IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

JAMES ROLLAND and SUSAN ROLLAND, husband and wife and the marital community comprised thereof, Appellants/Cross-Respondents, v. WAYNE WILLIAMS and MELANIE STEWART, husband and wife and the marital community comprised thereof; DOUGLAS WYCKOFF and CAROL WYCKOFF, husband and wife and the marital community comprised thereof; ROLLAND, O'MALLEY, WILLIAMS & WYCKOFF, P.S., a Washington professional services corporation; and WILLIAMS, WYCKOFF & OSTRANDER, PLLC, a Washington professional services limited liability company; Respondents/Cross-Appellants.	No. 39133-3-II UNPUBLISHED OPINION

Penoyar, C.J. — Attorneys James Rolland, Wayne Williams, and Douglas Wyckoff are directors, officers, and shareholders of Rolland, O'Malley, Williams, and Wyckoff, P.S., a workers' compensation firm. Williams and Wyckoff terminated Rolland's employment and established a new law firm. Rolland sued Williams, Wyckoff, and their new firm ("defendants") for breach of fiduciary duty, tortious interference with business expectancy, Consumer Protection Act[1] violations, and unjust enrichment. The trial court granted summary judgment to the defendants on these causes of action. We affirm.

[1] Chapter 19.86 RCW.

FACTS

I. Background

Rolland, O'Malley, Williams & Wyckoff, P.S. (ROWW) is a professional service corporation in Olympia that specializes in workers' compensation cases. Rolland, Williams, and Wyckoff each own one-third of the corporation's shares, and each signed an employment agreement with the corporation. Apparently, the three men are the corporation's sole officers and directors.[2] Dane Ostrander worked as an associate at ROWW.

In January 2005, Williams and Wyckoff asked Rolland to sign an additional employment agreement as a condition of continuing to practice law with the firm. Rolland complied. This agreement required Rolland to maintain consistent work hours, follow office procedure when assigning work to staff, document file activity, establish "tickle dates," and minimize the use of staff for personal reasons. Clerk's Papers (CP) at 589.

On March 18, 2005, Wyckoff told Williams that the "situation" with Rolland "[wasn't] improving," and the two men discussed ending their business relationship with Rolland. CP at 410. On March 19, Williams and Wyckoff held a special shareholders' meeting, apparently without informing Rolland. The minutes state that Williams and Wyckoff agreed to terminate

[2] The record is not fully developed on this point because the parties focus on Rolland's, Williams's, and Wyckoff's role as shareholders rather than as officers and directors. Rolland signed a corporate document as "[p]resident" in 2000. Clerk's Papers (CP) at 532. Williams stated in a declaration that he is an officer and director, and he signed the March 19, 2005 shareholders' special meeting minutes as "[s]ecretary." CP at 537. Wyckoff signed the same minutes as "[t]reasurer." CP at 537.

Rolland's "participation"[3] in the corporation because "[he] still did not want to follow office procedures . . . [and he] utilized the staff for personal tasks and disrupted their work" and because Rolland's behavior had placed the firm's "reputation and success" at risk.[4] CP at 536.

On March 22, Williams and Wyckoff informed Rolland that they had terminated his employment and that they planned to start a new firm, Williams, Wyckoff, & Ostrander, PLLC (WWO). On that same day, according to the deposition of ROWW's office manager Julie Hatcher, ROWW created "an attorney case load report" that listed the open client matters assigned to each of ROWW's attorneys, including "pension client" matters and "non-pension client" matters. CP at 277. "Pension client" matters were complete except that ROWW collected and deposited those clients' monthly pension checks and issued separate checks to clients after deducting legal fees. With regard to "non-pension clients," the attorney case report listed 52 open matters for Rolland, 85 open matters for Williams, 127 open matters for Wyckoff, and 127 open matters for Ostrander. Rolland's 52 open matters were distributed among 36 different clients. Rolland also "handled" all ROWW cases initially but did not participate in litigation. CP at 404.

On March 23, Williams and Wyckoff wrote a memorandum to Rolland, which stated in

[3] By using the word "participation," the minutes do not clearly articulate whether Williams and Wyckoff intended to terminate Rolland as an employee or to remove him as a director or officer. The parties do not appear to dispute that Williams and Wyckoff only intended to terminate Rolland's employment.

