RCW 29A.56. That section lacks a directive calling for immediate rejection for a lack of signatures. Such rejection may be implied under normal circumstances. But these are not normal circumstances, these are once-in-a-century circumstances.

When circumstances are special enough to warrant a recall, and special enough for the Governor to order the public to refrain from in-person contact except in very specific circumstances, the combination of the two requires gathering signatures in a non-traditional, non-in-person manner. Otherwise the law would create a moral hazard of an elected official behaving horrifically and with impunity during a national, state, and local emergency.

Particularly given the nature of this case, in which an elected official is defying the warnings of public health officials trying to contain a pandemic by warning people to stay home, and the high risk of unintentional spread of COVID-19 to signature gatherers, or signature gatherers to citizens, petitioner respectfully requests that signature gathering be permitted via a non-in-person platform, such as an online signature gathering website.

Petitioner argues the duty to allow non-in-person signatures is a non-discretionary duty of the County Auditor in light of the Governor's stay-at-home order. The presiding officer should have no choice but to allow online signature gathering for the duration of the Governor's mandatory order.

Petitioner also acknowledges the reverse: that by omission, the Governor does not want any in- person signature gathering, and by extension, recalls of elected officials by the public in this calendar year. This logic can lead to absurd results, and could allow a public official to remain in office who urges people to defy the Governor's self-same emergency order.

There is little court guidance to interpreting emergency orders in order to prevent absurd results. But statutory interpretation of legislative commands could assist. Absurd results that skirt the intent of the law should be avoided. The Governor's Emergency Order 20-25 is clear and unambiguous, but it certainly could not be the Governor's intent to make it impossible for the public to recall elected officials who defy, and encourage defiance, of his order. The case law is not completely on point (as this is a unique, once in a century situation), but the Governor's intent in issuing his executive order matters. Governor Inslee intended for people to follow his order and for elected officials to uphold the law and participate in the statewide effort. [The "primary objective in interpreting a statute is to ascertain and give effect to the intent of the Legislature" *State v. Keller*, 98 Wash. 2d 725, 728, 657 P.2d 1384, 1386 (1983). The purpose of an enactment should prevail over express but inept wording. *State ex rel. Royal v. Bd. of Yakima County Comm'rs*, 123 Wash. 2d 451, 462, 869 P.2d 56 (1994).]

By not allowing online signature gathering during a statewide emergency, there is a risk of creating a mortal hazard of elected officials going rogue and acting with mal- and misfeasance because they know they cannot be recalled by the public through certification of a petition via in-person signature gathering.

Thus, petitioner respectfully requests the presiding officer's support in this matter. Petitioner also acknowledges the Superior Court has original jurisdiction to compel Sheriff Fortney to compel the performance of any act required by any public officer or to prevent the performance by any such officer of any act in relation this recall not in compliance with the law. RCW 29A.56.270.

VIII. Affirmation:

I Lori Shavlik, affirm and swear under oath that I am a registered voter in Snohomish County and I believe the charge or charges to be true based upon personal knowledge of the alleged facts upon which the stated grounds for recall are based. I certify the truth of the foregoing under penalty of perjury of the Laws of the State of Washington.

Dated this 22nd day of April, 2020.

Lori Shavlik
22616 43rd Dr. SE,
Bothell, WA, 98021
loritanning@gmail.com

Appendix 1

Snohomish County Sheriff Adam Fortney
20 hrs ·

Snohomish County Residents and Business Owners,

I just watched the Governor's speech to Washingtonian's regarding our approach to getting Washington back in business and I am left to wonder if he even has a plan? To be quite honest I wasn't even sure what he was trying to say half of the time. He has no plan. He has no details. This simply is not good enough in times when we have taken such drastic measures as the suspension of constitutional rights. I wrote most of this about two weeks ago but I decided to wait out of respect for the Governor and my own misguided hope that each day he did a press conference he would say something with some specificity on getting Washington back to work. After what I witnessed tonight I can no longer stay silent as I'm not even sure he knows what he is doing or knows what struggles Washingtonian's face right now.

I want to start by saying this virus is very real and sadly, it has taken 97 lives in Snohomish County. This is a very serious issue and the appropriate precautions need to be taken to protect our most vulnerable populations. However, our communities have already shown and continue to show they understand the severity of the situation and are doing all they can already to keep themselves, their families and neighbors safe and healthy.

I am worried about the economy and I am worried about Washingtonian's that need to make a living for their family. As more data floods in week by week and day by day about this pandemic I think it is clear that the "models" have not been entirely accurate. While that is okay, we cannot continue down the same path we have been on if the government reaction does not fit the data or even worse, the same government reaction makes our situation worse.

As elected leaders I think we should be questioning the Governor when it makes sense to do so. Are pot shops really essential or did he allow them to stay in business because of the government taxes received from them? That seems like a reasonable question. If pot shops are essential, then why aren't gun shops essential? Our Governor has told us that private building/construction must stop as it is not essential, but government construction is okay to continue. So let me get this right, according to the Governor if you are employed or contracted by the government to build government things you can still make a living for your family in spite of any health risk. If you are a construction worker in the private sector you cannot make a living and support your family because the health risk is too high. This contradiction is not okay and in my opinion is bordering on unethical.

As I arrive to work at the courthouse, I see landscapers show up each day to install new landscape and maintain our flowerbeds. How has Governor Inslee deemed this essential work? However, a father who owns a construction company and works alone while outdoors is not allowed to run his business to make a living to provide for his wife and children? How has Governor Inslee deemed thousands of Boeing employees who work inside a factory building airplanes essential? But building residential homes is not essential? If a factory with 20,000+ employees each day can implement safe practices to conduct normal business operations, I am entirely confident that our small business owners and independent contractors are more than capable of doing the same.

If this Coronavirus is so lethal and we have shut down our roaring economy to save lives, then it should be all or nothing. The government should not be picking winners or losers when it comes to being able to make an income for your family. If the virus is so lethal it shouldn't matter whether you are building a school for the government, building a new housing development, restaurant owner, or you happen to be an independent contractor. To the contrary, if the virus is proving to not be as lethal as we thought, maybe it's time for a balanced and reasonable approach to safely get our economy moving again and allowing small businesses to once again provide an income for their families and save their businesses. This is what I hoped for from the Governor tonight but he is not prepared or ready to make these decisions. If we are going to allow government contractors and pot shops to continue to make a living for their families, then it is time to open up this freedom for other small business owners who are comfortable operating in the current climate. This is the great thing about freedom. If you are worried about getting sick you have the freedom to choose to stay home. If you need to make a living for your family and are comfortable doing so, you should have the freedom to do so.

As I have previously stated, I have not carried out any enforcement for the current a stay-at-home order. As this order has continued on for well over a month now and a majority of our residents cannot return to work to provide for their families, I have received a lot of outreach from concerned members of our community asking if Governor Inslee's order is a violation of our constitutional rights.

As your Snohomish County Sheriff, yes I believe that preventing business owners to operate their businesses and provide for their families intrudes on our right to life, liberty and the pursuit

of happiness. I am greatly concerned for our small business owners and single-income families who have lost their primary source of income needed for survival.

As your elected Sheriff I will always put your constitutional rights above politics or popular opinion. We have the right to peaceably assemble. We have the right to keep and bear arms. We have the right to attend church service of any denomination. The impacts of COVID 19 no longer warrant the suspension of our constitutional rights.

Along with other elected Sheriffs around our state, the Snohomish County Sheriff's Office will not be enforcing an order preventing religious freedoms or constitutional rights. I strongly encourage each of you to reach out and contact your councilmembers, local leaders and state representatives to demand we allow businesses to begin reopening and allow our residents, all of them, to return to work if they choose to do so.

The great thing about Snohomish County government is we have all worked very well together during this crisis. I'm not saying we agree all of the time, I'm saying we have the talent and ability to get this done for Snohomish County! This is not a time to blindly follow, this is a time to lead the way.

Sheriff Adam Fortney

EXHIBIT B

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

In Re: PETITION FOR RECALL OF ADAM FORTNEY, SNOHOMISH COUNTY SHERIFF	No. BALLOT SYNOPSIS

BALLOT SYNOPSIS OF RECALL CHARGE AGAINST ADAM FORTNEY, SNOHOMISH COUNTY SHERIFF

Shall Adam Fortney, Snohomish County Sheriff, be recalled from public office for misfeasance, malfeasance, or violation of oath of office for the following reasons:

1. On April 21, 2020, Sheriff Fortney stated in a Facebook post that he has not and will not enforce Governor's Inslee's "Stay Home—Stay Healthy" emergency proclamation. He reiterated his position at a press conference on April 22, 2020. This statement:

   (a) violates the sheriff's statutory duties under RCW 36.28.010 and 36.28.011;

   (b) constitutes wrongful conduct that affects, interrupts, or interferes with COVID-19 prevention efforts;

   (c) constitutes performance of a duty in an improper manner;

   (d) constitutes neglect or a knowing failure by an elective public officer to perform faithfully a duty imposed by law;

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(e) constitutes an unlawful act insomuch as it encourages citizens to violate the Governor's proclamation and other local health directives in violation of RCW 43.20.050, RCW 70.05.120, and WAC 246-100-070;

(f) undermines public trust and puts others at risk, including health officials and emergency management teams; and

(g) results in private gain to Sheriff Fortney's private business interests as a result of Sheriff Fortney's public office, in violation of RCW 42.23.070?

RESPECTFULLY SUBMITTED this 6 day of May, 2020.

ADAM CORNELL
Snohomish County Prosecuting Attorney

By: _____
Rebecca J. Guadamud, WSBA #39718
Deputy Prosecuting Attorney
Attorney for Snohomish County

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APPENDIX B

FILED

2020 MAY 22 PM 12:27

HEIDI PERCY
COUNTY CLERK
SNOHOMISH CO. WASH

20-2-02818-31
OR
Order 20
8233745

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

In Re:

PETITION FOR RECALL OF ADAM FORTNEY, SNOHOMISH COUNTY SHERIFF

20-2-02818-31 ✓ mt

No. 20-02818-31

ORDER DETERMINING SUFFICIENCY OF RECALL CHARGE AND APPROVING BALLOT SYNOPSIS [PROPOSED]

THIS MATTER, having come before this Court for hearing pursuant to the requirements of RCW 29A.56.140 for a determination of the sufficiency of the recall charge against Adam Fortney, Snohomish County Sheriff, and for a determination of the adequacy of the ballot synopsis prepared in relation to that charge, and the Court having considered the records and files herein and the arguments of the Parties and being fully advised,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the following determinations are made with regard only to the sufficiency of the recall charge against Respondent Fortney:

	Sufficient	Insufficient
Charge 1a	☑	☐
Charge 1b	☐	☑
Charge 1c	☑	☐
Charge 1d	☑	☐
Charge 1e	☐	☑
Charge 1f	☐	☑
Charge 1g	☐	☑

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Prosecuting Attorney – Civil Division
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[✓] IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the ballot synopsis filed herein is adequate as to those charges determined to be sufficient and shall be revised to delete those portions which pertain to charges determined to be insufficient.

[ ] IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the following ballot synopsis is adequate as to those charges determined to be sufficient and shall be revised to delete those portions which pertain to charges determined to be insufficient: _____

_____

_____

The ballot synopsis submitted by the Prosecuting Attorney, with the above deletions, is approved in lieu of those submitted by the Petitioner and Sheriff.

DONE IN OPEN COURT this 19th day of May, 2020.

JUDGE STEPHEN M. WARNING

Presented by:

ADAM CORNELL
Prosecuting Attorney

REBECCA J. GUADAMUD, WSBA #39718
Deputy Prosecuting Attorney
Attorney for Snohomish County

Snohomish County
Prosecuting Attorney – Civil Division
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Approved by:

_____

MARK C. LAMB, WSBA #30134
Attorney for Adam Fortney,
Snohomish County Sheriff

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APPENDIX C

• TY TRENARY
SHERIFF

SNOHOMISH COUNTY
SHERIFF'S OFFICE

Community First

• ROB BEIDLER
UNDERSHERIFF

M E M O R A N D U M

DATE: October 11, 2019

TO: To File

FROM: Bureau Chief S. K. Johnson #1210

RE: PC19-042 Part Two (Second Memo on this PC)

MPD Boice and Deputy Twedt first received their copies of the Pre-Disciplinary Hearing notice when I delivered them electronically to them Friday, August 16, 2019 (read/received documentation collected and attached to the file showing they received them that same day). I also met with both MPD Boice and Deputy Twedt in person, individually, on August 19, 2019, as scheduled. Both signed the original documents for the file and received a printed hard-copy document from me of the same Pre-Disciplinary notice. Deputy Twedt was cordial and our meeting brief. A short time later I met with MPD Boice. MPD Boice told me after signing his notice that he was not aware of the law or policy that restricted all impound inventories on trunks. He told me he has done them hundreds of times on cases and has had many people charged as a result. I suggested to him that he bring those case reports to his Pre-Disciplinary Hearing, as that may help demonstrate his assertion that he has been transparent in his actions and that prosecutors legally supported his actions. Both hearings were scheduled separately to occur on September 5, 2019.

Additional notes for the file are below. These items include updates to the investigation that occurred after the writing of the Pre-Disciplinary notice, but BEFORE the Pre-Disciplinary Hearing:

- MPD Boice/DSA requested an extension from the Sheriff directly for postponing the Pre-Disciplinary Hearing. Two dates were offered and the later date was selected by the involved employees/DSA representative(s); the new Pre-Disciplinary Hearing date was moved to September 27 (Deputy Twedt at 1300 hours and MPD Boice at 1400 hours). Timelines were waived by the DSA in writing to the U/S.
- On September 4, 2019, I was notified by Capt. Parker by phone that Sgt. Fortney had written a memo to his Lt., Lt. Rob Martin, regarding "Vehicle Inventories" and that he was coming to the defense of Boice and Twedt, claiming that no one in the organization knew that we cannot do inventories of trunks on impounds. We

discussed that MPD Boice had spoken to several people in the organization that he may be fired for not realizing our policy prohibits vehicle inventories (it appeared as though he had not shared the other elements of the investigation).

- On September 10, 2019, I received the two-page memo from Sgt. Fortney, written to Lt. R. Martin. In summary, Fortney states that he was not aware of our Vehicle Inventory policy (in place since 2016) until August 26, 2019 (after the involved deputies received their Pre-Disc notices). Sgt. Fortney said that no one on his crew was aware of the policy and that he and his crew have inventoried trunks countless times in the last several years. Sgt. Fortney notes that the new Lexipol policy clearly states you cannot open a trunk, even if there is a latch to open it, and noted that he now has trained his crew on it. Sgt. Fortney claimed there is a conflict with that Lexipol policy and our current Patrol Procedures SOP (it actually is not in conflict; the SOP does not give permission for going into a trunk, it simply describes how to document impound inventories). It is accurate that the SOP does not specifically list trunks; it also does not give permission and that restriction is clear in Lexipol policy (therefor there is no conflict). Sgt. Fortney claimed Lexipol is different than the previous policy (PolicyTech), but that is also not accurate (we have never had a policy that gave permission to go into a trunk for an inventory, the 2016 policy just specifically forbid it, to prevent deputies from doing it). Sgt. Fortney complains in the two-page memo (added to this PC file) about the volume of policies that needed to be read at the time we changed manuals (late 2015/early 2016) and mentioned a current ULP on the Lexipol policy manual (note: there were several sections that the DSA disputed relative to changes in the policy they felt were subject to bargaining back in 2016, but neither search and seizure nor vehicle inventories were ever listed in that ULP). Only one policy remains outstanding under that ULP at the time he wrote his memo (relative to public disclosure and devices). Given his acknowledgment of violating policy and search and seizure laws for years, his actions are being investigated separately.
- On September 12, 2019, I requested an audit by Captain Flood of Lexipol for the formal acknowledgment of "reading and understanding" for the specific policies in this PC (322.3 Searches, 322.4 Documentation, 510.5 Vehicle Inventory, and 510.6 Vehicle Searches) for Deputy Sweeney, Det. Bennett, Deputy Twedt, MPD Boice, and Sgt. Fortney. All five had read an acknowledged ALL of these policies (only Deputy Sweeney read them after this incident occurred on 06-10-17, finishing his review of policies as a part of field training as a new deputy, completing his review by July of 2017). MPD Boice was the only one of the group who read and acknowledged the Vehicle Inventory Policy twice (03-01-16 and 10-21-16), which specifically forbids

opening a trunk for an inventory, even if it can be accessed without a key through an accessible area in the passenger compartment. Captain Flood provided a two-page memo with these highlights, as well as the supporting documentation from Lexipol (attached to this file).

- On September 12, 2019, I was advised that there was a test question relative to search and seizure, specific to searching trunks, that had been an oral board question when then Deputy Boice tested to become an MPD (Master Patrol Deputy). The test was within the past year (around the end of 2018, beginning of 2019) and it was significant as Boice was still maintaining that he did not know that case law and policy both forbid inventorying of trunks, before he read the Pre-Disc notice. By the time I found out about the nexus of the MPD test and Boice's assertion he didn't know the law and policy until recently, the actual score sheets for the test had been purged (we keep them one testing-cycle and another MPD test had been run since that time). I was able to get the actual oral board questions from that day (as the question was read to him) and I requested two oral board members, Lt. Huri and Major Robertson, to write a memo for this file outlining what occurred. The specific question was a test of knowledge relative to search and seizure rules of evidence regarding a vehicle, including the trunk, with the expectation that candidates would be transparent in reporting the search error and use it to train the deputy correctly in the scenario. The question was a pretend scenario where a new deputy searches a trunk of a suspected burglar, without a warrant. Apparently Boice answered the question perfectly, in fact better than his peers, relative to policy and case law, but then stated they could use an inventory search to mitigate the deputy's wrongful actions, literally saying the words "wink, wink," which was interpreted by the panel as **making light of being dishonest in the scenario investigation**. As a result, the panel discussed failing him for the entire testing process, as they believed his **suggesting illegal and dishonest** behavior should disqualify him. They met as a panel and ultimately believed they did not have the authority for that given strict testing parameters, so he was failed on the score for that question (only). Lt. Huri advised that he followed-up with Boice twice after that day, once by phone and once in person, discussing how it was poor leadership to show an intent to be deceitful. Sgt. Dill (DSA VP) was also present on that oral board, but I did not request a memo from him.
- On September 12, 2019, U/S Beidler contacted Deputy Wells, who works as a TAC (primary instructor) at the police academy, asking him about the current training curriculum for new deputies relative to vehicle inventories. Deputy Wells shared a PowerPoint that is used to teach new deputies. I noticed that they are the same case

laws that I am familiar with from when I worked Patrol, and they remain the main/key case laws that guide our actions (there was no new case laws). Case laws he shared that restrict law enforcement from going into trunks, locked containers, and even closed containers as a part of an impound inventory include Arizona V. Gant (2009), Valdez (2009), Snapp-Wright (2012), among other older cases (such as White). Deputy Wells PowerPoint and email exchange were printed and added to the file.

The following section includes updates to the investigation that occurred **during or as a result of information that was provided relative to the two Pre-Disciplinary Hearings.**

Both hearings were scheduled to last one hour but Deputy Twedt was almost an hour late (scheduled for 1300, but he arrived around 1344 with an attorney and two union representatives). The notice stated he could bring a union representative or attorney, not both, but we allowed it (a total of three plus Twedt). Deputy Twedt's hearing lasted until approximately 1500 hours and all three of the people who accompanied him, Deputy Curt Carlson, Sgt. Marcus Dill, and attorney Erica Shelley Nelson, stayed the entire time. The same people were present for MPD Boice's hearing (Boice plus the same three representatives), which was supposed to start at 1400 but started around 1515 and stopped abruptly at 1612 hours.

