

**FILED**

Feb 7, 2022

Disciplinary  
Board

Docket # 003

DISCIPLINARY BOARD  
WASHINGTON STATE BAR ASSOCIATION

In re

**FLOYD EDWIN IVEY,**  
Lawyer (Bar No. 6888).

Proceeding No. 21#00023

ODC File No. 20-00654

Resignation Form of Floyd Edwin Ivey (ELC  
9.3(b))

I, Floyd Edwin Ivey, declare as follows:

1. I am over the age of eighteen years and am competent. I make the statements in this declaration from personal knowledge.

2. I was admitted to practice law in the State of Washington on October 27, 1976.

3. I have voluntarily decided to resign from the Washington State Bar Association (the Association) in Lieu of Discipline under Rule 9.3 of the Washington Supreme Court's Rules for Enforcement of Lawyer Conduct (ELC).

4. Attached hereto as Exhibit A is Disciplinary Counsel's statement of alleged misconduct for purposes of ELC 9.3(b). I am aware of the alleged misconduct stated in Disciplinary Counsel's statement, but rather than defend against the allegations, I wish to permanently resign from membership in the Association. Attached hereto as Exhibit B is Respondent's statement regarding the alleged misconduct.

1           5. I consent to entry of an order under ELC 13.9(e) assessing expenses of \$1,500 in  
2 this matter.

3           6. I agree to pay any additional costs or restitution that may be ordered by a Review  
4 Committee under ELC 9.3(g).

5           7. I understand that my resignation is permanent and that any future application by me  
6 for reinstatement as a member of the Association is currently barred. If the Washington Supreme  
7 Court changes this rule or an application is otherwise permitted in the future, it will be treated as  
8 an application by one who has been disbarred for ethical misconduct. If I file an application, I  
9 will not be entitled to a reconsideration or reexamination of the facts, complaints, allegations, or  
10 instances of alleged misconduct on which this resignation was based.

11           8. I agree to (a) notify all other states and jurisdictions in which I am admitted,  
12 including the United States Patent and Trademark Office, of this resignation in lieu of discipline;  
13 (b) seek to resign permanently from the practice of law as a registered patent practitioner with the  
14 United States Patent and Trademark Office and any other jurisdictions in which I am admitted;  
15 and (c) provide Disciplinary Counsel with copies of this notification and any response(s). I  
16 acknowledge that this resignation could be treated as a disbarment by all other jurisdictions.

17           9. I agree to (a) notify all other professional licensing agencies in any jurisdiction from  
18 which I have a professional license that is predicated on my admission to practice law of this  
19 resignation in lieu of discipline; (b) seek to resign permanently from any such license; and (c)  
20 provide disciplinary counsel with copies of any of these notifications and any responses.

21           10. I agree that when applying for any employment, I will disclose the resignation in  
22 lieu of discipline in response to any question regarding disciplinary action or the status of my  
23 license to practice law.

1 11. I understand that my resignation becomes effective on Disciplinary Counsel's  
2 endorsement and filing of this document with the Clerk, and that under ELC 9.3(c) Disciplinary  
3 Counsel must do so promptly following receipt of this document.

4 12. When my resignation becomes effective, I agree to be subject to all restrictions that  
5 apply to a disbarred lawyer.

6 13. Upon filing of my resignation, I agree to comply with the same duties as a disbarred  
7 lawyer under ELC 14.1 through ELC 14.4.

8 14. I understand that, after my resignation becomes effective, it is permanent. I will  
9 never be eligible to apply and will not be considered for admission or reinstatement to the practice  
10 of law nor will I be eligible for admission for any limited practice of law.

11 15. I certify under penalty of perjury under the laws of the State of Washington that the  
12 foregoing is true and correct.

13  
14 2/4/22 Kameauk  
15 Date and Place WA

Floyd Edwin Ivey  
Floyd Edwin Ivey, Bar No. 6888

16 ENDORSED BY:

17  
18 F. Rodriguez  
19 Francisco Rodriguez  
20 Disciplinary Counsel  
21 Bar No. 22881  
22  
23

**EXHIBIT  
A**

**DISCIPLINARY BOARD  
WASHINGTON STATE BAR ASSOCIATION**

In re

**FLOYD EDWIN IVEY,**  
Lawyer (Bar No. 6888).

Proceeding No. 21#00023

ODC File No. 20-00654

**STATEMENT OF ALLEGED  
MISCONDUCT UNDER ELC 9.3(b)(1)**

The following constitutes a Statement of Alleged Misconduct under Rule 9.3(b)(1) of the Washington Supreme Court's Rules for Enforcement of Lawyer Conduct (ELC).