[4] The parties do not explicitly address Williams's and Wyckoff's authority to terminate Rolland's employment at a special shareholders' meeting. Although the minutes state that ROWW had a "practice that two shareholders could act on important matters needing prompt attention without calling a formal meeting," the basis for this practice is unclear. CP at 536. Rolland's employment agreement states that the corporation may terminate his employment agreement "upon 60 days' written notice," but it does not specify a method for termination. CP at 516. ROWW's bylaws also do not include a procedure for terminating employees.

relevant part:

> Yesterday, you raised some issues and questions. Here are our responses.
>
> We would be happy to wait to send letters to your existing clients until you can get a phone and mailing address. However, we feel we must do something by Monday afternoon[, March 28.] You can call Qwest and get a new phone in one day . . . .
>
> We have no objection to you continuing to clean out your office today. However, at 3:00 pm today we are converting it to a conference room. We plan to move your desk and related property to the 2nd floor and will provide you with a key.

CP at 94.

That same day, WWO began to send letters to ROWW's non-pension clients who were assigned to Williams, Wyckoff, and Ostrander.[5] Wyckoff stated that he requested Rolland's input about the language to be used in these letters but that Rolland only provided his address and phone number. Hatcher, who became WWO's office manager, stated that WWO mailed these letters "over a series of a couple of days." CP at 626. The letters—on WWO letterhead with "[f]ormerly Rolland, O'Malley, Williams & Wyckoff, P.S." printed directly beneath WWO's name—read as follows:

> As you can see from the new letterhead, there have been some changes at our law firm. We wanted to write and let you know what is going on and assure you that your representation will continue at the highest level.
>
> Because of the recent departure of Jim Rolland from our firm and the death of Tom O'Malley in 2001, we believe it was important to have our firm name reflect who the members are, both for our clients and the legal community. Although the name has changed, our goal remains the same, to represent injured workers and clients in other fields at the highest most efficient level.
>
> Our support staff remains the same, headed by our Office Manager, Julie

[5] During the ensuing litigation, Rolland stated in a declaration that WWO sent these letters to "all ROWW clients." CP at 582. Rolland's basis for this assertion is unclear. Wyckoff stated that some of the clients who received the letters "may have started out with [Rolland]" but were currently assigned to one of the other three ROWW attorneys. CP at 403.

> Hatcher. In short, you should not notice any change in the way in which you are represented and how our business is conducted.
>
> If you have been a client of Jim Rolland's, your case has already been assigned to an experienced partner who will represent you during this transition period. We expect we will be contacting you in the near future to advise you of Jim Rolland's new address and give you the option to transfer your case to him. If you have any concerns or questions, please feel free to contact us immediately.
>
> In order to satisfy the Department of Labor and Industries' requirements,[6] we would request that you sign the enclosed forms and return them to us, reflecting our representation of you, under our new law firm name. We apologize for the inconvenience. We look forward to representing you regarding your claim.
>
> Sincerely,
>
> WILLIAMS, WYCKOFF & OSTRANDER, PLLC

CP at 96-97. The WWO letters included a client health care release, a form authorizing WWO to inspect the client's Labor and Industries (L&I) files, a retainer agreement, a power of attorney, and an L&I change of address form.

On March 31, Rolland sent a letter to ROWW clients,[7] informing them that he had opened a new law firm, Law Offices of James L. Rolland, P.S., in the same building as WWO. Rolland enclosed an election form that asked clients to choose to be represented by him or by WWO. Rolland also enclosed a client health care release, a form authorizing him to inspect the client's L&I files, a retainer agreement, a power of attorney, and an L&I change of address form.

Also on March 31, WWO sent a letter to Rolland's non-pension clients. Although similar

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[6] In a deposition, Wyckoff explained that WWO referred to the Washington State Department of Labor and Industries (L&I) requirements in the letter because WWO would be unable to access a client's L&I files without a new law firm identification number and specific client authorization.

