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June 20, 2005

Michael and Teresa Stanzel
2510 96th Avenue Court East
Edgewood, WA 98371

Re: Potential Legal Malpractice Claim against Fred Mendoza, Christopher Dodd and Curran Mendoza

Dear Michael and Teresa:

You have asked me to provide an opinion as to whether or not you have a viable legal malpractice claim against attorneys Fred Mendoza and Christopher Dodd and their law firm of Curran Mendoza for their actions and inactions in their representation of you in Pierce County Cause No. 03-2-03743-1, Crossroads Community Church of Sumner and Stanzel v. Song. You have also asked that I opine on whether or not you have a cause of action against the attorneys and law firm for violation of the Washington State Consumer Protection Act, RCW 19.86 et.seq.

I initially reviewed your bar complaint against Crossroads Community Church's attorneys', Martin Burns and Dalton Pence, WSB File No. 04-0090 and the various response and reply documents through May 25, 2005. In addition I have reviewed the purchase and sale agreements, deposition transcripts, trial court hearing transcripts, billing statements from your attorneys and various correspondence and pleadings from the case.

I have had several conversations with you regarding the facts as you recall them and one fairly lengthy office consultation with both of you. I have not conducted any independent investigation of the facts; nor have I interviewed any of the witnesses. I have not reviewed the entire court file; nor the entire billing file from Curran Mendoza.

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To recover for legal malpractice, a plaintiff must prove by a preponderance of the evidence, the following:

1. The existence of an attorney-client relationship, which gives rise to a duty of care on the part of the lawyer to the client;
2. An act or omission in breach of the duty of care;
3. Damage to the client; and
4. Proximate cause between the attorney's breach of duty and the client's damage. *Hizey v. Carpenter,* 119 Wn.2d 251, 803 P.2d 646 (1992).

To comply with the duty of care, which a lawyer owes to his or her client, the lawyer must possess and exercise that degree of care, skill, diligence, and knowledge, which is commonly possessed and exercised by a reasonable, careful and prudent lawyer in this state.

It is clear that you had an attorney-client relationship with both Mr. Mendoza and Mr. Dodd. I believe you will be able to show that both Mr. Mendoza and Mr. Dodd fell below the minimum standard of care and were negligent in their representation. Their failure to timely evaluate the church's case as frivolous, their failure to timely bring a summary judgment motion to resolve the case, their failure to provide an attorney fee clause in the purchase and sale agreement of December 10, 2002 against the seller, Mr. Song, their failure to claim Civil Rule 11 sanctions against the church's attorneys and law firm individually and/or their failure to advise you that their firm would not sue another lawyer or law firm for Civil Rule 11 sanctions under any circumstances will more likely than not be found and determined as negligent. You will need to offer expert testimony to prove at trial both the duty and breach of the duty owed to you by Mr. Mendoza and Mr. Dodd. In a legal malpractice case alleging negligence, expert testimony is required to establish the applicable standard of care. *Walker v. Bangs*, 92 Wn.2d 854, 601 P.2d 1279 (1979).

Your attorneys had a duty to timely evaluate the church's lawsuit and to determine the facts upon which it was based. The church filed its complaint on February 5, 2003 and its complaint was dismissed by summary judgment on January 23, 2004. You were an active participant in your lawsuit from the facts I have reviewed. You provided information and cooperated in all aspects of the litigation. On March 5, 2003, you provided your attorneys with information you obtained through a Public Disclosure Request. That information contained an admission by the church that could have been determined by a court that there was no basis for its claim and that its tactic was simply to delay and harass you and prevent your purchase of the property. Your attorneys both billed you for a review of this Public Disclosure information. It is my opinion that your attorneys were negligent in not using this information to attempt to timely resolve your lawsuit.

Your attorneys had a duty to write a letter to Mr. Burns and demand that the suit be voluntarily dismissed based on its frivolous nature and advising that if he failed to dismiss you would bring a claim for attorney fees directly against them under Civil Rule 11. Had Mr. Burns refused to dismiss, a summary judgment motion could have been

brought in a reasonable time, which should have sought dismissal, Civil Rule 11 sanctions against Mr. Burns and attorney fees against the church itself. Instead, your attorneys appear to have done nothing with the Public Disclosure information, agreed to a continuance two months later and to mediate the issues.