My observations or other follow-up information, such as if I circled back to confirm the information on each element, is in *italics.*

:

- To start the hearing, the Undersheriff described to Deputy Twedt that this was his time and that everyone who spoke on his behalf would be treated as if they were his own words; if they said anything incorrect he would have to let us know by correcting a statement, otherwise they would be given the same weight as if he said it.
- Attorney Nelson read a long document on behalf of Twedt to start >
    - Provided an overview of years of service and awards received; lack of discipline in file
    - Attorney spoke about our threshold for burden of proof that she insisted needed to be 'clearing and convincing'
    - She stated that we cannot prove malicious intent
    - She stated that Deputy Twedt was **not** a part of the inventory search *(I later circled back and asked him directly if he inventoried the car and he said yes)*
    - She stated that the prior policy allowed for the inventory of trunks (***It did not)***
    - That there was no notice to staff to stop searching trunks (*our staff was never told they could inventory trunks; self-study and interpretation MAY have led them to believe they could years-ago, however the fact they hide that in their*

case reports suggest knowledge it is exculpatory). I later asked Twedt a follow-up question to the claim that he had no notice on the (2016) Lexipol policy regarding vehicle inventory restriction on opening trunks. I asked him if I did an audit of Lexipol, would I find that he affirmatively acknowledged 'reading and understanding' that policy? **He said, yes, I would find that he did.**

- She claimed that legality of inventorying of trunks is not clear and that it is "unsettled Law" *(it is not and has not been for a very long time; some cases in the past ten years tried to create new case law that would allow it, but those were ultimately not successful; opening trunks has always been discouraged and have been a violation of search and seizure laws for many years).*
- She admitted Twedt had case report errors, but then also stated it was a full and complete case report given it was a 'case supplement' report, which requires less detail *(that was misleading at best; case supplemental reports can be shorter because they require less overall incident documentation, as that is covered on a different form by the primary deputy, but the actual narrative portion by deputies is dictated by their actions at the scene, not a lack of template requirements).*
- She claimed that Deputy Twedt didn't even know it (the shotgun) was a firearm, as he only saw part of the grip. The U/S asked him directly at this point and Twedt was evasive in that he described seeing the pistol grip, but actually wasn't sure it was a shotgun *(in his interview with Sgt. Alanis he stated that Deputy Sweeney found a shotgun in the trunk and after that Twedt and Boice moved to the trunk to look at what was found).*
- Sgt. Reid, who signed-off Twedt's report, was blamed for not catching the errors. *(This falls flat as a Sgt. who reads a report who was not at a scene will not know if someone omitted actions at a scene. If someone illegally searches an area and does not put that in a report, how would that supervisor be expected to catch it?). No one on scene made a reference to the vehicle ever being a planned impound, or that an inventory occurred at all, or that a shotgun was found, until this investigation was started.*
- She also stated that as proof that Twedt didn't read the body of Sweeney's affidavit, Twedt did not comment when Sweeney accidentally used some of Twedt's training on the form. (*This skipped a formal acknowledgment that Twedt initially denied helping him at all, even being animated in his interview with Sgt. Alanis that he never talked with Sweeney again after Sweeney was rude at the arrest scene, as an explanation why he had no knowledge what*

Sweeney wrote in his report or search warrant affidavit). I found proof in email that discredited his personnel complaint interview. Deputy Twedt loosely said that he forgot until the Pre-Disc notice led him to check his own email, then he remembered that he did see it ***(he more than saw it as he gave him templates and coached him on how to write it and what to fix)***. The Attorney for Twedt claimed that because there were other errors were on the form not corrected by Twedt in the email, it proves he only read the top of the affidavit, not the body. *This was meant to continue Twedt's claim that he had no idea what was in the warrant and that Sweeney also somehow forgot to disclose the 'finding of the shotgun' in the affidavit. We contend that he was getting direction from Twedt alone (not Bennett, per the investigation) in the actual writing the search warrant, much like* ***Twedt admitted to directing Sweeney at the scene on how to do the inventory. Email proves that Twedt was directing Sweeney on the affidavit and search warrant writing****. The basis of the initial verbal complaint by Deputy Sweeney to Deputy Johnson that day (while typing) was that* ***Sweeney didn't understand why he could not admit in the affidavit to finding the shotgun in the trunk****. He was directed to not put it in the document, as they hoped the presence of the ammunition via plain-view (not a disclosed part of the inventory) alone would be enough to get the UPF charge added, but it wasn't, that is why they continued to hide it and did two search warrants, as they knew they could not disclose their shotgun find (shows knowledge and intent; to hide exculpatory information to get the search warrant approved).*

- *The attorney talked a lot about conspiracy, inferring that word was used several times in the Pre-Disc document, although when asked, she could not find the word. She indicated that the investigation was one-sided and biased and her impression from ti was that we were suggesting the incident was a conspiracy.*

- Deputy Twedt then spoke directly to Undersheriff Beidler, highlights include:
  - In looking to counter the NWS timeline, specifically the arrival time (written in the Pre-Disc notice) of Deputy Bennett and trainee Deputy Sweeney, Twedt described their efforts that morning that led to the traffic stop. He described that they were doing an operation at Bobby Blackburn's house that was the reason for the traffic stop. *THIS CONFIRMED A SUSPICION WE HAD THAT THIS WAS A PRE-TEXT STOP FROM THE ONSET.* The fact that he accidentally disclosed that speaks volume to the underlining allegations: **this is also exculpatory information that was left out of their case reports**. Pre-Text

stops are not lawful (since 1999) as you cannot stop a vehicle for a hidden purpose and look for evidence of another crime (*if you have enough on the on-set to believe a driver has drugs on him, like in this case, then they would have to call it a Terry Stop and articulate specific details of that). If they had provided the actual details that led to the stop, including that they were watching traffic come and go from Blackburn's house, even the initial drug charges on the driver would never have been charged.* ***This was a very damaging act for Twedt to accidentally confess to, while he was looking to make a different point in his defense.*** *It was clear that Deputy Twedt did not catch that he was admitting to improper behavior that is also counter to case law, as his intended point of his comment was relative to working hard and that there were errors on our dispatch timelines from that night. For his entire law enforcement career (not new policy or case law), pre-text stops are illegal seizures. To start a pre-text stop case report narrative with anything but your honest initial intended purpose is intentionally hiding pre-text*

- Twedt stated I was in error in my Pre-Disc notice when I wrote **that he knew the suspect at the time of the stop.** I looked at him and told him that I got that from his own case report (his case report listed a sentence in the timeline order that talked about assisting with the handcuffing of the suspect, seeing bullets in a baggy in the door pocket, and then wrote "**I knew Thomas** (using his first name) to be a convicted felon and unable to possess firearms." This was all within moments of him arriving to assist Boice. *This suggests he is either dishonest with us or in his case report.* If Twedt did not know McAferty, his written report was inaccurate (*the assertion in his report at the time of arrest that he had immediate knowledge that the driver was a convicted felon, and therefor unable to possession a firearm, would add more weight to his plain-view observance of ammunition in the door as he helped handcuff him*). *If he really did not know him 9and perhaps forgot that he wrote that), then why did he write that sentence?*
- Deputy Twedt made the statement that at the time he was doing an inventory on the car, he did not know consent had already been turned down. *This surprised me since consent would normally be the first thing attempted after an arrest is made for plain-view paraphernalia, just as described in Boice's original case report (and certainly before the car was going to be "impounded" as a regular tow, as alleged).*

- Deputy Twedt described doing the inventory in the passenger compartment and that there was spill-over from the trunk into the backseat, stating that it made the access to the trunk not locked *(which legally does not make a difference). In his interview describing his inventory of the passenger compartment and Sweeney opening the trunk, Twedt had not mentioned the open access or spillage from the trunk.* Twedt made a point to describe that the vehicle was extremely full of stuff including coming from the trunk, so I asked him why he didn't list any items as a part of his inventory then, given so much stuff. His response was that **there was nothing of value to list.** *This is counter to the reason for doing an inventory: if there is nothing of value then you write that down, to counter a later claim that something of value was stolen from the impound lot (no information at all is an open door to claims). If the inventory was done for legitimate reasons, then an inventory is expected to list the general inventory of what is observed (clothes, old CD's, etc.).* Additionally, I noticed that when an inventory was actually done on the vehicle, after the service of the search warrants when the car was picked-up from the North Precinct by a tow, **items of value were in the car.** Sweeney listed on that inventory "computer, cellphone, tools, clothing, and a backpack".
- At one point Twedt stated that he thought trunks were okay to inventory if he could access them from the passenger compartment; believing still that lever-accessed trunks are not off-limits. He said that he didn't know that closed containers had been off limits. Twedt made a reference to talking with DPA's, such as Michelle Rutherford, who said that these are still good cases that they would take them to court (see my communication with her later in this document). I later spoke to Rutherford and she said **that she did not say that at all; she stated that that it would require a law change, because current case law does not support evidence found in inventories.** *Deputy Twedt overstated the DPA's position in our hearing in order for his admitted actions (inventory of the trunk) to not appear to have been improper.*
- Deputy Twedt stated that he asks for consent after he finds things, which is legally problematic, especially if he already has PC that evidence is in a vehicle. The law on vehicle inventories is very clear: even when they are done properly to a lawful impound process (which requires exploring **alternatives to an impound first; required steps not done in this case**), we cannot use inventories as a tool to find evidence. If we do, the evidence found in those manners are suppressed.

- Twedt stated that sometimes when he sees paraphernalia he does not always write an S/W. I responded to him that I understood that decision. I said that probably more than 90% of the time, due to charging challenges when that is the only crime that makes sense, but the remaining 10% **when we would do a S/W,** would likely be to support a related felony charge. Deputy Twedt agreed with that. I then drew the nexus to this case, which would mean that vehicle should have been evidence all along, as we needed the paraphernalia evidence (and a search warrant for the car) for court for the felony arrest, and therefore it doesn't make sense that they would do an inventory for a regular impound. Dill and Carlson tried to defend his answer, adding that 'if you use the county code for drug paraphernalia, you don't need to collect the pipe to have it tested'. I pointed out that we would need the pipe from the initial PC as evidence in a case like this, since they did not take it as plain-view (not even pictures were taken of it, so they had no evidence to support the felony arrest). *Common sense result is that they planned to take the car as evidence all along. I suspect they wanted to see if there was going to be anything else in the car to make it worth their time, thus they searched it to see what a search warrant would get them.*
- Deputy Twedt handed us three cases for us to look at; none of which had like-facts (added to the file). I asked him if he found any case reports where he did a successful search warrant based upon finding evidence in the trunk during an inventory. Twedt said he did not, that 'he is not sure how to even look for that'. *He could have searched for the word trunk, since he keeps Word formatted electronic copies of his search warrants to use as examples or later use.*
- Carlson – DSA Rep Deputy Carlson spoke for a few minutes to describe why **he believes the NWS time stamps are wrong**, then he created his own document that he gave to the U/S which he said he believes are the correct times for the call (he said that NWS went down that night for a period time and he used other resources to interpret and correct time data). Since he created the document, it may or may not be accurate. *It is possible that the NWS I obtained from dispatch may have an error on it. Their biggest concern was the arrival time by Bennett/Sweeney. If we accept their timeline, it would not change the fact that they only asked for an Evidence Tow, never a Rotational Tow, and the inventory was still not permissible, regardless of Sweeney and Bennett's arrival time.*

Deputy Twedt left and we took a short break to give time for Boice to swap with Twedt. The Undersheriff gave MPD Boice the same information described to Deputy Twedt; that this was his time and that everyone who spoke on his behalf would be treated as if they were his words; if they said anything incorrect he would have to let us know, otherwise they would be given the same weight as if he said it.