[7] The record is unclear as to whether Rolland sent the March 31 letter to ROWW's pension clients, ROWW's non-pension clients, or both. Rolland sent the March 31 letter to clients assigned to Williams, Wyckoff, and Ostrander in addition to clients assigned to him.

in some respects to the letter that WWO sent to William's, Wyckoff's and Ostrander's non-pension clients during the preceding week, WWO's March 31 letter omitted language that the client's case had been "assigned to an experienced partner . . . during this transition period" and that the client should return the enclosed forms to satisfy L&I requirements. CP at 539. WWO's March 31 letter also provided the name, address, and telephone number of Rolland's new firm.

In April, WWO sent out its original March 23 letter to at least three clients. These three clients were assigned to Wyckoff and Ostrander. Wyckoff called these mailings "clerical errors." CP at 633.

After receiving both WWO's and Rolland's notification letters, eight ROWW clients signed contracts with both WWO and Rolland. Williams discussed this situation with a Washington State Bar Association (WSBA) representative, who told him that it was appropriate for WWO to contact those eight clients to ask them which firm they wanted to represent them. After WWO contacted them, five selected WWO and three selected Rolland's firm.

II. Lawsuit

On October 5, 2005, Rolland filed a complaint against Williams, Wyckoff, and WWO[8] in Thurston County Superior Court. Rolland sought ROWW's judicial dissolution[9] and claimed that Williams and Wyckoff had breached their fiduciary duties to ROWW. Rolland also claimed that Williams, Wyckoff, and WWO had tortiously interfered with his business expectancy, had violated

[8] Rolland's complaint also named ROWW as a defendant. Rolland's assignments of error focus on the alleged wrongdoing of Williams, Wyckoff, and WWO—not ROWW. Therefore, like Rolland, we focus on the actions of these three defendants.

[9] Rolland sought judicial dissolution in his capacity as a shareholder, asserting that "[t]he directors . . . have acted, are acting, or will act in a manner that is illegal, oppressive, or fraudulent" and "[t]he corporate assets are being misapplied or wasted." RCW 23B.14.300(2)(b), (d).

the Consumer Protection Act (CPA), and were unjustly enriched. Williams, Wyckoff, and WWO counterclaimed for breach of contract, misappropriation and waste, and indemnification.

Over two years later, after the parties had engaged in discovery, Williams, Wyckoff, and WWO moved for summary judgment on each of Rolland's claims, arguing in part that Rolland had not demonstrated that WWO's letters had damaged him and that the letters did not implicate the CPA. In opposing the motion, Rolland submitted several declarations and exhibits, including his own declaration; a declaration by certified public accountant Michael Moss about Rolland's alleged economic damages; and declarations by Allan Duckworth and Susan Martin, clients of Rolland's new firm.

Rolland stated in his declaration that he had been able to retain approximately 30 former ROWW clients after his termination. Earlier, in response to an interrogatory during discovery, Rolland had listed 52 former ROWW clients who had hired him.

Moss, the accountant, stated that WWO had received $2,947,402 in fees from former ROWW clients from April 1, 2005, through June 30, 2007. These fees included "pension payments for Labor and Industries claims that have been permanently decided, lump sum payments or periodic payments for claims that are in progress." CP at 451.

Duckworth stated that he visited ROWW's former office after an individual referred him to Rolland. At the office, Ostrander told Duckworth that Rolland "was no longer with ROWW" and that "there was no forwarding address for Mr. Rolland." CP at 543. Consequently, Duckworth agreed to retain WWO. One month later, Duckworth learned that Rolland worked in the same building as WWO and he asked WWO to transfer his case file to Rolland.

Martin stated that Rolland had been her lawyer since 2000. After receiving WWO's

notification letter, she called WWO to ask for Rolland's contact information. WWO staff told her that they did not know how to reach Rolland. Martin eventually contacted Rolland through the WSBA. Williams subsequently stated that he sent a notification letter to Martin because he, not Rolland, had represented Martin before the Board of Industrial Insurance Appeals.

The trial court granted summary judgment on Rolland's non-CPA claims because Rolland had failed to make a prima facie showing of damages:

> If I have to go back to the letters, which I did many times, and some of the statements including Mr. Rolland, and figure out whether or not oppressive conduct has occurred or not, arguably, there is an issue of fact but there is no evidence, there is no issue of fact in this Court's opinion on the issue of damages. I think that the plaintiff has the burden to come forward [on] each of these causes, each of which involved the element of damages to show that one or more - - one client would have gone with Mr. Rolland but for these letters that were sent out and I didn't see that in the record, so, I'm going to grant the motion for summary judgment.