**I. ADMISSION TO PRACTICE**

1. Respondent Floyd Edwin Ivey was admitted to the practice of law in the State of Washington on October 27, 1976.

**II. ALLEGED FACTS**

2. Allen and Dorothy Osborn invented and patented a fishing device which they licensed through their company Rebel Creek Tackle, Inc. (RCT).

3. In 2010, RCT licensed Seth Burrill Productions, Inc. (SBP) to be the exclusive producer and distributor of the devices.

1           4.       Respondent represented RCT in all the arbitrations, trial court proceedings, and  
2 appellate court proceedings referenced below.

3           5.       In 2012, RCT unilaterally terminated its licensing agreement with SBP. In  
4 response, SBP filed for arbitration against RCT (Arbitration #1) for breach of contract.

5           6.       In May 2013, an arbitrator entered an award in favor of SBP, finding that RCT had  
6 breached the licensing agreement.

7 **CONTEMPT FINDING**

8           7.       The arbitration award was confirmed in a court order filed June 7, 2013, in *Seth*  
9 *Burrill Productions, Inc. v. Rebel Creek Tackle, Inc.*, Spokane County Superior Court No. 13-2-  
10 01982-0.

11          8.       The court's order required, among other things, that RCT "cooperate in the transfer  
12 and/or delivery of said molds as requested" by SBP.

13          9.       In August 2013, attorneys for SBP contacted Respondent seeking RCT's approval  
14 to transfer the molds.

15          10.       Respondent initially failed to respond to SBP's requests.

16          11.       On August 29, 2013, Respondent advised counsel for SBP that Respondent had  
17 "directed that the molds not be released" to SBP.

18          12.       Respondent knew that the court's order required that RCT "cooperate in the  
19 transfer and/or delivery of said molds as requested" by SBP.

20          13.       Respondent's intention in directing that the molds not be released to SBP was to  
21 benefit RCT and the Osborns by ensuring they would continue to have access to production data  
22 from the current manufacturer as a safeguard against SBP underreporting sales.

23          14.       Based on Respondent's instructions, the manufacturer that possessed the molds



1 refused to release them to SBP.

2 15. On October 15, 2013, SBP brought an action for contempt against RCT for its  
3 failure to comply with the June 7, 2013 order.

4 16. On November 18, 2013, the trial court found RCT in contempt for intentionally  
5 violating the June 7, 2013 order. The court imposed remedial sanctions, including transfer of the  
6 molds, and assessed costs and attorney fees in the amount of \$4,251.00.

7 **APPEAL OF THE CONTEMPT ORDER (APPEAL #1)**

8 17. On December 12, 2013, Respondent filed a notice of appeal of the contempt order  
9 The appeal (Appeal #1) was assigned Court of Appeals No. 32119-3-III.

10 18. The appeal was frivolous and had no substantial purpose other than to embarrass,  
11 delay, or burden a third person.

12 19. On July 7, 2015, the Court of Appeals issued a decision in Appeal #1 affirming  
13 the trial court. The Court of Appeals determined that Respondent had “not presented any  
14 debatable issue” and that Respondent’s appeal was “completely without merit.”

15 20. The Court of Appeals awarded SBP costs and attorney fees in the amount of  
16 \$5,738.39 as sanctions against RCT under RAP 18.9(a) for bringing a frivolous appeal.

17 21. Respondent filed a petition for review, which was denied.

18 **BUSINESS TRANSACTION WITH CLIENT**

19 22. As of April 2016, the amount due on the judgment against RCT was approximately  
20 \$100,000.00.

21 23. On April 15, 2016, after nearly three years of unsuccessful efforts to negotiate a  
22 satisfaction of its judgment, SBP moved the trial court to appoint a general receiver for RCT. The  
23 motion was set for hearing on April 29, 2016.

1           24.     Respondent and the Osborns feared that if a receiver were appointed, RCT's  
2 intellectual property and other assets would be auctioned off to satisfy SBP's judgment against  
3 RCT.