Attorney Nelson read the same basic written statement for Boice, tailoring it to his history at the Sheriff's Office. New information included:

- She provided an overview of years of service and awards received; union position; she stated he only received one verbal reprimand, and only once (this is not accurate; he had been disciplined twice, both in the last 24 months; once for failing to report use of force and the other for a preventable collision, both resulted in a verbal reprimand, one each).
- Attorney spoke again about our threshold for burden of proof needs to be 'clearing and convincing'
- She stated that Boice **told Sweeney to stop** and that they did not have consent to search. *This did NOT match his interview when he described watching Twedt and Sweeney inventory the car, stating that the access to the trunk may have been with a lever (although he didn't know for sure), when he confidentially said what they were doing was fine, since they were going to impound the car since it was in the roadway).*
- She stated that we cannot prove malicious intent
- She described vehicle trunk inventories as **unsettled law** and that there is still ambiguity *(after hearing this twice I told there that the law is clear and it is not unsettled).*
- She stated that Boice did not have enough time to read the policy *(although he read it twice, per the audit). Boice later said that he took responsibility for missing it when he read the new Lexipol policy.*
- She stated his report was clear and complete, but later added that he forgot some things.
- She made note that the Pre-Disc letter stated that Boice did not document that the inventory occurred, quoting me (I wrote that he does not commonly document inventories, even though he said he does). This was out of context as lawful inventories require documentation of observation and actions, and Boice had advised previously that he does document them consistently, but the departure from his interview was that he does NOT document as he assured us he does (we could not verify his statement in a random audit of his case reports). **She likely was trying to point out that it was 'not unusual he**

didn't document it,' although also problematic to make that statement (infers it was not a one-time oversight and his interview statement not accurate then).

- She stated that the investigation was one-sided and biased, giving the example that there was a lack of investigation into Deputy Johnson, who she said was likely aware of felony perjury. The U/S asked how an investigation into something Johnson knew, third-hand, would help Boice? MPD Boice seemed mad at Deputy Johnson and he affirmed that they wanted an investigation into Johnson. *Later the DSA sent an email to the U/S and asked that we do NOT do additional investigations on this matter; in sum, removing this request.*

- MPD Boice then spoke directly to Undersheriff Beidler; highlights include:
  - MPD Boice started by talking about how upset he was that his integrity is being questioned. He talked about how hard-working he is and how tired he was that night; advising that he probably should have called in sick as he was getting little sleep due to a new child at home. He inferred that he could have been home but not only was he out working, he worked hard, all the way to the end of his shift. He stated that at 0327 hours, the time of the stop, he should have been home in his driveway, but they were trying to get a case going at Blackburn's. The traffic stop in question was on a car from that house and it resulted in a felony arrest. *THIS CONFIRMED THAT THIS WAS A PRE-TEXT STOP FROM THE ONSET.* ***Those details are exculpatory and left out of the report and his previous interview.*** *He had previously described only a simple traffic stop to Sgt. Alanis, and help to that despite Sgt. Alanis suspecting it was pre-text.*
  - MPD Boice provided reasons his performance was impacted, including family struggles, needing more sleep, his mother-in-law's suicide, and that he did not have an involved supervisor.
  - Boice stated that if his supervisor was more involved that some things may not have happened (Sgt. Jared Reid eventually did not make probation as a Sgt., and he returned to the rank of Deputy). *MPD Boice has indicated that he has done trunk inventories until just a few weeks ago, under a different supervisor. See later entry on this document that covers written admonishments and search and seizure training Sgt. Reid gave to Boice and in 2017.*
  - Boice stated that even his interviewer, Sgt. Alanis did not know the law relative to trunks and inventories (*this is* ***not accurate****; see later entry in this memo regarding Capt. Parker, who did the follow-up on this topic).*

- Boice stated that he has taught some trainees to do inventories on trunks since becoming an FTO last year. *We did follow-up on this and found one who did not follow his direction, because she knew it was wrong to go into a trunk and another one who did find drugs as a result of Boice's training (in a close container in the passenger area). That deputy then later told Boice that criminal case was declined as a result of the inventory, which Boice responded that the DPA was wrong. See later entry in this memo regarding Capt. Parker, who did the follow-up on this topic).*
- Boice confirmed to the U/S that he only knew that we could not go into trunks as a part of an inventory **as a result of reading my Pre-Disc notice**. He maintained that he did not know before then (did not know before August 2019). *The inference by the attorney is that they had no reason to intentionally hide the impound inventory because they believed it was lawful and proper to go into the trunk, whereas all other facts point to all having knowledge, thus direction to Sweeney to keep it out of the affidavit).* The U/S then asked MPD Boice how he knew the proper answer to the MPD Oral Board question then. After some delay and re-direction, it appeared as though Boice did not realize we were aware of the MPD oral board. They decided to take a break, then ended the hearing a few minutes later instead of trying to explain the discrepancy relative to Boice's knowledge on the policy and law.
- Upon the conclusion of the hearing Sgt. Dill provided the U/S copies of the DOR (Daily Observation Reports) that Bennett did on Sweeney at that time, which included the incident and S/W service from 2017. No new information was gleaned from those documents that we did not already discover in the investigation (those DOR's are also attached to this file).

The following section includes updates to the investigation that occurred **AFTER the two Pre-Disciplinary Hearings as a result of information they provided:**

- On September 30, 2019, I called Captain Parker and asked him to do some follow-up work on this. I asked him to contact Sgt. Alanis and ask him if he really didn't know the policy and law on inventories (that was not accurate; Sgt. Alanis did, and never claimed he had not). I also asked Captain Parker to contact a few specific deputies, ones trained by Boice to see what they knew about inventories and trunks. Captain Parker wrote a three page memo covering his communication with those people (dated October 8, 2019) and it

included the case report of the inventory search by Deputy Germino; the one that was not charged because drugs were found subsequent to an inventory (when Germino told Boice about it, he disagreed with the DPA's decision).

- On September 30, 2019, I called Michelle Rutherford, and Snohomish County DPA (Violent Unit) and she told me she spoke to Twedt recently. She said that she sent him the link to the Washington State prosecutor's manuals (the ones DPA's use as resources throughout the state), as **'his link wasn't currently working'** (indicating that he previously accessed the site). He was interested in the search and seizure manual (it was last updated in 2015 and it is still legally current today). I asked if it was accurate that she said she would charge a case where evidence was found in a trunk and she said that she was clear, **that it would require a law change, because current case law does not support that.** She explained the inventorying is a part of community care-taking, and that our state cares far more about privacy. She said that she told him it would take a case law change, so at some point it is possible to take a strong case forward that is compelling, but not currently. I found the link and resources to be very clear: **"Inventory Searches: Police may not enter a trunk of an impounded vehicle to inventory the contents. Nor may police open an unlocked, but closed container to inventory the contents (State v. White, 1988, Houser, 1980). "A vehicle may not be impounded until an officer exhaust reasonable alternatives" (State v. Williams, 1984)**, which did NOT occur on this case.
- On October 9, 2019 I reviewed the training files for Boice and Twedt, looking for specific training. In addition to reading the Lexipol policy in 2016, both Twedt and Boice received one hour of search and seizure training on Dec. 10, 2017, including Arizona v. Gant, from Sgt. Reid (I located a two-page training syllabus, added to the file).
- On October 10, 2019, I did a P Drive review of Sgt. Reid's file, via DIS, as a result of the claim that he failed to supervise Boice. Since he no longer works here, I tried to find training materials for either Boice or Twedt (I found part of the Dec. 10, 2017 training documents there). I also located a memo from Sgt. Reid to Lt. Rogers, dated December 15, 2017, that documented a meeting Reid had with Boice. In it, it covered specific cases that Sgt. Reid had counselled Deputy Boice on, including a traffic stop that looks like a pre-text stop when I read it . It covers marijuana that may have been collected inappropriately from a juvenile in a vehicle as well as other cases that needed more documentation.

I located a PIR (verbal counseling) given to Boice on 12-15-17 by Sgt. Reid, where Boice is told to eliminate options from reports, told to insure his **search and seizure** processes are documented well, and to insure that **supporting law enforcement personnel are named in his reports** (two of the three things we found in the case in question). It is apparent that the counseling and training by Sgt. Reid came at the direction of Lt. Rogers, who was insuring supervision was occurring on the crew.

- I looked through randomly selected PA Decline notices to see if I could find an open record of a DPA advising Boice or Twedt that a case will not be charged as a result of inventory practices. I was not able to locate any; I had trouble finding any that was transparent relative to entering trunks, even though they said it was common and that they had stopped and gotten warrants when this has occurred in the past. I could not find cases where they documented accessing a trunk and finding contraband, only to seal ti and apply for a search warrant. I could not find that they admitted to inventorying trunks at all.

APPENDIX D

SNOHOMISH COUNTY SHERIFF'S OFFICE
INTEGRITY • DIGNITY • COMMITMENT • PRIDE
Ty Trenary, Sheriff

ORIGINAL

DATE: **April 3, 2016**

TO: **Deputy Arthur Wallin #1464**

FROM: **Lieutenant Jeff Brand #1196**

SUBJECT: **Letter of Reprimand**

On or about January 19, 2016 I wrote a directive to Sgt. Adam Fortney and you directing in part that "You will NOT attempt to or complete a Pursuit Intervention Technique (PIT) maneuver on any vehicle until you have been directed otherwise by me or a person of higher rank."

I met with both Sgt. Fortney and you on January 19, 2016 so you could both review the directive, ask questions if needed and then asked each of you to sign that directive, which you did.

On March 2, 2016 at about 0257 hours Sgt. Fortney and you began pursuing a stolen vehicle in the area of 5th Ave West and 128th Street SW and you were the primary unit. At about 0258 hours you asked for permission to PIT the suspect vehicle and within 14 seconds SNOPAC was advised that the PIT had been completed at East Gibson Road.

In your report, you stated that during the pursuit you had asked for permission to PIT but then noticed your speed and decided not to attempt it at the time. You further stated the suspect vehicle slowed to about 10 miles per hour which was too slow to PIT so you decided instead to pin the suspect vehicle's driver door closed and pin the car.

As of this date, I have not countermanded this directive and have been told that no one above my rank has given such a directive.

Your actions during this incident violated the following provisions of the Snohomish County Code and Snohomish County Sheriff's Office Policy and Procedures Manual: ***PPM 7.2.2: Knowing, Observing, And Obeying All Written Directives, Policies and Procedures.***

I have completed my review of the above incident, to include police reports, witness statements, photographs, and a personnel complaint form. A Pre-disciplinary Hearing was conducted on **April 3, 2016 at 2053 hours**. I have considered any mitigating factors in this incident. With those considerations, and after weighing all the factors, I have decided to officially reprimand you for your actions, which violate the Sheriff's Office Policy and Procedures Manual.