Report of Proceedings (RP) (Dec. 7, 2007) at 23. The trial court also granted summary judgment to Williams, Wyckoff, and WWO on Rolland's CPA claim because it was "a private action between individual parties." RP (Dec. 7, 2007) at 23.

Rolland moved for reconsideration. The trial court denied the motion "except for questions regarding [the] distribution of assets." CP at 793. After a bench trial in November 2008, the trial court entered a judgment resolving numerous issues regarding ROWW's assets.[10]

Rolland now appeals the trial court's grant of summary judgment to Williams, Wyckoff,

[10] We do not address the trial court's distribution of ROWW's assets because that issue is not before us in this appeal. We note the trial court declined to judicially dissolve ROWW, finding that such a "drastic remedy . . . would be detrimental to ROWW Shareholders." CP at 1212. Rather, the trial court concluded that ROWW remained an "active, ongoing corporation" that would "continue in existence for the purpose of collecting the accounts receivable, paying expenses, and disbursing receivable fees to Shareholders, as appropriate." CP at 1212, 1214.

and WWO on his claims of breach of fiduciary duty, tortious interference with business expectancy, CPA violations, and unjust enrichment.

ANALYSIS

I. Standard of Review

We review summary judgment orders de novo. *Lunsford v. Saberhagen Holdings, Inc.*, 166 Wn.2d 264, 270, 208 P.3d 1092 (2009). We consider facts and reasonable inferences in the light most favorable to the nonmoving party. *McNabb v. Dep't of Corrs.*, 163 Wn.2d 393, 397, 180 P.3d 1257 (2008).

Summary judgment is appropriate only if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." CR 56(c). Once the moving party meets its initial burden to show that there is no genuine issue as to any material fact, the nonmoving party must set forth specific facts rebutting the moving party's contentions and disclosing that a genuine issue as to a material fact exists. *Seven Gables Corp. v. MGM/UA Entm't Co.,* 106 Wn.2d 1, 13, 721 P.2d 1 (1986).

To avoid summary judgment, a plaintiff must make out a prima facie case concerning the essential elements of its claim. *Boguch v. Landover Corp.*, 153 Wn. App. 595, 609, 224 P.3d 795 (2009). "If . . . the plaintiff 'fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial,' then the trial court should grant the motion'" because "'a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial.'" *Young v. Key Pharms., Inc.,* 112 Wn.2d 216, 225, 770 P.2d 182 (1989) (quoting

Celotex Corp. v. Catrett, 477 U.S. 317, 322-23, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986)).

II. Breach of Fiduciary Duty

Rolland contends that the trial court erred by granting summary judgment on his breach of fiduciary duty claim. He asserts that Williams and Wyckoff engaged in impermissible self-dealing by mailing solicitation letters to ROWW clients while Williams and Wyckoff remained ROWW's directors, officers, and shareholders. Specifically, Rolland objects to the letters' (1) implication that Rolland "was gone" even though he planned to open a new firm in the same building; (2) identification of WWO as "[f]ormerly [ROWW]" in the letterhead; and (3) suggestion that clients should sign the enclosed forms in order to comply with L&I requirements, which "injected a note of urgency" into WWO's letter.[11] Appellant's Br. at 21-22 (emphasis omitted). We hold that the trial court did not err because Rolland failed to make a prima facie showing of damages.

A corporation's directors and officers must discharge their duties with the care that an ordinarily prudent director and officer would exercise under similar circumstances. RCW 23B.08.300(1)(b), .420(1)(b). Directors and officers must act in good faith and in the corporation's best interests, and they may not retain "any personal profit or advantage gleaned 'on the side.'" RCW 23B.08.300(1)(a), (c), .420(1)(a), (c); *Leppaluoto v. Eggleston*, 57 Wn.2d 393, 402, 357 P.2d 725 (1960). A plaintiff who asserts that a corporation's officers or directors have breached a fiduciary duty must also prove damage resulting from the breach. *Interlake Porsche + Audi, Inc. v. Bucholz*, 45 Wn. App. 502, 510, 728 P.2d 597 (1986); *see also Leppaluoto*, 57

[11] As noted above, the letter that WWO sent to Rolland's non-pension clients on March 31 corrected two of these alleged problems by providing Rolland's contact information and omitting any reference to L&I requirements. The letterhead, however, still identified WWO as "[f]ormerly [ROWW]." CP at 541.