4           25.     On April 27, 2016, two days before the hearing on SBP's motion to appoint a  
5 receiver, Respondent met with Allen Osborn and agreed to provide RCT with sufficient funds to  
6 satisfy SBP's judgment against RCT and to cover any "sums which may be imposed in the  
7 execution of" the judgment.

8           26.     In exchange for this financial assistance, Respondent received a 50% non-voting  
9 ownership interest in RCT.

10          27.     Respondent and Allen Osborn signed a written agreement dated April 27, 2016  
11 memorializing this transaction, and Allen Osborn signed a stock certificate giving Respondent  
12 one half of the stock of RCT.

13          28.     Dorothy Osborn was not present for the meeting and did not sign the agreement.

14          29.     Respondent did not obtain informed consent, in a writing signed by either Allen  
15 or Dorothy Osborn, before entering into the agreement in which Respondent received a 50%  
16 interest in RCT.

17          30.     Several months before entering into the agreement to obtain a 50% interest in RCT,  
18 Respondent had received a formal appraisal of the value of RCT's fishing device projecting sales  
19 of more than \$42 million over the next 15 years in the U.S. alone.

20          31.     On April 28, 2016, the day before the hearing on SBP's motion to appoint a  
21 receiver, Respondent deposited personal funds in the amount of \$110,000.00 into Respondent's  
22 client trust account for the purpose of satisfying SBP's judgment against RCT as required by the  
23 stock purchase agreement with the Osborns.

1           32.     On May 20, 2016, more than three weeks after the written agreement was signed,  
2 Respondent presented the Osborns with a letter addressing potential conflicts of interest relating  
3 to the transaction granting Respondent a 50% interest in RCT and noting the potential for a  
4 “significant result if the product was properly marketed.”

5           33.     The letter did not indicate whether Respondent was representing the Osborns in  
6 the transaction.

7           34.     The letter did not explain the desirability of seeking independent legal advice.

8           35.     The timing of the letter did not afford the Osborns with a reasonable opportunity  
9 to seek independent legal advice before entering into the agreement.

10          36.     Once Respondent obtained an ownership interest in RCT, there was a substantial  
11 risk that Respondent’s representation of RCT and the Osborns would be materially limited by  
12 Respondent’s own financial interests.

13 **APPEAL OF THE RECEIVERSHIP ORDER (APPEAL #2)**

14          37.     On April 29, 2016, the trial court granted SBP’s motion for a receivership.

15          38.     On May 2, 2016, Respondent filed a notice of appeal of the order appointing a  
16 receiver. The appeal (Appeal #2) was assigned Court of Appeals No. 34401–1–III.

17          39.     The appeal was frivolous and had no substantial purpose other than to embarrass,  
18 delay, or burden a third person.

19          40.     On April 11, 2017, the Court of Appeals issued a decision in Appeal #2 affirming  
20 the trial court. The Court of Appeals determined that Respondent had failed to address any  
21 provision of the applicable receivership statute, had not attempted to identify any abuse of  
22 discretion by the trial court, and had made arguments unsupported by law.

23          41.     The Court of Appeals awarded SBP costs and attorney fees in the amount of



1 \$7,835.79 as sanctions against RCT under RAP 18.9(a) for bringing a frivolous appeal.

2 **MOTION FOR SUMMARY JUDGMENT AND CR 11 SANCTIONS**

3 42. In June 2016, while Appeal #2 was pending, Respondent prepared a motion for  
4 declaratory judgment of termination of the 2010 license agreement.

5 43. Respondent's motion bears no case number and was captioned as a pleading for  
6 the Court of Appeals.

7 44. Respondent's motion stated that it was "filed in both the Court of Appeals and in  
8 the Spokane County Superior Court," but in fact it was not directly filed in the Superior Court. A  
9 copy of the motion only made its way into the Superior Court file as part of the appellate record  
10 from Appeal #2.

11 45. In May 2017, shortly after issuance of the mandate in Appeal #2, the trial court  
12 entered orders terminating the receivership and disbursing funds held in the court's registry. These  
13 orders resolved the parties' dispute regarding the first arbitration award and the contempt  
14 sanction.

15 46. On July 6, 2017, Respondent filed a motion for summary judgment purporting to  
16 relate to the motion for declaratory judgment filed in the Court of Appeals in June 2016.  
17 Respondent's motion requested a declaration that the 2010 license agreement was terminated.

