

September 23, 2021

LEV v. CITY OF BELLINGHAM and FLEETWOOD

**FINAL MEDIATED SETTLEMENT AGREEMENT**

1. RECITALS.

- 1.1 The City of Bellingham ("City") is a city of the first class operating under Charter and law. The Honorable Seth Fleetwood is the duly elected Mayor of the City.
- 1.2 The City operates a municipal court ("Court") pursuant to Chapter 3.50 RCW and Chapter 2.16 BMC. The Honorable Debra Lev is the duly elected Municipal Court Judge and serves as Presiding Judge of the Court.
- 1.3 RCW 3.50.080 states in part: "All employees of the municipal court shall, for all purposes, be deemed employees of the city or town. They shall be appointed by and serve at the pleasure of the court."
- 1.4 The Supreme Court's General Rule 29 applies to the Court. It states in part:
  - (e) General Responsibilities. The Presiding Judge is responsible for leading the management and administration of the court's business, recommending policies and procedures that improve the court's effectiveness, and allocating resources in a way that maximizes the court's ability to resolve disputes fairly and expeditiously.
  - (f) Duties and Authority. The judicial and administrative duties set forth in this rule cannot be delegated to persons in either the legislative or executive branches of government. A Presiding Judge may delegate the performance of ministerial duties to court employees; however, it is still the Presiding Judge's responsibility to ensure they are performed in accordance with this rule. In addition to exercising general administrative supervision over the court, except those duties assigned to clerks of the superior court pursuant to law, the Presiding Judge shall:

...

    - (5) Supervise the daily operation of the court including:
      - (a) All personnel assigned to perform court functions; and
      - (b) All personnel employed under the judicial branch of government, including but not limited to working conditions, hiring, discipline, and termination decisions except wages, or benefits directly related to wages;

...

- 1.5 The Guild of Pacific Northwest Employees, Bellingham Local 1937 ("Guild"), is exclusive bargaining representative for certain City employees, including certain Court personnel. On Friday, April 23, 2021, the Mayor's Office met with Judge Lev and Court management staff and reported that employee complaints were brought directly to HR, and describing generally the

issues but not providing specific allegations or documents relating thereto. The executive branch had retained an outside investigator on April 13, 2021.

- 1.6 A dispute arose between the Judge and the City regarding the legality and management of an investigation by the executive branch of the Guild employee complaints.
- 1.7 On May 27, 2021, Judge Lev initiated an action in her official capacity as the Presiding Judge against the Mayor and the City seeking, in part, a declaratory judgment and injunctive relief. *LEV v. CITY OF BELLINGHAM and FLEETWOOD*, Whatcom County Cause No. 21-2-00541-37 (the "Litigation").
- 1.8 On June 2, 2021, the Guild filed seven grievances alleging multiple violations of the collective bargaining agreement, and an unfair labor practice ("ULP") complaint (Case 134233-U-21 with the Public Employment Relations Commission ("PERC")) alleging nine violations of the Public Employees' Collective Bargaining Act (Chapter 41.56 RCW). On June 29, 2021 PERC found the ULP complaint deficient.
- 1.9 On June 4, 2021, the Superior Court entered an emergency injunction in the Litigation prohibiting the Mayor and City from compelling Court staff to participate in an executive branch investigation; prohibiting the Mayor from taking disciplinary action against Court personnel; and, restoring Courthouse and computer access to Court personnel previously suspended by the Mayor.
- 1.10 The City and Guild subsequently settled the grievances and charges of unfair labor practices. The Court did not participate in that settlement that was negotiated without the Court's knowledge or consent. The Mayor, City and Judge Lev seek to resolve the Litigation without further expenditure of resources or disruption to the Court or the City through this Settlement Agreement.

2. GR 29 APPLICATION. The City recognizes the authority of the Court's Presiding Judge over hiring, supervision, discipline, termination, and other working conditions pursuant to GR 29 and RCW 3.50.080, and subject to Chapter 41.56 RCW. The Presiding Judge recognizes the authority of the legislative and executive branches concerning wages and wage-related benefits pursuant to GR 29, RCW 3.50.080, and Chapter 41.56 RCW. All Parties to the litigation agree to comply with GR 29.

3. COMMISSION ON JUDICIAL CONDUCT. Under Washington Constitution, Art. IV, Section 31, only the Supreme Court may censure, suspend, or remove a judge or justice for violating the Supreme Court's Code of Judicial Conduct ("CJC"). Pursuant to RCW 2.64.010(4), the Commission on Judicial Conduct ("Commission") has jurisdiction to investigate and act on complaints of judicial misconduct. As a result, any complaint relating to a judicial officer of the Court (including under CJC 2.12 or 2.13) shall be referred to the Commission. Complaints against other Court personnel, unless related to an allegation of a judicial officer's violation of the CJC, shall be managed in accordance with GR 29 and this Agreement.

4. LABOR RELATIONS. The Parties recognize their obligations and collective bargaining agreements with unions representing employees working in the Court. The City and Court shall work together in good faith under Chapter 41.56 RCW, and subject to GR 29 and RCW 3.50.080, on collective bargaining processes involving employees working in the Court, and in grievances from employees working in the Court arising under a collective bargaining agreement.