Even as a layperson, you knew and questioned your lawyers regarding the delay and the increase in your attorney fees due to that delay. In an August 19, 2003 e-mail to Mr. Dodd, you state:

> "To simply GIVE them more time to stall this process out to negotiate some kind of deal with Song will require that they, along with Song, admit that they have filed a frivolous lien and that Song probably colluded with them at first and both are responsible for my attorney fees and costs. …I don't think we should give anybody anything until they cough up those costs as an expression of their "good will". … This lawsuit and their lis pendens has always been about them buying more time …Maybe it's time to take this to a judge (to compel?) and put an end to this nonsense."

Again on September 18, 2003 you e-mail to Mr. Dodd and state:

> "… I don't understand why we are waiting until Oct 10. … Martin Burns had absolutely no position to negotiate anything from day one and it is looking more and more like we gave him everything that he wanted $15,000 ago. … I do not want to give everybody what they want when I was in a very strong position to end this and get what I needed. I am not looking forward to this getting dragged out into next year…."

On October 16, 2003, your attorneys billed you for drafting a summary judgment motion. I did not have an opportunity to review that draft and don't know if you were ever sent a copy. Apparently such a motion was not set at that time. Rather, your attorneys amended the complaint to name the pastor individually. On November 5, 2003, they received a letter from the pastor's attorney threatening Civil Rule 11 sanctions if his client was not dismissed. Your attorneys dismissed the pastor.

On November 17, 2003, your attorneys again billed you another 5.5 hours to again draft a summary judgment motion. I did not have an opportunity to review that motion either. Apparently, at or about that same time, a summary judgment motion was filed by Mr. Song's lawyer and by Mr. Burns on behalf of the church. Both arguments were set for December 19, 2003. Apparently, your motion was never filed and thus, never heard by the court.

In addition to their failure to timely seek a resolution of this case, your attorneys failed to seek attorney fees from the other parties and attorneys, with the exception of Crossroads Community Church, which all parties knew had no assets. Their drafting of the purchase and sale agreement of December 10, 2002 failed to include an attorney fee clause as between yourselves and Mr. Song, the seller. As such, no motion for fees was

ever brought to seek fees from Mr. Song, even though the original purchase and sale agreement of April 24, 1999 did include an attorney fee clause. It was that 1999 purchase and sale agreement that contained the right of first refusal upon which the 2002 agreement was predicated.

While Mr. Dodd did belatedly bring a motion for attorney fees against the Church, which was granted in part, that judgment is likely uncollectible. As I understand the facts, Curran Mendoza billed you $39,725.35 in attorney fees for their representation in this matter, of which you have paid $23,255.45. Of the $39,725.35 billed, the court awarded you a judgment against the Church for $19,000 in fees and $1,414.40 in costs for a total of $20,414.40.

Interestingly, Judge Nelson indicated in her written letter accompanying the Order that she "carefully considered the amounts previously awarded in this case as reasonable fees after reviewing detailed time records therein, and the time and cost records provided here, and has concluded that a reasonable fee for the Stanzels in their portion of the case, …is more than what was previously awarded as indicated, but not the full amount requested." She earlier awarded Song $18,190.11 as *reasonable fees* and arguably felt that a somewhat higher amount was a reasonable fee for the work done by your attorneys in your portion of the case. Judge Nelson awarded the full amount requested by Song and awarded you less than 50% of the fees you were actually billed. I will discuss the total amount of fees billed to you in a later section of this letter, when I discuss the Consumer Protection Act.

Your attorneys were negligent by either failing to bring a Civil Rule 11 claim against Mr. Burns or by failing to advise you in a timely manner that their firm would not bring such a claim against another attorney or law firm. Based on the facts of this case, your attorneys fell below the minimum standard of care in failing to bring such a claim before the trial court or to advise you of your rights and give you the option of seeking representation with another firm that would proceed with such a claim.