18 47. Respondent's motion was not supported by any authenticated documents. Instead,  
19 Respondent appended a series of unsworn exhibits to Respondent's memorandum of authorities  
20 in support of summary judgment.

21 48. Shortly after Respondent filed the motion for summary judgment, SBP's counsel  
22 asked Respondent to withdraw the motion because it was not grounded in fact or law. Counsel  
23 further notified Respondent that if Respondent did not withdraw the motion for summary

1 judgment, SBP would seek CR 11 sanctions against Respondent.

2 49. Respondent refused to withdraw the motion.

3 50. SBP filed an opposition to Respondent's motion for summary judgment and a  
4 separate motion for CR 11 sanctions against Respondent.

5 51. In reply, Respondent requested CR 11 sanctions against SBP.

6 52. Respondent's motion for summary judgment and Respondent's request for CR 11  
7 sanctions against SBP were frivolous and had no substantial purpose other than to embarrass,  
8 delay, or burden a third person.

9 53. On August 18, 2017, the trial court denied Respondent's motion for summary  
10 judgment and Respondent's request for CR 11 sanctions, which the court determined were  
11 frivolous.

12 54. The court granted SBP's motion for CR 11 sanctions against Respondent and  
13 ordered Respondent to pay \$4,500 to SBP for having to defend the summary judgment motion.

14 **APPEAL OF ORDERS DENYING SUMMARY JUDGMENT AND IMPOSING CR 11**  
15 **SANCTIONS (APPEAL #3)**

16 55. On September 5, 2017, Respondent filed a notice of appeal from the orders  
17 denying summary judgment and imposing CR 11 sanctions. The appeal (Appeal #3) was assigned  
18 Court of Appeals No. 35572-1-III.

19 56. The appeal was frivolous and had no substantial purpose other than to embarrass,  
20 delay, or burden a third person.

21 57. On July 11, 2019, the Court of Appeals issued a decision in Appeal #3 affirming  
22 the orders on review. The Court of Appeals held that the CR 11 sanctions imposed against  
23 Respondent below were justified for multiple reasons, including: (1) Respondent's summary  
24 judgment motion was factually and legally unrelated to any existing legal claims or issues in the

1 case, (2) Respondent's motion was not supported by properly authenticated exhibits, and (3)  
2 Respondent had no basis for requesting CR 11 sanctions against SBP's counsel.

3 58. The Court of Appeals also held that Respondent's appeal was frivolous for  
4 multiple reasons, including: (1) Respondent had inaccurately represented the manner in which  
5 Respondent filed the motion for declaratory judgment, (2) the motions for declaratory judgment  
6 and summary judgment were unrelated to any pending claims for relief in the case, (3) Respondent  
7 received fair warning of these deficiencies from both SBP and the trial court, and (4)  
8 Respondent's briefing was devoted to issues that were moot.

9 59. The Court of Appeals awarded SBP costs and attorney fees in the amount of  
10 \$38,985.79 as sanctions against RCT under RAP 18.9(a) for bringing a frivolous appeal.  
11 Respondent filed a motion to modify, which was denied.

12 60. On August 14, 2019, Respondent filed an untimely petition for review, which was  
13 assigned Supreme Court No. 97539-6.

14 61. Respondent then filed a procedurally improper motion to consolidate  
15 Respondent's untimely petition for review with a new appeal (Appeal #4 below) that Respondent  
16 had filed in the Court of Appeals on June 17, 2019.

17 62. The Supreme Court took no action on Respondent's motion to consolidate  
18 because, as the Court said, "[t]he Court cannot consolidate a Supreme Court case with a Court of  
19 Appeals case."

20 63. On December 4, 2019, the Supreme Court granted Respondent's motion for  
21 extension of time to file Respondent's untimely petition for review and denied the petition for  
22 review.

23 64. The Supreme Court awarded SBP costs and attorney fees in the amount of

1 \$14,525.00 under RAP 18.1(j) to be paid by RCT.

2 65. Respondent filed a motion to modify, which was denied.

3 66. After the mandate issued on September 3, 2020, Respondent continued to file  
4 additional papers and pleadings in Appeal #3, including: a motion to recall the mandate, a motion  
5 for stay, a petition for review, another motion for stay, and a motion for discretionary review.

6 67. These additional papers and pleadings were frivolous and had no substantial  
7 purpose other than to embarrass, delay, or burden a third person.