ORIGINAL

This disciplinary letter will be made part of your personnel file for a period of **2 years** commencing on the date this office first learned of these incidents, **March 2, 2016**. If there are no further violations of a similar nature, this letter will be removed from your personnel file on **March 2, 2018**. Further violations of this or any other rule may result in discipline up to and including termination.

If you have any questions regarding your rights and responsibilities concerning this disciplinary action, please feel free to contact me.

SHERIFF TY TRENARY

1196

Lieutenant Jeff Brand #1196

Employee Signature: A. Wallin #1464 Date: 04/06/16

SNOHOMISH COUNTY SHERIFF'S OFFICE
INTEGRITY • DIGNITY • COMMITMENT • PRIDE
Ty Trenary, Sheriff

DATE: **7-16-18**

TO: **Deputy A. Wallin**

FROM: **Lt. A.J. Bryant**

SUBJECT: **Letter of Reprimand**

Sgt. Fortney became aware on 6-11-18 that you had not completed a case report for an incident that took place on 5-13-18. In that incident you took possession of items of evidence that were not timely booked and were stored in the back of your patrol vehicle. You discovered them in your vehicle when you were changing vehicles and still did not book them as evidence. It wasn't until you were told by Sgt. Fortney to get them out of the vehicle and book them as evidence that you finally did so.

Additionally, you did not complete a report for your actions on this incident until once again prompted by Sgt. Fortney on 6-13-18.

When Sgt. Fortney provided a performance evaluation for last year he said he would rate you as meeting standards but your report writing had to improve in 2018 in so far as timeliness, quantity and quality of reports. Although the quality of your reports has improved, he has had to remind you several times so far this year about the timeliness.

Your actions during this incident violated the following provisions of the Snohomish County Code and Snohomish County Sheriff's Office Policy and Procedures Manual:

804.3 Property Handling – ***Sustained***
344.1, 344.2.1, 344.3 Report Writing – ***Sustained***

I have completed my review of the above incident, to include police reports and a personnel complaint form. I have considered any mitigating factors in this incident. With those considerations, and after weighing all the factors, I have decided to officially reprimand you for your actions, which violate the Sheriff's Office Policy and Procedures Manual.

This disciplinary letter will be made part of your personnel file for a period of *1* year commencing on the date this office first learned of these incidents, June 11, 2018. If there are no further violations of a similar nature, this letter will be removed from your personnel file on June 10, 2019. Further violations of this or any other rule may result in discipline up to and including termination.

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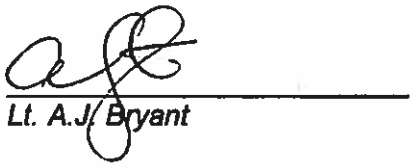
If you have any questions regarding your rights and responsibilities concerning this disciplinary action, please feel free to contact me.

SHERIFF TY TRENARY



Lt. A.J. Bryant

Employee Signature: A. Wallin Date: 07/23/18

SNOHOMISH COUNTY SHERIFF'S OFFICE
INTEGRITY • DIGNITY • COMMITMENT • PRIDE
Ty Trenary, Sheriff

DATE: December 19, 2018

TO: Deputy Art Wallin

FROM: Captain Scott Parker

RE: Letter of Reprimand

On Tuesday, June 20th, 2017 you were assigned to the night shift patrol team serving in the capacity of a canine handler responsible for police service dog Ronin. You responded to a call for service at 3111 132nd St SE, Everett along with other deputies for a reported Robbery. A personnel complaint was generated in August of 2018 when the Sheriff was made aware of the circumstances surrounding this incident.

I find that your actions violated the following Snohomish County Sheriff's Office Policy and Procedures:

1. 341.2.2 Knowing, Observing and Obeying all Written Directives, Policies, and Procedures
    a. 300.2.1 Use of Force to Effect an Arrest, Detention, or to Conduct a Search

I have completed my review and subsequent investigation of the aforementioned incident. The severity of the crime at issue for deployment as defined by you was obstructing, not Robbery, that by itself is inconsistent with agency standards which generally requires probable cause for other crimes in addition to obstructing prior to deploying a canine. It is understood that at times you need to make decisions quickly as information is rapidly received and processed. However, in this particular incident there was no exigency to rush the deployment of a canine, especially considering there had been no contact or identification of the reporting party or a victim, or anyone for that matter having information or knowledge about what was being reported to 911. Furthermore, there was no reliable information indicating a crime had been committed other than what was broadcast by dispatch and there was no independent validation that a crime had been committed by you prior to deploying a canine. In addition to the considerations you outlined in your report narrative, other considerations should have included:

1. A victim had yet to be identified,
2. Obstructing a law enforcement officer (RCW 9A.76.020) is generally not an accepted stand-alone crime handlers deploy a K-9 for,
3. A search environment that you should have reasonably known would end with a canine contact; this based on your own statement "The vegetation became so thick I could not see more than a foot or two ahead of me."

This disciplinary letter will be made part of your personnel file for a period of two years commencing on the date this office first learned of the incident, ***August 20, 2018***. If there are no further violations of a similar nature, this letter will be removed from your personnel file on ***August 20, 2020***. Further violations of this or any other policy or procedure may result in discipline up to and including termination.

If you have any questions regarding your rights and responsibilities concerning this disciplinary action, please feel free to contact me.

SHERIFF TY TRENARY

Captain Scott Parker

Employee Signature: A. WALLIN #1464 Date: 12/19/18

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• TY TRENARY
SHERIFF

SNOHOMISH COUNTY
SHERIFF'S OFFICE
Community First

• ROB BEIDLER
UNDERSHERIFF

M E M O R A N D U M

DATE: April 6th, 2016

TO: Sgt. Steve McDonald

FROM: Deputy Scott Wells

RE: Deputy Arthur Wallin Training Plan

Synopsis:

I am a current member of the Snohomish County Personnel Development Division-Training Unit. Within that role I serve as; lead defensive tactics instructor, use of force instructor, firearms (handgun Level I) instructor, active shooter instructor, ASP baton, handcuff and flashlight instructor.

My supervisor is Sgt. McDonald. I was requested by Sgt. McDonald to assist in actions taken by Deputy Arthur Wallin in January 2016 during the course of; police pursuit, pursuit intervention technique (PIT), tactics, and use of force issues. My role was not disciplinary in nature. My role was to view, analyze, and assess information (primarily dash cam video of portions of the pursuit from the perspective of an assisting WSP Trooper) and collaborate with other members of this office in the realm of their respective expertise for issues regarding training. I have met with Sgt. McDonald, Training Unit members Deputy J. Cook (Range Master) and Deputy Doug Saint-Denis (EVOC, PIT, Firearms) as well as K9 Deputies Gibson and McCullar in order to utilize a collaborative approach to the development of a training plan for Deputy Wallin.

Video/Audio Review:

The portion of video used in developing my opinion(s) and observations was recorded dash cam footage provided by an assisting unit in the pursuit which was a WSP Trooper. Additionally, I listened to an audio recording of portions of the pursuit provided by who I assume to be SNOPAC.

In review of the video I had two primary, over-arching questions;

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1.) Does the immediate apprehension of the suspect in this case outweigh the danger to the public, law enforcement, or the offender if not immediately apprehended? In other words, what is the nature and quality of the intrusion weighed against the counterveiling governmental interest(s) at stake? Do we need to apprehend the offender right now? If so, is any subsequent use of force in achieving that goal reasonable in its; inception, manner and duration?
2.) Pre-event decision making regarding the inevitable use of force analysis, whether internally or externally, using the "Graham Factors" from the Supreme Court decision in Graham v. Connor. (Immediate threat, severity of the crime active resistance and/or attempts to escape or evade arrest by flight). Did law enforcement's actions in this case create the immediacy and need for the potential use of deadly force? What did we do leading up to the moment force was used? Did our actions create time compression (ex. closing distance), thereby creating a "snowball" effect of; increased threat perception, thereby creating no or less time available to access, consider, or use reasonable force alternatives or resources?

In the Supreme Court's decision in Graham v. Connor the Supreme Court acknowledged that often times, law enforcement officers are forced to make split second decisions in situations and circumstances that are tense, uncertain, and rapidly evolving. However, not every encounter between law enforcement and the public meets that criteria.

In this memo I will only cite from a few sources, however there appear to be many on the issues of pre-event decision making prior to the use of force as well as creating the immediacy or exigency to use force by law enforcements actions or inactions.

In the Critical Issues in Policing Series (Re-Engineering Training on Police Use of Force) paper put forth by PERF (Police Executive Research Forum) the following is a relevant point on this issue;

"The question is not that you can, it's whether you absolutely had to. And the decisions leading up to the moment when you fired a shot ultimately determine whether you had to or not."

In David Blake's article (How UOF Evaluation is Changing-And How to Improve UOF Decision Making) the following example form a ruling from the 9th Circuit of the Supreme Court is cited (***Hayes v. San Diego***)

"The case involved deputies who entered a residence to confront a potentially mentally unstable subject. During that encounter, the subject moved toward deputies with a large knife overhead and was subsequently shot and killed. ***The court ruled that the shooting was not objectively reasonable based on several pre-event decisions (actions/inactions) made by the deputies prior to engaging the subject.*** Ultimately, this decision adds to the "totality of circumstances" review

in that courts in the 9th circuit will also review officer's actions or inactions (decision making) prior to the use of force in determining whether force was justified."

Regarding the development of a training plan; I would recommend the following reading and attendance in the listed courses hosted by SCSO. There would be no additional cost incurred to the Office for Deputy Wallin to attend these trainings minus manpower needs for Deputy Wallin to be absent from his normal shift in order to attend these trainings. I would also recommend Deputy Wallin to attend EST as students participate in scenario-based, decision-making force scenarios during that training. Additionally, it is my understanding that members of the K9 Unit are developing the implementation of scenario-based training more specific to K9 handlers. I concur that properly structured and well thought out scenario-based training with clear goals and objectives to achieve is a preferred format for law enforcement training.

Reference Citations and Case Law:

Scott v. Harris
https://supreme.justia.com/cases/federal/us/550/372/

Graham v. Connor
https://supreme.justia.com/cases/federal/us/490/386/

Tennessee v. Garner
https://supreme.justia.com/cases/federal/us/471/1/case.html

Recommended/Suggested Reading:

Managing The Use of Force Incident
© 2011 by CHARLES C THOMAS • PUBLISHER, LTD.

