

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Circuit Mediation Office

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MEDIATION QUESTIONNAIRE

The purpose of this questionnaire is to help the court's mediators provide the best possible mediation service in this case; it serves no other function. Responses to this questionnaire are *not* confidential. Appellants/Petitioners must electronically file this document within 7 days of the docketing of the case. 9th Cir. R. 3-4 and 15-2. Appellees/Respondents may file the questionnaire, but are not required to do so.

Any party may provide additional information *in confidence* directly to the Circuit Mediation Office at ca09mediation@ca9.uscourts.gov. Please provide the case name and Ninth Circuit case number in your message. Additional information might include interest in including this case in the mediation program, the case's settlement history, issues beyond the litigation that the parties might address in a settlement context, or future events that might affect the parties' willingness or ability to mediate the case.

9th Circuit Case Number(s):		10-35815	
District Court/Agency Case Number(s):		C10-5293KLS	
District Court/Agency Location:		U.S. District Court for the Western District of Washington at Tacoma	
Case Name:	Ken Aronson	v.	Dog Eat Dog Films, Inc.

Please briefly describe the dispute that gave rise to this lawsuit.

Ken Aronson appeared without his permission in a Michael Moore film *Sicko* produced by Dog Eat Dog Films, Inc. Mr. Aronson's right to privacy was invaded by the film and his image was used without his permission.

Briefly describe the procedural history, the result below, and the main issues on appeal.

Aronson filed a complaint for common law tort of invasion of privacy in the United States District Court for the Western District of Washington at Tacoma. The defendant Dog Eat Dog Films, Inc. filed a motion under a newly enacted Washington statute that requires a party presenting claims for defamation or common law invasion of privacy and similar torts to demonstrate the merits of such claims. Although the burden of proof for such claims is preponderance, RCW 4.24.0001 requires a claimant to prove by clear, cogent, and convincing evidence that the claimant has a meritorious claim. If a court determines the plaintiff has not met this high burden of demonstrated merit, the court may dismiss the complaint, award attorney fees, and impose a statutory penalty of \$10,000. In this case, the district court's magistrate, the Honorable Karen Strombom, entered a ruling dismissing Aronson's complaint, awarding attorney fees to Dog Eat Dog Films, and awarding that company the statutory \$10,000 penalty.

On appeal, the principal issues to be raised by Aronson include whether RCW 4.24.0001 is unconstitutional in light of decisions of the Washington Supreme Court in *Putnam v. Wenatchee Valley Medical Center*, 166 Wn.2d 974, 216 P.3d 374 (2009), and *Waples v. Yi*, 169 Wn.2d 152, 234 P.3d 187 (2010), where that court struck down certification of merit statutes in the medical negligence context. Moreover, RCW 4.24.0001, was enacted as part of a statute relating to SLAPP (Strategic Lawsuit Against Public Policy) lawsuits. The statute at issue here has nothing to do with SLAPP. The statute violates the single subject requirement of the Washington Constitution, Article II, § 19 and the provisions of Article II,

§ 37 which bar the amendment of an act by mere reference to its title. The statute has other constitutional deficiencies, including violation of the bedrock right of access to the courts, separation of powers, equal protection and disparate treatment, and prior restraint. Aronson will also contest the district court's determination that his claim lacked merit under the specific terms of RCW 4.24.0001.

Describe any proceedings remaining below or any related proceedings in other tribunals.

Aronson's present appeal is taken from the district court's ruling of August 31, 2010. He filed a motion for reconsideration on September 9, 2010, upon which the district court has not yet ruled. That motion for reconsideration specifically articulates the constitutional questions referenced above. An immediate direct appeal of decisions under the statute is provided for in RCW 4.24.0001(5)(d).

Provide any other information that might affect the suitability of this case for mediation.

Aronson will likely seek certification by this Court to the Washington Supreme Court of the state constitutional issues associated with RCW 4.24.0001. RCW 4.24.0001 is new, first enacted in 2010. It has never been judicially construed in Washington and this Court would benefit from an interpretation of the statute and its constitutionality by the Washington Supreme Court.

CERTIFICATION OF COUNSEL

I certify that:

a current service list with telephone and fax numbers and email addresses is attached (see 9th Circuit Rule 3-2).

I understand that failure to provide the Court with a completed form and service list may result in sanctions, including dismissal of the appeal.

Signature Philip A. Salmadge

("s/" plus attorney name may be used in lieu of a manual signature on electronically-filed documents.)

Counsel for Kenneth Aronson

Note: Use of the Appellate ECF system is mandatory for all attorneys filing in this Court, unless they are granted an exemption from using the system. **File this document electronically** in Appellate ECF by choosing Forms/Notices/Disclosure > File a Mediation Questionnaire.

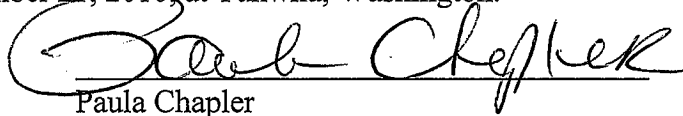
CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the Mediation Questionnaire with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

Bruce Johnson
Noelle Kvasnosky
Davis Wright Tremaine LLP
1201 3rd Avenue, Suite 2200
Seattle, WA 98101-3047
Email: brucejohnson@dwt.com
noellekvasnosky@dwt.com

Thomas B. Vertetis
Jason P. Amala
Pfau Cochran Vertetis Kosnoff PLLC
911 Pacific Avenue, Suite 200
Tacoma, WA 98402
Email: Thomas@pcvklaw.com
Jason@pcvklaw.com

DATED: September 21, 2010, at Tukwila, Washington.



Paula Chapler
paula@tal-fitzlaw.com
Talmadge/Fitzpatrick
18010 Southcenter Parkway
Tukwila, WA 98188