8 **APPEAL OF ORDER REQUIRING THAT RCT'S MOTION TO CONFIRM SECOND**  
9 **ARBITRATION AWARD BE FILED UNDER A NEW CAUSE NUMBER (APPEAL #4)**

10 68. In 2017, RCT filed for arbitration against SBP (the second arbitration) for failure  
11 to meet the minimum sales requirement in the 2010 license agreement.

12 69. The decision in the second arbitration was entered January 22, 2018.

13 70. On April 11, 2019, Respondent sought to confirm the second arbitration award in  
14 the original 2013 Superior Court case, *Seth Burrill Productions, Inc. v. Rebel Creek Tackle, Inc.*,  
15 Spokane County Superior Court No. 13-2-01982-0.

16 71. The trial court explained to Respondent that the second arbitration award should  
17 be filed under a new case number "because it's an entirely new issue and there's nothing in the  
18 record that has extended the scope of the first arbitration to this second arbitration."

19 72. Instead of simply filing the motion to confirm the arbitration award under a new  
20 case number, Respondent filed a notice of appeal from the trial court's order on June 17, 2019.  
21 The appeal (Appeal #4) was assigned Court of Appeals No. 36899-8-III.

22 73. The appeal was frivolous and had no substantial purpose other than to embarrass,  
23 delay, or burden a third person.

24 74. On December 10, 2020, the Court of Appeals issued a decision in Appeal #4



1 affirming the trial court's order. The Court of Appeals determined that Respondent had provided  
2 "no authority or coherent argument explaining how the trial court abused its discretion," and that  
3 Respondent's appeal "presents no debatable issues and is so devoid of merit there is no possibility  
4 of reversal."

5 75. The Court of Appeals awarded SBP costs and attorney fees in an amount to be  
6 determined as sanctions against Respondent and RCT under RAP 18.9(a) for bringing a frivolous  
7 appeal.

8 **APPEAL OF ORDER DENYING RCT'S MOTION TO QUASH PLAINTIFF'S**  
9 **DISCOVERY OF INTERROGATORIES AND DEPOSITION (APPEAL #5) & APPEAL**  
10 **OF ORDER DENYING RCT'S MOTION TO STAY EXECUTION (APPEAL #6)**

11 76. SBP began supplemental proceedings in the trial court to satisfy the judgments in  
12 its favor.

13 77. SBP sought discovery, including the identity of the investors of RCT and the  
14 deposition of Respondent.

15 78. Respondent had not previously disclosed Respondent's financial interest in RCT.

16 79. On November 23, 2020, the trial court entered two orders: (1) an order denying  
17 RCT's motion to stay execution of the judgments, and (2) an order denying RCT's motion to  
18 quash discovery.

19 80. The next day, Respondent filed two more notices of appeal. The appeals were  
20 assigned Court of Appeals No. 37857-8-III (Appeal #5) and Court of Appeals No. 37858-6-III  
21 (Appeal #6).

22 81. Respondent also filed an "emergency" motion for stay, which was denied.

23 82. The appeals and the "emergency" motion for stay were frivolous and had no  
24 substantial purpose other than to embarrass, delay, or burden a third person.

1 83. In December 2020, following a settlement with SBP, Respondent moved to  
2 dismiss all pending appeals. The appeals were dismissed.

3 **COMMINGLING PERSONAL FUNDS IN CLIENT TRUST ACCOUNT**

4 84. From 2016 through 2020, Respondent deposited Respondent's own funds into the  
5 client trust account on multiple occasions and then used those funds for the benefit of RCT.

6 85. On April 28, 2016, Respondent transferred personal funds in the amount of  
7 \$110,000.00 into Respondent's client trust account. As described in ¶ 31, this transfer was  
8 connected to Respondent's business transaction with Allen Osborn.

9 86. On May 24, 2016, Respondent wrote a check for \$103,000.00 on Respondent's  
10 client trust account payable to the Spokane County Clerk to cover amounts owing on SBP's  
11 judgment against RCT.

12 87. On May 3, 2017, Respondent transferred \$30,000.00.00 in personal funds into  
13 Respondent's client trust account.

14 88. On May 3, 2017, Respondent wrote a check for \$26,251.89 on Respondent's trust  
15 account payable to the Spokane County Superior Court Clerk to cover RCT's supersedeas bond.