"The Science of Training" by David Blake PoliceOne.Com News Article
-How UOF evaluation is changing (and how to improve UOF decision making)

"Emerging Use of Force Issues-Balancing Officer and Public Safety"
-IACP/COPS Symposium

The above listed Supreme Court decisions can be accessed and read by utilizing the website link above (supreme.justia.com). Other recommended and/or suggested reading can and will be provided to Deputy Wallin upon receiving direction to do so. In addition to the above I have procured a complimentary spot in a hosted 8 hour Police Pursuit Decision Making course by our agency at the SCSO North Precinct on 06-15-2016.

• TY TRENARY
SHERIFF

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• ROB BEIDLER
UNDERSHERIFF

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I would also advocate for Deputy Wallin to attend one of the upcoming hosted CIT De-Escalation courses instructed by Ellis Amdur of Edgeworks LLC. This is an 8 hour course that SCSO is hosting in the latter part of 2016 (August, September, October). I will secure a spot in one of these classes for Deputy Wallin upon directed to do so.

Respectfully,

Deputy B. Scott Wells
Personnel Development Division
Training Unit

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SNOHOMISH COUNTY SHERIFF'S OFFICE
INTEGRITY • DIGNITY • COMMITMENT • PRIDE
Ty Trenary, Sheriff

DATE: **February 1, 2019**

TO: **Deputy Arthur Wallin #1464**

FROM: **Bureau Chief S.K. Johnson #1210**

SUBJECT: **Letter of Reprimand**

On or about October 15, 2018, you were on duty and responding to a call for service when you unintentionally drove over the hand of a woman. That woman had been directed by another deputy to lay down next to the vehicle as a standard practice during a high risk stop. The tactics you used resulted in the injury to the woman, which caused her to be transported by aid to the hospital for multiple fractures to her hand. You consulted with an attorney prior to writing your case report and through the report writing process. As a result of the attorney's recommendation that you not turn the report in unless specifically directed to do so by a supervisor, resulted in the report not being turned-in in a timely manner, per policy. You have been counseled and disciplined in the past 24 months for not turning reports in as required by policy.

Your actions during this incident violated the following provisions of the Snohomish County Code and Snohomish County Sheriff's Office Policy and Procedures Manual:

341.2.6 Committing Negligent Acts or Endangering Self or Others

344.1.1 Report Preparation

341.2.5 Displaying Competent Performance and Achieving Competent Performance Results

I have completed my review of the above incident, to include police reports, witness statements, photographs, videos, and the OPA administrative investigation. A Pre-disciplinary Hearing was conducted on January 25, 2019 at 1130 hours. I have considered any mitigating factors in this incident. With those considerations, and after weighing all the factors, I have decided to officially reprimand you for your actions, which violated the Sheriff's Office Policy and Procedures Manual.

5 Year Written Reprimand
50 Hours Suspension (5 days)

M S #606 • 3000 Rockefeller Ave • Everett WA 98201 • Phone (425) 388-3393 • Fax (425) 388-3805

This disciplinary letter will be made part of your personnel file for a period of **five years** commencing on the date this incident occurred, **October 15, 2018**. If there are no further violations of a similar nature, this letter will be removed from your personnel file on **October 15, 2023.** Further violations of this or any other rule may result in discipline up to and including termination.

If you have any questions regarding your rights and responsibilities concerning this disciplinary action, please feel free to contact me.

SHERIFF TY TRENARY

#1210

B/C S.K. Johnson #1210

Employee Signature: A. Wallin #1464 Date: 02/01/19

• TY TRENARY
SHERIFF

SNOHOMISH COUNTY
SHERIFF'S OFFICE

• Rob Beidler
UNDERSHERIFF

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M E M O R A N D U M

DATE: February 1, 2019

TO: Deputy Arthur Wallin #1464

FROM: Bureau Chief S. K. Johnson #1210

SUBJECT: Results of Pre-Disciplinary Hearing regarding (IA18-01)

On January 25, 2019 at 1130 hours, a pre-disciplinary hearing was held to consider the allegations that have been raised against you in an internal investigation (IA #18-01). You attended this hearing, which was scheduled on your currently modified work schedule (M-F, 0900-1700), during your current work hours. Sgt. Adam Fortney was present with you as your association representative as we met in the Training Room on the 4th Floor of the County Courthouse. This memorandum will summarize the response to the allegations and my determination.

The allegations in this matter are as follows:

On or about October 15, 2018, you were on duty and responding to a call for service when you unintentionally drove over the hand of a woman. That woman had been directed by another deputy to lay down next to the vehicle as a standard practice during a high risk stop. The tactics you used that night contributed to the incident occurring. You decided to consult with an attorney prior to writing your case report but you did not turn-in that report as required by policy until told to do so during this administrative investigation.

Details of the incident at issue:

On or about October 15, 2018, you responded to assist Deputy Twedt with a theft in-progress call at the Arco AM/PM business, located as 1515 164th Street SW Lynnwood, Snohomish County, Washington. Prior to anyone arriving on scene, you spoke to Deputy Twedt over the radio (on TAC) about the call. You later described that you knew Deputy Twedt did not have a laptop that night so you wanted to share details of the call that you had read in NWS. You shared that there was a possibility that the call may actually be a robbery, due to a reference of money being taken and a language barrier with the complainant. Deputy Twedt arrived on scene first and broadcast over the radio that he was out contacting a known male subject (Deputy Twedt identified the male subject by name over the radio). You later stated that upon hearing the update you expedited your

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response, including using emergency equipment to get there quicker, turning it off prior to arrival.

Deputy Twedt began to conduct a high risk stop on the subject by parking his patrol vehicle directly behind the subject's and taking cover at his open driver's side door while giving commands with his firearm at low/ready. At one point while giving commands to the male subject, whom he told to lay down on the ground near to the driver's side of the Suburban, a female (also known to Deputy Twedt from previous criminal contacts) emerged from the passenger side of Suburban. Deputy Twedt directed the female to lay on the ground in a prone position on the passenger side of the vehicle. Having subjects lay down next to their vehicle is a standard control technique for high risk stops and Deputy Twedt found this necessary to control the two subjects who were not being cooperative.

During your interview with OPA (Office of Professional Accountability) Sgt. Morris, you described that when you arrived on scene, Deputy Twedt was conducting the high risk stop in the parking lot next to the gas pumps. You advised that prior to arriving you were not aware of his specific tactics, since Deputy Twedt did not specifically say that he was doing a high risk stop over the radio. You stated that you were first able to see Deputy Twedt when you made the left turn onto Motor Place, which actually put you in a cross-fire situation due to Deputy Twedt's positioning (the suspect vehicle was between him and you, with his firearm pointed in your general direction). In your interview you acknowledged your basic options were to stop and back-up or continue forward and try to get out of the line of fire.

You further described that within a second or two of arriving on Motor Place that Deputy Twedt was already holstering, so you believed cross-fire was no longer an issue. You described seeing Deputy Twedt moving to contact the subject on the driver's side of the Suburban and that you were now focused on quickly assisting Twedt with the physical contact. You turned into the lot to your right and then straight toward the Suburban, parking right next to it on the passenger side of the Suburban. It was at that point that you described the woman suddenly appearing and standing on the passenger side of your vehicle, between your vehicle and the Suburban, with her hand injury. Aid was immediately summoned and you obtained some ice from the store to help the injured woman. The woman was transported to the hospital and found to have multiple fractures in her left hand.

In your interview with Sgt. Morris, you stated that you were not sure why you did not see the woman lying on the ground as you drove-up. You indicated that factors could have been because you were distracted by Twedt's actions or perhaps due to visual obstructions (such as the elevation change, the A-pillar of your car, the bushes in the lot, or gas pumps). You stated that you did not know she was lying on the ground, but you also acknowledged that it is common for people to be lying prone next to a vehicle during a high risk stop. You stated that you did not know Twedt was doing a high risk stop before coming into the area, however you did state that you became aware of the high risk stop before you stopped your vehicle. You also acknowledged that you did not know if there was anyone uncooperative in the Suburban when you parked next to it. Parking

next to the Suburban created another potential cross-fire situation, as the occupancy of the Suburban was unknown and Deputy Twedt was contacting a suspect on the opposite side of the vehicle from you.

The CIU (Collision Investigation Unit) Detectives responded to the scene and conducted the collision investigation (car/pedestrian). Deputy Twedt stated that ultimately he discovered there was not a crime committed at the AM/PM but it was a misunderstanding over $20 in change involving a different person which had been resolved before Deputy Twedt arrived. The two people in the Suburban (including the injured woman) were found to not be involved with the initial theft complaint or any crime.

Deputy Twedt stated that there was discussion at the scene about who was going to write case reports. Deputy Twedt was told that CIU was going to write the primary case report and he was to write only a follow-up report. Twedt stated that you told him at the scene that you were going to do your report on the old follow-up form. MPD Zach Brown stated that his discussion with you about your report entailed your statement to him that you were going to talk to an attorney first. MPD Brown stated that the scene was busy but he did not recall having any conversation with you about not turning in your report by the end of shift.

On November 6, 2018, Lt. Bryant collected CIU's case report and other follow-up reports and turned them in with the initial Commander's Summary for this incident, to be reviewed by the Driving Review Board. At that time, we still did not have your case report turned-in. That same day, Sgt. Morris was directed to begin an administrative investigation.

On December 19, 2018, during your interview with Sgt. Morris for this administrative investigation, you acknowledged that you wrote a follow-up report but that you still had not turned it in. You stated that you had spoken to a union provided attorney and that you wrote a few drafts of your report. You described that the report went back and forth between you and your attorney before you collectively landed on the final version. You could not recall when you actually finished the report. You did not turn in your report until directed by Sgt. Morris to bring it to the December 19th interview. You described that you were waiting until you were told to submit a report (via Garrity or other directive from a supervisor), as you believed there was potential that you could be charged with a crime, however slight.

You described to Sgt. Morris what you called a lengthy conversation that you had with MPD Brown about not turning a report in that night and that you were not going to, until told to do so. You stated that MPD Brown stated he would let his chain of command know about that and that he would then let you know if/when you needed to turn your report in. MPD Brown did not deny it was possible that you said those things at the scene, stating it was busy/loud/chaotic, but he had no recollection of any conversation with you, other than you would be talking with an attorney before you turned in your report. MPD Brown expected you to turn your report in. Deputy Twedt also expected you to be turning in a report, based upon his memory of your statement that you were doing a follow-up, it just would be on the old form (therefore an attachment to the case

report). You have been counseled and reprimanded in the past two years for not turning reports in, per policy.