As earlier stated, you provided them with information on March 5, 2003 that the suit and lis pendens were arguably frivolous and advanced for an improper purpose. Even as a layperson you recognized that Mr. Burn's actions were the cause of your ever increasing legal fees. In your August 19, 2003 email to Mr. Dodd you state:

> "Burns has as much as admitted that Crossroads doesn't have financing in place or ever did. … he should have told him that if he didn't have financing by December 31 he shouldn't have filed a lis pendens. … He has also suggested that Crossroads is starting from scratch right now and wants to walk away without taking any sort of responsibility for their illegal and deceitful actions. … Also may be time for sanctions."

You followed up your comments in your September 18, 2003 email as follows:

The most difficult element in your case, as in most legal malpractice claims, that you must prove is the element of proximate cause. Proximate cause in a legal malpractice case is established if the client would have received a better result if the attorney had not breached his duty. *Martin v. Legal Services*, 43 Wn.App. 405, 717 P.2d 779 (1986). Proximate cause in your case would be established with a "but for" inquiry. But for the failure of Mr. Mendoza and Mr. Dodd to file a Civil Rule 11 claim, you would have received your legal fees from Mr. Burns. But for the failure of Mr. Mendoza and Mr. Dodd to bring on a timely summary judgment motion, your case would have been resolved sooner, with less attorney fees and costs. But for the failure of Mr. Mendoza to include an attorney fee clause in the December 2002 purchase and sale agreement, you would have recovered attorney fees from Mr. Song. If the harm that resulted would have resulted irrespective of the attorney's negligence then the negligence would not be a substantial factor or proximate cause of the damages.

Based on the Judge Nelson's oral opinion and finding that the lawsuit was frivolous and based on her awarding attorney fees in your favor and in Mr. Song's favor, you may be able to show, on a more probable than not basis, that Judge Nelson would have awarded sanctions against Mr. Burns for violating Civil Rule 11.

The law on an award of Civil Rule 11 sanctions is well established. "Starting a lawsuit is no trifling thing. By the simple act of signing a pleading, an attorney sets in motion a chain of events that will surely hurt someone. Because of Rule 11, that someone may be the attorney." Cascade Brigade v. Economic Development Board, 61 Wn. App. 615, 617, 811 P.2d 697 (1991). An attorney's pre-filing inquiry under CR 11 "is measured against an objective standard." Manteufel v. Safeco Ins. Co. of America, 117 Wn.App. 168, 68 P.3d 1093 (2003); Bryant v. Joseph Tree, Inc., 57 Wn. App. 107, 116, 786 P.2d 829 (1990). "The principal concern of the rule is whether the attorney acted reasonably in taking the action." Doe v. Sno-Isle Blood Bank, 55 Wn. App. 106, 111, 776 P.2d 1361 (1989). The church's complaint and lis pendens, you would argue, "is not based upon a plausible view of the law." See Bryant, 57 Wn. App. at 116. "If the court determines that a violation [of CR 11] has occurred, the court must impose 'appropriate' sanctions ... which can include the full award of attorney's fees." Cascade Brigade v. Economic Development Board, 61 Wn. App. at 619.

The statute of limitations for legal malpractice requires that you file suit within three years of the attorney's negligence or three years of when you reasonably should have discovered his negligence. RCW 4.16.080 (3); *French v. Gabriel*, 116 Wn.2d. 584, 806 P.2d. 1234 (1991). Based on the facts that I have reviewed, it is my opinion that your statute of limitations may begin to run at the earliest on August 18, 2003 when you suspected your attorneys would not file a Civil Rule 11 claim and at the latest on March 10, 2004 when you were awarded fees against the church only. If you fail to file suit against Mr. Mendoza and Mr. Dodd prior to August 18, 2006, your claims may be forever barred. If you fail to file prior to March 10, 2007, your claims will certainly be forever barred.

You have also asked me to review the actions of Mr. Mendoza and Mr. Dodd in light of an attorney's duty to comply with the Washington State Consumer Protection Act, RCW 19.86 et. seq. (CPA). The CPA prohibits "(u)nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce." RCW 19.86.020. To establish a CPA claim, the plaintiff must show (1) an unfair or deceptive act or practice, (2) occurring in trade or commerce, (3) that impacts the public interest, and (4) causes injury to the plaintiff's business or property. Hangman Ridge Training Stables, Inc. v. Safeco Title Ins.Co., 105 Wn.2d 778, 719 P.2d 531 (1086). The Washington Supreme Court has held that "these business aspects of the legal professions (such as the billing and collection of fees charged and how the firm obtains clients) are legitimate concerns of the public which are properly subject to the CPA." Short v. Demopolis, 103 Wn.2d 52, 691 P.2d 163 (1984).