5. PERSONNEL MATTERS.

- 5.1 Nothing in this Settlement Agreement shall limit a City employee's right to raise employment claims, including processing of grievances and appeals to the City or with their Union. The Court and City shall work cooperatively to address such claims.
- 5.2 The City may not compel a Court employee to participate in an investigation regarding matters within the Presiding Judge's authority according to GR 29. The Court may not prevent a Court employee's voluntary cooperation with an investigation arising from a claim from a Court employee, as referenced in Sec. 6.
- 5.3 The City agrees to provide assistance, when requested in writing by the Presiding Judge, regarding all workplace concerns raised by Court employees, and lawful investigations including but not limited to, providing all data and information as authorized by law which in any way relates to such concerns.
- 5.4 Claims of employment discrimination (including hostile work environment) should be directed immediately to the Court Administrator or the Presiding Judge. If the concern is about the Judge, and the employee is not comfortable reporting the concern to the Judge, the employee may contact the Commission on Judicial Conduct; and, may use the reporting procedure under PER 11.02.01 (Providing Equal Opportunity) and PRO 01. (Complaint Report, Investigation, and Resolution), subject to GR 29 and the potential referral of claims to agencies under Agreement Section 6. In any event, the Court and City will work collaboratively to address such a claim.
- 5.5 In accordance with this Agreement, in the event of disagreement over implementation of measures or remedies, the Mayor and Presiding Judge shall meet and confer to resolve a disagreement which may include mutual agreement to engage in alternative dispute resolution processes. The final decision on personnel actions remains within the Court's authority under GR 29, subject to actions under Agreement Section 4 to the extent that Arbitration under a collective bargaining agreement is involved; and, Section 6.
- 5.6 Employees retain their rights to invoke alternative dispute resolution processes; litigation; applicable grievance processes under a collective bargaining agreement; the Public Employment Relations Commission; the Civil Service Commission; referral to the Commission on Judicial Conduct; or processing by such other agency with jurisdiction.

6. OTHER AUTHORITIES WITH JURISDICTION.

- 6.1 Nothing in this Settlement Agreement shall be read to limit the authority of other agencies, such as the Commission on Judicial Conduct, federal Equal Employment Opportunity Commission,

Washington State Human Rights Commission, and State Public Employment Relations Commission, with respect to claims from Court employees or their union(s).

- 6.2 The Court acknowledges the authority of police agencies, including City police, to investigate allegations of criminal conduct involving the Court or Court personnel.

7. RESOLUTION OF LITIGATION. This Settlement Agreement recognizes that the Parties seek to resolve differences in a forward-looking manner, without acknowledging the claims or defenses of the other party. The Parties will present a stipulated judgment dismissing the Litigation without prejudice and release a joint public statement regarding a settlement, to be approved by both Parties.

8. COOPERATION WITH COURT'S INDEPENDENT INVESTIGATION. The City agrees to cooperate with the completion of the independent investigation into the employment complaints that led to this dispute. Such cooperation shall include but not limited to providing the full investigation file held by the City's investigator (Sarah Hale) to the Court's investigator (Sarah Wixson); and the City will comply with any request for City records by Wixson that she deems necessary to the completion of her investigation. The investigator may request follow-up input in writing from interviewed employees, and their responses may be in writing; and interviews with employees not previously interviewed. The Mayor will use reasonable best efforts to encourage employee response to the investigator's inquiries. The City will pay all reasonable costs and fees of the independent investigator.

9. HIRING OF COURT PERSONNEL IN COMPLIANCE WITH GR 29. The filling of Court vacancies will be expedited and prioritized to the extent practicable until all Court vacancies are filled. The Parties, or their designees, will meet to resolve outstanding hiring process and procedure issues and if such issues are not resolved within a reasonable period, the Judge and Mayor will meet. If such issues are not resolved, the parties agree to further mediation with Judge Hilyer to assist the Parties in the resolution of these issues.

10. ATTORNEY FEES. The City will pay all reasonable attorney fees to the Talmadge Fitzpatrick firm for its representation of Judge Lev in the litigation. The City will also pay all reasonable attorney fees to the Barron Smith Daugert firm for its representation of the Court in the labor relations matters relating to the litigation and, including fees for ongoing and subsequent work under this Agreement, including under Section 9, not to exceed eight (8) hours unless otherwise approved by the City.

11. AGREEMENT IMPLEMENTATION.

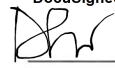
11.1 This Agreement is pursuant and subject to CR 2A.

- 11.2 This Agreement is subject to the approval by the City Council. Following City Council approval, the Parties agree to execute all documents necessary to effectuate this Agreement and conclude the pending Litigation.
- 11.3. The Parties agree that in the event of any disputes regarding this Agreement, the Parties agree to consider further mediation before Judge Hilyer.

Dated this 24<sup>th</sup> day of September 2021

Hon. Debra Lev

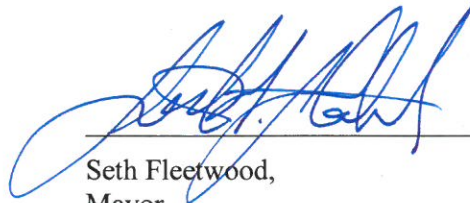
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Debra Lev, Presiding Judge  
Municipal Court  
City of Bellingham

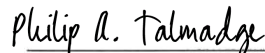
Hon. Seth Fleetwood



Seth Fleetwood,  
Mayor  
City of Bellingham

Talmadge/Fitzpatrick

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Confirmed:

Hilyer Dispute Resolution

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Bruce W. Hilyer, Judge (ret.)