At the Pre-Disciplinary Hearing on January 25, we spoke about this investigation for approximately 20-25 minutes. You clarified two important things at the meeting. The first item was regarding when you actually realized Deputy Twedt was doing a high risk stop. You stated that it was not immediately apparent as you arrived on Motor Place, as his patrol car was simply parked behind the Suburban (basically parked near the gas pumps) and he did not have his overhead strobe lights on. You said that it took several seconds (longer than I had described in my pre-disciplinary hearing notice narrative) to realize that Twedt was doing a high risk stop. Typically driving close to a high risk stop like this is one of the reasons that pinning or blocking occupied vehicles can be so dangerous. You stated that you would not have intentionally parked next to the suspect vehicle if you had realized in time that the Suburban was the focus of a high risk stop. You were aware that Deputy Twedt was contacting a suspect on the drivers' side of the vehicle at the time.

The second item was regarding the submission of your police report. You described that because of the animated actions of the male subject that night (shouting that you should be arrested and charged with a crime), it gave you pause and led you to notify MPD Brown that you wanted to consult with an attorney before writing your report. You described that it was because of the advice of your attorney that you did not turn in your case report after he/she helped you write it. You described that if there was a possibility of being charged with a crime, however slight, that the attorney suggested that it was best to wait and be directed by a supervisor to turn it in, then Garrity would apply. I clarified that you did not go back to MPD Brown and state that you were waiting to be directed in order to turn it in. You confirmed that MPD Brown was only aware that you were going to consult with an attorney before writing it. Sgt. Fortney described that this was an unusual situation for you to be in; being told by your attorney to not turn in your report (different from when a deputy is on Admin Leave for a SMART investigation before a deputy's report is written). In hindsight, we discussed that going to a supervisor to get permission to not turn a report in (after receiving that direction from an attorney), would have been a better option, especially because you have been counseled and reprimanded in the past two years for not turning reports in. You indicated that you would have turned the report in if the attorney had not given you that advice.

Finding:

As a result of the information received in this investigation, I find that there is sufficient evidence to substantiate the allegations of:

341.2.6 Committing Negligent Acts or Endangering Self or Others

344.1.1 Report Preparation

341.2.5 Displaying Competent Performance and Achieving Competent Performance Results

In making my determination on this matter, I have considered the statements and the credibility of all witnesses, the information you provided at the pre-disciplinary hearing and the quality of the investigation. The investigation showed that that tactics you selected resulted in you driving over the hand of a woman who was following the commands of another deputy. That deputy was using common tactics for the type of contact he was making, including having subjects lay on the ground next to their vehicle during a high risk stop. You are trained and experienced in high risk stops and contacts. The significant injury to the woman (multiple fractures) was preventable. After the incident, you did not turn in your police report as policy requires, even after you had the opportunity to have an attorney review and make adjustments to the report with you.

After considering these factors, I find that there is sufficient evidence to substantiate a finding of **SUSTAINED** on all three policy violations.

In making my determination concerning discipline, I have considered the following mitigating and aggravating factors:

A mitigating factor is that the majority of your work as a Canine Handler and Deputy meets or exceeds our standards for such work. You have been recognized formally by our agency for past life-saving and heroic actions. Additionally, you immediately rendered aid and provided care for the woman. Aggravating factors include two other sustained personnel complaints in the past 24 months, resulting in a one-year written reprimand (for report writing and evidence policy violations) and a two-year letter of reprimand for a Use of Force violation for a specific canine application. For the purposes of determining discipline, this incident is considered a Grade 3 incident as a result of the actual injury to the woman and the likelihood of a civil claim (at a minimum the County will be responsible for medical bills related to the fractures, even if she does not file a claim for damages).

Taking into account both aggravating and mitigating factors, the information learned in the administrative investigation, and your comments provided at the pre-disciplinary hearing, I have determined to impose the following discipline:

5 Year Written Reprimand
50 Hours Suspension (5 days)

This letter will be made part of your personnel file for a period of **five years** commencing on the date this occurred, **October 15, 2018**. If there are no further violations of a similar nature, this letter will be removed from your personnel file on **October 15, 2023**. Further violations of this or any other rule may result in discipline up to and including termination.

If you have any questions regarding your rights and responsibilities concerning this disciplinary action, please feel free to contact me at 425-754-2318.

We understand that this situation may cause you and your family personal concern, and want to remind you that the County has an Employee Assistance Program (EAP). This program is available for your use, should you desire assistance in dealing with any of your concerns. This program is strictly confidential and you may call them 24 hours a day, 7 days a week at 1-800-553-7798. EAP services are a paid benefit for up to 3 visits per incident per family member.

Copy Received
Employee Signature: A. Wallin #1464 Date: 02/01/19

CC: Personnel File
OPA File

• TY TRENARY
SHERIFF

SNOHOMISH COUNTY
SHERIFF'S OFFICE

Community First

• ROB BEIDLER
UNDERSHERIFF

M E M O R A N D U M

DATE: January 17, 2019

TO: U/S Beidler

FROM: B/C S. K. Johnson #1210

RE: Deputy Wallin IA18-01 Finding

In reviewing this investigation for potential violations of the Snohomish County Sheriff's Office policies, my findings are as follows:

Lexipol Policy and Procedures Manual

341.2.6 Committing Negligent Acts or Endangering Self or Others

- Sustained

344.1.1 Report Preparation

- Sustained

341.2.5 Displaying Competent Performance and Achieving Competent Performance Results

- Sustained

This investigation was completed by OPA Sgt. Morris and included police reports, videos and photos, as well as interviews that identified the following facts:

On October 15, 2018, at approximately 0100 hours, Deputy Wallin responded to assist Deputy Twedt with a theft in-progress call at the Arco AM/PM business, located as 1515 164th Street SW Lynnwood, unincorporated Snohomish County, Washington. Prior to anyone arriving on scene, Deputy Wallin spoke to Deputy Twedt over the radio (on TAC) about the call. Deputy Wallin described that he knew Deputy Twedt did not have a laptop that night and Deputy Wallin wanted Twedt to know that when Wallin read the

NORTH PRECINCT
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Marysville, WA 98271
Phone (425) 388-5200
FAX (360) 653-7609

SOUTH PRECINCT
15928 Mill Creek Blvd
Mill Creek, WA 98012
Phone (425) 388-5250
FAX (425) 337-5809

EAST PRECINCT
515 Main Street
Sultan, WA 98294
Phone (425) 388-6260
FAX (360) 793-7774

CORRECTIONS
3000 Rockefeller Ave. M/S 509
Everett, WA 98201
Phone (425) 388-3474
FAX (425) 339-2244

ADMINISTRATION
3000 Rockefeller Ave. M/S 606
Everett, WA 98201
Phone (425) 388-3393
FAX (425) 388-3805

details of the call in NWS, he thought the call may actually be a robbery due to a reference of money being taken and a language barrier with the complainant. Deputy Twedt arrived on scene first and broadcast over the radio that he was out contacting a known male subject (Deputy Twedt identified the male subject by name over the radio). Deputy Wallin advised that upon hearing the update he expedited his response, including using emergency equipment to get there quicker, turning it off prior to arrival.

Deputy Twedt began to conduct a high risk stop on the subject by parking his patrol vehicle directly behind the subject's Suburban and taking cover at his open driver's side door while giving commands with his firearm at low/ready. At one point while giving commands to the male subject, whom he told to lay down on the ground near to the driver's side of the Suburban, a female (also known to Deputy Twedt from previous criminal contacts) emerged from the passenger side of Suburban. Deputy Twedt directed the female to lay on the ground in a prone position, which was on the passenger side of the vehicle. Having subjects lay down next to their vehicle is a standard control technique for high risk stops and Deputy Twedt found this necessary to control the two subjects who were not being cooperative.

Deputy Wallin advised that when he arrived on scene, Deputy Twedt was conducting the high risk stop in the parking lot next to the gas pumps, but stated that he did not realize that he was doing a high risk stop before he saw Twedt. Wallin had just made the turn onto Motor Place (adjacent to the AM/PM), which ultimately put him in a cross-fire situation due to Deputy Twedt's positioning. Deputy Wallin acknowledged that he discovered his approach was now in the path of the high risk stop and explained he knew his options were to stop and back-up or continue forward and out of the line of fire. Wallin explained that Twedt was holstering within a second or two of Wallin's arrival on Motor Place and he saw Twedt moving up to contact the subject laying on the driver's side of the Suburban, so he believed the cross-fire was no longer an issue. Deputy Wallin stated that he was focused on quickly assisting Twedt with the physical contact of the driver as he drove toward the Suburban and then parked immediately adjacent to it, on the passenger side (see mapping/drawing by Sgt. Morris in Tab 15 for people and vehicle orientation).

Deputy Wallin placed his vehicle in park and was preparing to go assist Deputy Twedt when Wallin described the woman surprised him as she was suddenly standing next to his vehicle (she stood-up between Wallin's vehicle and the Suburban after Wallin drove over her left hand). Deputy Wallin stated that he was not sure if he did not see her because he was distracted by Twedt's actions as he was driving or if it was due to visual obstructions (the bushes and gas pumps). Wallin stated that he did not know she was lying on the ground, but also acknowledged that it is common for people to be lying prone next to a vehicle during a high risk stop. He stated that he did not know Twedt was doing a high risk stop before he arrived, however he was aware of that before he

drove his car and parked next to the subject's Suburban. Wallin acknowledged that he did not know if there was anyone uncooperative in the Suburban when he parked next to it (which is typically why we do not park adjacent to occupied vehicles, especially during a high risk stop).

Deputies called an aid car for the woman, Deputy Wallin got some ice for her from the AM/PM, and both CIU and the supervisor were called to the scene. The woman was transported to the hospital and found to have multiple fractures in her left hand. Deputy Twedt stated that ultimately he discovered there was not a crime committed at the AM/PM but it was a misunderstanding over $20 in change involving a different person which had been resolved before Deputy Twedt arrived. The two people in the Suburban were found to not be involved with the initial theft complaint or any crime.

The CIU (Collision Investigation Unit) detectives conducted the collision investigation (car/pedestrian) at the scene. Deputy Twedt stated that they talked about reports at the scene and he was told to do a follow-up report and CIU was going to be the primary. Twedt stated that Deputy Wallin told him at the scene that he was going to do his report on the old follow-up form. The Patrol supervisor that night, MPD Zach Brown, responded to the scene and briefly discussed reports with the deputies. MPD Brown said that at some point Deputy Wallin told him that he was going to talk to an attorney first. MPD Brown stated that the scene was busy but he did not recall having any conversation with Deputy Wallin about Deputy Wallin not turning in his report by the end of shift. At one point MPD Brown was asked to write a supplemental report and indicated that he did not specifically recall having a conversation with Wallin about turning in his report by the end of shift. MPD Brown only recalls Wallin discussing his intent to talk to an attorney first.