I only reviewed the invoice provided by Mr. Dodd to the court as Exhibit A to his declaration in support of attorney fees dated March 1, 2004. That invoice or Detail Transaction File List as it is titled was limited to the time period January 9, 2003 through December 17, 2003. More investigation will need to be done before I could form an opinion as to whether or not Curran Mendoza violated the CPA in its billings to you. However, I have noted the following invoices and practices that need explanation:

1. On many entries, both Mr. Mendoza and Mr. Dodd would enter time for the same activity. You were charged by both Mr. Mendoza and Mr. Dodd at their full hourly rates for any meetings you had with both attorneys. You were charged by both Mr. Mendoza and Mr. Dodd at their full hourly rate for any interfirm conferences between the two. Interestingly, on several occasions the amount of time differed between the two attorneys for the same activity. For example:

a. 2/4/03 Dodd billed .80 of an hour for "Prepare for and conference with client". Mendoza billed 1.0 hour for "Prepare for meeting with client; conference with Mike Stanzel and Chris Dodd to discuss strategy".

b. 3/7/03 Dodd billed .50 of an hour for "Receipt and review message from client; conference with attorney Mendoza; review status of case; initial draft of letter; phone conference with client re not disclosing FIA information. Mendoza billed 1.0 hour for "Conference with Chris Dodd to discuss and review church records obtained from Pierce County and develop tactical strategy for their use".

c. 11/21/03 Dodd billed .70 of an hour for "Conference with client and attorney Mendoza." Mendoza billed 1.0 hour for "Conference with Chris Dodd re: depositions of client and pastor of defendant church; conference with client (no charge)."

d. 12/17/03 Dodd billed 1.0 hours for "Inter-office conference with attorney Mendoza re: summary judgment hearing; review and discuss argument for motion to strike". Mendoza billed 1.50 hours for "Conference with Chris Dodd to prepare for oral arguments in opposition to motions for summary judgment".

e. 12/17/03 Dodd billed 1.0 hours for "Intra-Office conference with attorney Mendoza re: summary judgment hearing; review and discuss argument for summary judgment hearing; review and discuss argument for motion to strike. On 12/18/03 (?)Mendoza billed 1.50 hours for "Conference with Chris Dodd to prepare for oral arguments in opposition to motions for summary judgment."

f. 12/19/03 Dodd billed 2.70 hours for "Prepare for Summary Judgment Hearing; travel to Pierce County courthouse; argue summary judgment hearing; conference with attorney Mendoza re: how to work and present judge's order". Mendoza billed 3.0 hours for "Attend Summary Judgment Motion hearing (4.5 hours); conference with Chris Dodd to draft court order denying summary judgment and granting specific performance to Stanzel (2.0)"

2. The time and fees billed to you for drafting of a summary judgment motion may be excessive and/or duplicative, or provided no value to you. As I understand the facts no motion for summary judgment prepared by your attorneys was before the court on December 19, 2003 or ever presented.

a. 10/16/03 Dodd billed .80 of an hour for "Phone conference with attorney Driessen re: summary judgment; phone conference with client re: same; draft note for summary judgment; draft note and letter to parties."

b. 10/16/03 Dodd billed 1.0 hour for "Note Motion for partial summary judgment; prepare documents to be filed with Pierce County Superior Court; Prepare cover letter to opposing counsel; fax documents to opposing counsel."

c. 11/05/03 Dodd billed 1.80 hours for "Conference with attorney Haffner re: status of case; discuss legal strategies (sic) concerning preparing for summary judgment; phone conference with Driessen; phone conference with Pence; phone call to client."

d. 11/13/03 Dodd billed 2.0 hours for "Finish initial draft of client's declaration."

e. uncertain as to whether or not billings for drafting the declaration of Mike Williams (5 entries) relate to the summary judgment motion – 6.50 hours!

f. 11/13/03 Dodd billed .80 of an hour to "e-mail client copies of revised documents; oraganize (sic) documents to prepare for summary judgment."

g. 11/17/03 Dodd billed 5.50 hours for "Draft summary judgment pleadings."