16 89. On September 11, 2020, Respondent transferred \$55,778.75 in personal funds into  
17 Respondent's client trust account.

18 90. On November 2, 2020, Respondent wrote a check for \$57,478.75 on Respondent's  
19 trust account payable to the Spokane County Superior Court Clerk to cover RCT's supersedeas  
20 bond.

21 91. On November 30, 2020, Respondent wrote a check for \$1,760.00 on Respondent's  
22 trust account payable to the Spokane County Superior Court Clerk as an additional payment  
23 toward RCT's supersedeas bond.

1 92. On December 18, 2020, Respondent transferred \$53,000.00 in personal funds into  
2 Respondent's client trust account.

3 93. On December 18, 2020, Respondent wired \$53,000.00 from Respondent's trust  
4 account to Lee & Hayes, the law firm representing SBP, as payment on behalf of RCT to settle  
5 the litigation between RCT and SBP.

6 **USING TRUST ACCOUNT AS RCT BUSINESS ACCOUNT**

7 94. Between April 2018 and February 2021, Respondent used Respondent's client  
8 trust account as RCT's business operating account, paying business expenses from trust that were  
9 unrelated to Respondent's representation of RCT and the Osborns.

10 95. In February 2018, Respondent received a check from counsel for SBP in the  
11 amount of \$19,280.92 as payment for outstanding royalties owed to RCT.

12 96. On February 23, 2018, Respondent deposited SBP's royalty payment into  
13 Respondent's client trust account.

14 97. On March 8, 2018, Respondent wrote a check to Allen Osborn in the amount of  
15 \$5,000, as a partial disbursement of the royalty payment.

16 98. In April and May 2018, Respondent used \$3,000 of the funds from the royalty  
17 payment to cover outstanding credit card debt owed by Allen Osborn.

18 99. Respondent retained the approximately \$10,000 remaining from SBP's royalty  
19 payment in Respondent's client trust account and used these funds to pay RCT's business  
20 expenses over the next several years.

21 100. On April 20, 2018, Respondent issued a check on Respondent's client trust account  
22 in the amount of \$1,039.80 payable to Plastic Injection Molding, Inc. (PIM), manufacturer of  
23 RCT's fishing device. The check was payment for the retrieval of the plastic molds used to

1 produce the device.

2 101. On December 13, 2019, Respondent issued a check on Respondent's client trust  
3 account in the amount of \$1,050.94 payable to Artmil. The check was payment for packaging for  
4 RCT's fishing device.

5 102. On February 4, 2021, Respondent wrote a check on Respondent's client trust  
6 account in the amount of \$5,907.00 payable to PIM. This check was payment for revisions to the  
7 plastic molds used to produce RCT's fishing device and for 1,000 units of the product.

### 8 III. ALLEGED MISCONDUCT.

9 103. By bringing proceedings and/or asserting or controverting issues without a basis  
10 in law and fact for doing so that was not frivolous, Respondent violated RPC 3.1 and RPC 8.4(d).

11 104. By filing appeals and motions that had no substantial purpose other than to  
12 embarrass, delay, or burden a third person, Respondent violated RPC 4.4(a) and RPC 8.4(d).

13 105. By directing the manufacturer to refuse to transfer the molds to SBP in violation  
14 of a court order, Respondent violated RPC 8.4(a)/RPC 8.4(j) and RPC 8.4(d).

15 106. By entering into a business transaction with clients without obtaining informed  
16 consent, without advising the clients of the desirability of seeking independent legal advice, and  
17 without giving the clients a reasonable opportunity to obtain such advice, Respondent violated  
18 RPC 1.8(a).

19 107. By commingling personal funds with client funds in a client trust account,  
20 Respondent violated RPC 1.15A(c) and RPC 1.15A(h)(1).

21 108. By using funds in a client trust account to pay expenses unrelated to the  
22 representation, Respondent violated RPC 1.15A(a).





## EXHIBIT B

### Respondent's Statement Regarding Alleged Misconduct

With respect to ¶ 19: Respondent knows that the Osborn did not personally hold contempt of the court in resisting the order to turn molds over to SBP but that rather Osborn only wanted to know where the molds were to be located and to have awareness of the number of devices produced in order to calculate the percentage of sales to be paid to Osborn.