Wn.2d at 405 (stating that plaintiff shareholder was "not entitled to any relief" where he did not prove that the corporation's president profited or that the corporation suffered damages from the president's actions).

Here, the trial court did not err because Rolland failed to demonstrate that WWO proximately caused damage to Rolland by mailing letters to former ROWW clients in the days following Rolland's termination. Rolland suggests that he lost clients as a result of WWO's letters, arguing that his termination "without notice . . . remov[ed] him from the firm and access to his clients, premises and assets." Appellant's Br. at 21. Rolland admitted in response to an interrogatory, however, that he eventually retained 52 former ROWW clients after his termination, which represents 16 more clients than were assigned to him on the date of his termination. Although Rolland later stated in a declaration that he had only retained about 30 former ROWW clients, the decrease from 52 to 30 clients during litigation could not have been proximately caused by WWO's letters.

As the trial court noted, Rolland had the burden to demonstrate that the alleged misrepresentations in WWO's letters caused one or more former ROWW clients to select WWO—instead of Rolland—as its representative. Rolland did not meet this burden. The only client declarations that Rolland submitted—those of Martin and Duckworth—did not disclose the existence of a factual dispute concerning damages because neither Duckworth nor Martin ultimately retained WWO.

Rolland's contention fails even if, as he implies, the proper measure of damages here is not the number of clients that Rolland lost from WWO's alleged misrepresentations but, rather, the diminution in Rolland's share of the total profits generated by client fees from all former ROWW clients. Rolland points to Moss's statement that WWO received $2,947,402 in client fees from former ROWW clients from April 1, 2005, to June 30, 2007 in order support his argument that summary judgment on the issue of damages was improper. But this fact alone is insufficient to demonstrate that Rolland's share of the total profits generated by former ROWW clients decreased during this period because he presents no evidence of the amount of client fees that he collected from former ROWW clients during the same time period.

III. Tortious Interference with Business Expectancy

Rolland next contends that the trial court erred by granting summary judgment on his tortious interference with business expectancy claim. In order to make out a claim for tortious interference, a plaintiff must make a prima facie showing on five elements:

> (1) The existence of a valid contractual relationship or business expectancy;
> (2) That defendants had knowledge of that relationship;
> (3) An intentional interference inducing or causing a breach or termination of the relationship or expectancy;
> (4) That defendants interfered for an improper purpose or used improper means; and
> (5) Resultant damages.

Sintra, Inc. v. City of Seattle, 119 Wn.2d 1, 28, 829 P.2d 765 (1992) (citing *Pleas v. City of Seattle,* 112 Wn.2d 794, 800, 804, 774 P.2d 1158 (1989)). As we explained in detail in the preceding section, Rolland failed to make a prima facie showing of damages sufficient to survive summary judgment.[12] Therefore, the trial court did not err by granting summary judgment on this

claim.

IV. Consumer Protection Act

Rolland also argues that the trial court erred by granting summary judgment to Williams, Wyckoff, and WWO on his CPA claim. Rolland argues that "the practice of law affects the public interest" and that the defendants' actions "amounted to a repeated course of conduct to hundreds of clients, thereby establishing a pattern of behavior." Appellant's Br. at 27. We reject this argument.

> To prevail in a private CPA action, a plaintiff must prove five elements:
>
> (1) an unfair or deceptive act or practice that (2) occurs in trade or commerce, (3) impacts the public interest, (4) and causes injury to the plaintiff in her business or property, and (5) the injury is causally linked to the unfair or deceptive act.