3. It appears that your attorneys were served with summary judgment motions from the seller on November 18, 2003 and did nothing further with your motion for summary judgment until after the December 19, 2003 hearing. They spent *significant* time reviewing and responding to the motions served upon them.

a. 11/18/03 Mendoza billed 1.50 hours to "Review Motion for Summary Judgment filed by Song and Response from Church."

b. 11/20/03 Dodd billed 2.50 hours for "Phone conference with Pence; receive and review Summary Judgment pleadings; analyze case."

c. 12/02/03 Dodd billed .70 of an hour for " Prepare for and conference with client; review plaintiff and defendant's Motion for Summary Judgment."

d. 12/02/03 Dodd billed 5.50 hours to "Continue drafting memorandum in opposition to defendant's motion for summary judgment; review and revise Stanzel declaration; begin drafting memorandum in opposition to plaintiff's motion for summary judgment."

e. 12/03/03 Dodd billed 2.30 hours to "Finish draft of memorandum in opposition to defendants summary judgment; continue to review declaration of Mike Stanzel."

f. 12/03/03 Dodd billed 4.50 hours for "Conference with client; continue working on summary judgment briefs and declaration of Mike Stanzel."

g. 12/04/05 Dodd billed another 4.0 hours for "Continue working on clients response to Crossroads motion for summary judgment."

h. 12/04/03 Dodd billed 1.30 hours for "Finish draft memorandum in opposition to co-plaintiff's summary judgment."

i. 12/04/03 A clerk billed .80 hours to "Prepare and review summary judgment motion documents for filing with the clerk."

j. 12/05/03 After the documents were prepared for filing with court, Dodd billed another 2.70 hours to "Finalize all pleadings for response to summary judgment pleadings."

k. 12/09/03 Mendoza billed 2.50 hours to "Review all summary judgment motion papers and assist Chris Dodd with preparation". !!

l. 12/17/03 and 12/18/03 As discussed above, your attorneys billed you a total of 2.5 hours to meet, discuss and prepare for the summary judgment motion.

m. 12/18/03 Dodd billed 3.50 hours to "Review respond(sic) to pleadings in opposition to motion to strike; review pleadings; prepare for summary judgment hearing; draft argument outline."

n. 12/19/03 As discussed above, your attorneys billed you a total of 5.70 hours to attend the summary judgment motions.

The billings from Mr. Mendoza and Mr. Dodd are not discrete billings, but instead often "lump" several tasks into one time period. It is difficult to break out the individual times when the billings are prepared as such. While there are some additional tasks included in the summary judgment response, a total of 40 billable hours were expended in two responses that were fairly similar and not unusually complex. I was not provided with all of the response paperwork and declarations, however. There are experts who review billings and work product to determine whether or not a time and fee is excessive.

4. The billing summary that I reviewed showed that Mr. Mendoza's hourly rate at the beginning of the summary was $205.00 per hour. On November 18, 2003, the hourly

rate is shown as $225.00 per hour for the balance of the billing summary. An attorney has a duty to advise a client of any change in the hourly billing rates after a representation has started. Were you advised in advance of the increase in Mr. Mendoza's fees?

There are some definite concerns regarding the billing summary and limited pleadings that I reviewed. More investigation would be needed to determine if there is a basis for seeking damages for a violation of the Consumer Protection Act. The Act does provide for treble damages up to $10,000 and includes a statutory award of your reasonable attorney fees for prosecuting those claims. Legal Malpractice cases do not have a basis for the award of attorney fees.

I would recommend discussing your concerns with Mr. Mendoza and Mr. Dodd and seeking a resolution in regards to the fees paid to their firm, prior to initiating any formal legal action. You may wish to consider assigning to the firm the judgment you received from the Crossroads Community Church and letting Curran Mendoza take the burden of collecting that judgment in lieu of attorney fees from you.

I would be happy to discuss the contents of this letter in detail with you and I thank you for the opportunity to review this very interesting matter.

Sincerely yours,

Gloria R. James