With respect to ¶ 24 through 30: Mr. Osborn sought financing in 2015 and 2016 sufficient to satisfy the judgment but was unable to obtain financing. On April 27, 2016 Mr. Osborn advised Respondent of the inability to obtain financing and offered Respondent a 50% interest in RCT if Respondent would satisfy the judgment. Respondent advised the Osborn's of the hazards of an attorney entering into business with a client, advised the Osborns that additional terms must be considered and Respondent and the Osborns signed an agreement regarding the transaction. On May 22, 2016 Respondent provided the Osborns with a copy of the pertinent rule including the statement that neither Respondent nor the Osborns had a reasonable expectation that the fishing product would produce income and the Osborns, on May 22, 2016, signed the disclosure including the pertinent rule stating that independent counsel advice was advised and that the Osborns would have to state that they had made an informed consent for Respondent to extend funds sufficient to satisfy the judgment. The agreement was executed by the Osborns stating that they executed and had made an informed consent and the Respondent accepted and would provide funds sufficient to satisfy the judgment.

With respect to ¶ 31 through 35: The matter of conflict of interest and awareness that independent counsel and informed consent were required for a transaction between attorney and client were known to the Osborns prior to Respondent making funds available to satisfy the Judgment. The Osborns inability to obtain funding was known to the parties prior to April 27, 2016 and the offer made to Respondent was made knowing that the appointment of a Receiver would allow sale of all assets of Osborn's corporation Rebel Creek Tackle Inc., and the Osborns knew their attempt to obtain financing had failed and that Respondent's assistance was the last possible step available to successfully retain an ownership interest in RCT.

With respect to ¶ 47: By June 2016 SBP had failed to meet the sales required by the Licensing Agreement where the Agreement provided for RCT to have the right to terminate the agreement if require sales were not made. That Sales Required were not made was admitted by SBP attorney in correspondence and email with these admissions relied on by Respondent in bringing the motion.

With respect to ¶ 54: Respondent immediately filed an Arbitration with the Decision in January 2018 holding that the License Agreement was terminated by reason of SBP's not having made required sales.

With respect to ¶ 55: The trial court had been persuaded by SBP Counsel that “pleadings were required” denied the MSJ. On Appeal Judge Siddoway continued with the contention that “pleadings were required” with this additionally supported by SBP Counsel; thereafter senior SBP Counsel, supervising other SBP counsel so arguing, admitted that pleadings would never have been in the matter since the case had been opened by Motion as is required by Statute.

With respect to ¶ 56: The COA III Justice, without notice by SBP Senior Counsel that there would never be pleadings, recited the same “pleadings required” mistake holding as follows...”

With respect to ¶ 57: SBP Counsel’s misrepresentations: (1) there would never be pleadings as admitted later by Senior SBP counsel; (2) The MSJ was supported by admissions of SBP Counsel; and (3) the SBP counsel’s misrepresentations supported RCT’s Motion for CR11 sanctions.

With respect to ¶ 58 to 67: The issues addressed in ¶ 57 equally apply. The award of sanctions was improper.

With respect to ¶ 68 to 75: Following an Arbitration a Superior Court case is opened by Motion per statute. The case existing following the first Arbitration continued in the Spokane County Superior Court. All parties remained the same, the same License Agreement and court order pertaining to Contempt existed modifying the License Agreement. By the Washington State Constitution the case retained its authority following all activity from the initial Motion and into 2017. The Arbitration Motion statute gave no basis for closing a superior court following the Arbitration award. Opening a new case would have required the filing the contents of the existing case in addition to the later Arbitration Award. The trial court, in dismissing the MSJ did not give a basis showing that his decision was not an abuse of discretion.

With respect to ¶ 84 to 108: With advice that independent counsel could be contacted, in failing for two years to gain funding to pay judgments held by SBP, and in knowing that there were no other funding available, RCT and the Osborns acknowledged that they agreed to the business arrangement proposed by the Osborns to Ivey and so stated that they had an informed consent to enter into the proposed business arrangement. Ivey deposited funds and funds from sales by SBP into the RCT Trust account. Ivey disbursed sums pertaining to sanctions and additionally disbursed funds pertaining to a separate claim against the Osborns and for charges required for continuation of the several patents held by the Osborns and RCT. The Osborns and RCT were never harmed by the funds disbursed from the Trust Account and ODC has not indicated that any untoward act regarding Trust Funds ever occurred.

Floyd E. Ivey, wsba 6888. January 26, 2022.