On December 19, 2018, during Deputy Wallin's interview with Sgt. Morris for this administrative investigation, he acknowledged that he wrote a follow-up report but that he still had not turned it in. He stated that he had spoken to a union provided attorney, that he wrote a few drafts of his report and it went back and forth between him and his attorney, and that they had landed on a final version of his report (provided to Sgt. Morris after the interview, and now attached to this investigation). Deputy Wallin stated that he was waiting until directed to submit a report (via Garrity or other directive from a supervisor), as he believed there was potential he could be charged with a crime.

Deputy Wallin described what he called a lengthy conversation that he had with MPD Brown about not turning a report in until told to do so, and that MPD Brown stated he would let his chain of command know, then let Deputy Wallin know if/when Wallin needed to turn in his report.

MPD Brown described the conversations regarding Deputy Wallin's report as brief, at the scene, with a passing reference that Wallin was going to call an attorney first, but no specific discussion on delaying the turning in of Wallin's report. Deputy Twedt also advised at the scene that Wallin advised that he would do a report, but it would be on the old follow-up form. MPD Brown stated that it is possible Wallin said more about the report to him at the busy scene (noisy/chaotic), but he had no recollection of any discussion beyond Wallin talking with an attorney first.

Findings:

341.2.6 Committing Negligent Acts or Endangering Self or Others

This allegation is sustained as Deputy Wallin drove his vehicle in a negligent manner that resulted in the injury of a person. There was not just one single element that caused this to occur (such as not being able to see the subject on the ground because the bushes or gas pumps may have blocked his vision when he entered the driveway, for example). Like the general public, we are responsible for damage or injuries that we cause when we strike a person/car/object with our vehicles and that impact was preventable. If there are physical obstructions to being able to see where we are driving, then we are expected to stop or adjust our view before driving where we cannot see (such as moving our head to look around the A-pillar of our car when turning). In this case, the area where the woman was lying on the ground was a very well illuminated parking lot that was open for business. In this specific case, Deputy Wallin acknowledged knowing it was a high risk stop after he turned onto Motor Place, but before he turned towards the right and drove straight towards the subject's Suburban. It is common knowledge in law enforcement that people may be prone on the ground on either side of a vehicle during a high risk stop. Without the specific knowledge that a second person was placed on the passenger side of the vehicle does not change the poor tactic of parking immediately next to the subject vehicle, especially when Deputy Wallin acknowledged that he did not know if there were uncooperative people in the Suburban. This positioning also created a second possible cross-fire issue when Deputy Twedt was physically confronting someone on the opposite side of the Suburban as Wallin parked. Deputy Wallin did not intentionally hit the woman on the ground, who was simply following our commands by lying down next to the vehicle, but his actions were negligent given his training and experience with high risk contacts.

344.1.1 Report Preparation

The allegation is sustained as Deputy Wallin did not turn in his report by the end of shift as required by policy. His statement to MPD Brown, stating he wanted to talk with an attorney first, is consistent with MPD Brown's memory of the conversation, and is also consistent with Wallin's statement to Deputy Twedt that he would be doing a follow-up,

just on the old form. The "old form" is a reference to a Word document, which can be used when deputies work with an attorney in preparing their statement (as it can be sent electronically), such as when a deputy has used deadly force. In those cases, the Sheriff or his designee places the deputy on Administrative Leave first and advise their statement will be gathered later. A Deputy does not get to select which reports they write and which they do not. Deputies are also not allowed to wait and see if we notice a report is missing before they turn it in. Deputy Wallin did have an attorney help him with his report but still did not turn it in until directed to do so with this investigation, more than two months later. MPD Brown does not have any recollection of Wallin discussing not turning his report in with him, therefor he did not 'obtain permission,' which would require affirmative approval, as the policy requires.

341.2.5 Displaying Competent Performance and Achieving Competent Performance Results

This allegation is Sustained as Deputy Wallin has been repeatedly counseled on his tardiness of his police reports. Deputy Wallin has failed to turn in his reports in a timely manner intermittently for more than a year. He has been verbally counseled on it, has received documentation in 2017's evaluation, and received Letter of Reprimand for it in early 2018. Given this is a documented and repeating issue with this policy requirement, this allegation is sustained.

Based on the above sustained policy violations, this falls into a Grade 3 incident (for reasons including actual injury to a citizen and an open civil claim). As a result of the OPA review of the past 24 months and other recent sustained complaints, I recommend Deputy Wallin receive a five year Written Reprimand and be suspended for five days, if there is no new evidence or facts discovered.

This memorandum serves as documentation for what is technically a "preliminary finding," as I recognize that we will give Deputy Wallin an opportunity to meet and discuss this incident, as well as any additional mitigating information, before a final decision is made and concurred.

Superior Court of Washington
County of Snohomish

In Re:

PETITION FOR RECALL OF ADAM FORTNEY, SNOHOMISH COUNTY CLERK

Case No. 20-2-02972-31

AMENDED CALENDAR NOTE: (NTC)
CIVIL MOTIONS - JUDGES' CALENDARS

VISITING JUDGE ASSIGNED

HEARING VIA "ZOOM"

Unless otherwise provided by applicable rule or statute, this form and the motion must be filed with the Clerk not later than five (5) court days preceding the date requested. CR 6(d)

**SEE "WHERE TO NOTE VARIOUS MATTERS" ON PAGE 2, TO DETERMINE WHAT MOTIONS ARE TO BE SET BEFORE THE CIVIL MOTIONS JUDGE VERSUS THE CIVIL MOTIONS COMMISSIONER VERSUS THE PRESIDING JUDGE.

TO: The Clerk of Court:

A. PRESIDING JUDGE'S CALENDAR

Monday – Friday @ 9:00 a.m.
Department as assigned

Date Requested (mm/dd/yyyy): _____
Nature of Hearing: _____
**Confirm court hearing by noon two (2) court days prior to the requested date by calling (425) 388-3587

B. JUDGE'S CIVIL MOTIONS CALENDAR

Tuesday through Friday @ 9:30 a.m.
Department as assigned

Date Requested (mm/dd/yyyy): _____
Nature of Hearing: _____

**Confirm court hearing by noon two (2) court days prior to the requested date by calling (425) 388-3587

C. RALJ HEARINGS

Wednesday @ 10:30 a.m.
Department C304 – Criminal Hearings Courtroom

Date Requested (mm/dd/yyyy): _____
Nature of Hearing: _____

**RALJ hearings are automatically confirmed by the Clerk's Office. No confirmation is necessary.

D. JUDGE'S PERSONAL CALENDAR
(Special set hearings to be heard by a specific Judge)

Hearing date and time must be scheduled through the Judge's law clerk

Judge's calendar/contact information can be found at: http://www.co.snohomish.wa.us/documents/Departments/Superior_Court/judgeschedule.pdf

Date Requested (mm/dd/yyyy): **June 9, 2020, at 9:00** a.m. before visiting **Judge Kathryn C. Loring** (San Juan County Superior Court)
Nature of Hearing: **Ballot Synopsis Argument re: Recall Charges of Adam Fortney, Snohomish County Sheriff. The parties shall appear via "Zoom"**

**Confirm court hearing by noon two (2) court days prior to the requested date by calling the Judge's law clerk

NOTE: DO NOT schedule your hearing for a court holiday. Please check with the Clerk if you are uncertain when court holidays occur.

This calendar note must be filed with the Clerk not later than five (5) court days preceding the hearing date requested.

WARNING CONFIRMATION REQUIRED:

All matters set on the Judge's Civil Motion Calendar, Presiding Judge's Trial Continuance Calendar or Court Commissioner Calendars must be confirmed at 425-388-3587 two (2) court days prior to the hearing BEFORE 12:00 noon.

All RALJ hearings are automatically confirmed by the Clerk's Office. No confirmation is necessary.

Any hearings such as adoptions, reasonableness hearings and minor settlements which are specially set in front of a specific Judge on the Judge's Personal Calendar must be confirmed two (2) court days in advance through the Judge's law clerk. For more information on the Judge's schedules, you may call Court Administration at 425-388-3421 or information can be found on the internet at:
http://www.co.snohomish.wa.us/documents/Departments/Superior_Court/judgeschedule.pdf

Failure to notify the Court of a continuance or strike of a confirmed matter may result in sanctions and/or terms. SCLCR 7(b)(2)(H).

THIS FORM CANNOT BE USED FOR TRIAL SETTINGS. SCLMAR 2.1 AND SCLCR 40(b).

CERTIFICATE OF SERVICE BY MAIL:
I hereby certify that a copy of this document and all documents listed on page 4 have been mailed to the attorneys/parties listed on page 3, postage prepaid on the:

Date (mm/dd/yyyy): 6/2/20

(Signature)

Kathy Murray
(Printed name)

Noted by:

(Signature) 26141 for RJG

REBECCA J. GUADAMUD
(Printed name)

39718
WSBA#

Attorney for: (CHECK ONE)
☑ Petitioner/Plaintiff ☐ Respondent/Defendant
☐ Pro Se

WHERE TO NOTE VARIOUS MATTERS:

COMMISSIONER CIVIL MOTIONS:
The following are heard on the Court Commissioner's Civil Motion Calendar: Defaults, Discovery Motions and enforcement thereof; Supplemental Proceedings; Unlawful Detainer or Eviction & Receiver actions; Motions to Amend Pleadings and Petitions for Restoration of the Right to Possess Firearms. Probate and Guardianship matters are set on the Probate/Guardianship calendar.

PRESIDING JUDGE'S CALENDAR:

The following motions are heard on Presiding Judge's Calendar: trial continuance, pre-assignment, expedited trial date, jury trial (untimely demand), motion to waive mediation requirement.

RALJ HEARINGS
RALJ hearings are noted on the Wednesday morning criminal hearings calendar @ 10:30 a.m. in room C304.

All other civil motions are heard on the Judge's Civil Motions Calendar

EXTENDED MOTIONS BEFORE A COMMISSIONER: Extended motions are set by the Court Commissioner, not by a party or by counsel.

Calendar Notes should be filed at:
Snohomish County
Superior Court Clerk's Office
3000 Rockefeller Ave M/S 605
Everett, WA 98201

All Motions Heard At:
Snohomish County
Superior Court
3000 Rockefeller Ave
Everett, WA 98201

Please print the names, addresses etc. of all other attorneys in this case and/or all other parties requiring notice.

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Attorney for: (CHEC

☑ Petitioner/Plaintiff ☑ Respondent/Defendant

☐ Pro Se

List all documents mailed: Civil Motions Calendar Note for Telephonic Hearing