Michael v. Mosquera-Lacy, 165 Wn.2d 595, 602, 200 P.3d 695 (2009) (citing *Hangman Ridge Training Stables, Inc. v. Safeco Title Ins. Co.,* 105 Wn.2d 778, 780, 719 P.2d 531 (1986)). We evaluate four factors to determine whether a plaintiff in a private dispute has demonstrated that his or her lawsuit would serve the public interest:

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[12] Rolland cites *Deep Water Brewing, LLC v. Fairway Resources Ltd.*, 152 Wn. App. 229, 215 P.3d 990 (2009), *review denied*, 168 Wn.2d 1024 (2010) for the proposition that "once a party owed the fiduciary duty establishes a prima facie case of breach, the fiduciary bears the burden of clearly disestablishing the causal connection between the breach and the claimed loss." Appellant's Br. at 24. Rolland does not point to specific language in the opinion that supports this rule and we find none. In *Deep Water Brewing*, a restaurant owner sued a developer and homeowners' association for tortious interference with a contract when the developer and homeowners' association, in violation of a prior agreement, permitted the construction of homes that obscured the restaurant's view of Lake Chelan. 152 Wn. App. at 238, 242-43. At the damages phase of the trial, the restaurant owner proved damages by presenting expert testimony that the obstructed view diminished the restaurant's value by $245,000. *Deep Water Brewing*, 152 Wn. App. at 244-45.

Rolland also cites various out-of-state cases to support his arguments, but none of them stands for the proposition that he need not make a prima facie showing of damages to survive summary judgment.

> (1) whether the alleged acts were committed in the course of defendant's business; (2) whether the defendant advertised to the public in general; (3) whether the defendant actively solicited this particular plaintiff, indicating potential solicitation of others; (4) whether the plaintiff and defendant have unequal bargaining positions.

Michael, 165 Wn.2d at 605. None of these factors is dispositive and all of the factors need not be present. *Michael*, 165 Wn.2d at 605.

The trial court properly granted summary judgment on Rolland's CPA claim because WWO's allegedly deceptive acts do not impact the public interest. Although WWO mailed the notification letters in the course of its business, it did not send letters to the public at large, but only to former ROWW clients. WWO did not solicit Rolland. Additionally, Rolland, Williams, and Wyckoff shared equal bargaining positions as ROWW's directors, officers, and shareholders. WWO's allegedly deceptive acts—misrepresenting the relationship between WWO and ROWW and obscuring Rolland's whereabouts in letters sent to ROWW's former clients—occurred as the result of WWO's formation, a one-time event. These acts occurred over a one-to-two week period in 2005. Accordingly, WWO is unlikely to repeat these allegedly deceptive acts in a manner that impacts the public at large.

V. Unjust Enrichment

Finally, Rolland argues that the trial court erred by dismissing his unjust enrichment claim. Specifically, he argues:

> Rather than maintain the clients under ROWW by simply doing a corporate name change and apportioning the fee properly among the shareholders as a corporate asset, Williams and Wyckoff took and retained all of the benefit of the clients and work of Rolland and ROWW under the masthead of their separate entity.

Appellant's Br. at 29. Rolland's argument lacks merit.

Unjust enrichment permits recovery for the value of a benefit retained absent any contractual relationship because notions of fairness and justice require it. *Young v. Young*, 164 Wn.2d 477, 484, 191 P.3d 1258 (2008). A plaintiff must establish three elements to sustain a claim for unjust enrichment:

> a benefit conferred upon the defendant by the plaintiff; an appreciation or knowledge by the defendant of the benefit; and the acceptance or retention by the defendant of the benefit under such circumstances as to make it inequitable for the defendant to retain the benefit without the payment of its value.

Young, 164 Wn.2d at 484 (quoting *Bailie Commc'ns, Ltd. v. Trend Bus. Sys., Inc.,* 61 Wn. App. 151, 159-160, 810 P.2d 12, 814 P.2d 699 (1991)).

Rolland's unjust enrichment argument fails because he has not conferred any benefit on Williams, Wyckoff, or WWO. Although it is certainly true that Rolland, as a founding member of ROWW, helped to establish ROWW's business, Williams and Wyckoff also worked to build the business over many years. Additionally, Rolland has presented no evidence that Williams and Wyckoff retained any former ROWW client as a result of improper solicitation.

Affirmed.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

Penoyar, C.J.

We concur:

Worswick, J.

Dwyer, J.