

Moreover, it capitalized on Mr. Eyman's inability to purge himself of contempt without finding the present ability to comply with the original discovery order to justify contempt in the first place.

Importantly the court may have overlooked Mr. Eyman cured the essential basis of that CR 37 motion by granting the State access to all his bank accounts in his motion for reconsideration, which the court summarily denied without oral argument after it was filed on September 23.

Now the State again misleads the court attempting to claim Mr. Eyman is "still" withholding information about his donors—which is patently and absolutely false. See Sanders Reply Declaration.

H. ARGUMENT

A. Basis of Motions

The State claims the only possible basis for the motions is CR 59 to reconsider and CR 60 to vacate. That is incorrect, these rules pertain to final judgments, not interlocutory orders which may be revised at any time. CR 54(b), *Zimny v. Lovric*, 59 Wn.App. 737, 739-740, 801 P.2d 259 (1990)

B. State has full discovery on CR 37 donor information

As set forth in the Sanders Reply Declaration, the State has had full unobstructed access to all Eyman bank accounts since his Motion to Reconsider Non-Monetary Sanction was filed on September 23, 2019. The State may not be able to access those accounts through the bankruptcy, but it has absolute ability to do so through these authorizations. The Trustee agreed not to release these checks to the public to protect the privacy of the donors, but the State has separate access to the same thing. The whole reason the motion for non-monetary sanctions was brought was to punish Eyman for not providing full donor information. As of September 23, the State had everything. And Perkins acknowledged that in his January 8 deposition.

1 **C. Eyman didn't willfully disobey a court order with ability to comply**

2 The Goodstein declaration demonstrates Mr. Eyman was simply incapable to purge his
3 contempt as a lay person. He is incapable of doing what it took his lawyer over 220 hours to do with
4 a commercial grade computer. This means he never should have been held in contempt in the first
5 place, nor was the CR 37 sanction properly imposed for willfully disobeying a court order.

6 One can only be held (or continue to be held) in contempt for "intentionally" doing
7 something he is capable of doing, RCW 7.21.010, and refusing to do "an act which is yet within the
8 person's power to perform." RCW 7.21.030(2) This is a strict requirement of the contempt statute.
9 Since the statute is civil and coercive "the contemnor must hold the keys to his release" and the court
10 must affirmatively find the ability to comply for the order to be valid. *Britannia Holdings Ltd. v.*
11 *Greer*, 127 Wn.App. 926, 928, 113 P.2d 1041 (2005) The court must *find a present ability* to comply
12 even if there is evidence the contemnor is contumacious. *Id.* At 934

13 This Court however made no such finding—and couldn't under these facts. The Goodstein
14 declaration recounts the events surrounding Mr. Eyman's bankruptcy and the forced withdrawal of
15 his lawyer, Mr. Joel Ard under pressure from the State. It also documents the State's claim that Mr.
16 Ard was not competent to represent Mr. Eyman in discovery because he was *only* a sole practitioner.
17 But if a licensed lawyer couldn't keep up with discovery, how could a layman?

18 Your undersigned sees nothing in the record the court even considered Mr. Eyman's present
19 ability to satisfy discovery requests—much less actually *find* he could. Contrary to *Britannia*, there
20 was no required affirmative finding Eyman had the capacity to comply with prior discovery orders.
21 *Pro se* Eyman couldn't defend himself.

22 To dispel any doubt *pro se* Eyman could comply with discovery orders without the aid of a
23 lawyer, he moved to find *himself* in default in late January 2019 and to simply confess judgment
24
25

1 *because he was incapable of defending himself.* The State objected, claiming cases should be
2 resolved on their merits. We agree with the State!

3 CR 37 requires a showing of willfulness and bad faith to justify an order. There wasn't any.

4 **D. Since Lawyer's Appointment Discovery almost Complete**

5 As reflected in your undersigned' letter to Mr. Eyman attached to his motion to Reconsider
6 Non-monetary Sanctions, compliance with court orders must be the priority. And it *was* given
7 priority. An inordinate amount of time has been invested in supplementing interrogatory answers by
8 Mr. Goodstein. The State brushes this off ("Regardless of his lawyer's current efforts..." Response
9 p. 7) Mr. Eyman always cooperated fully with his lawyers and is entitled to have his case heard on
10 the merits. He has expended over \$60,000 on these unreasonable discovery demands and has been
11 fined hundreds of thousands of dollars for not doing what he was incapable of doing. The State has
12 everything it needs. If it wants more time, give it more time. It has everything there is on Mr.
13 Eyman's donors.
14

15 **III. CONCLUSION**

16 The merits of this case *is* what justice is all about. Mr. Eyman must be heard on the merits.
17 If the court really believes *on the merits* the partial summary judgment should stand, deny the
18 motion to reconsider; however grant Mr. Eyman the same right as anyone who comes before the
19 court to have his case judged on its merits by an impartial judge. At the least vacate the CR 37
20 sanction order. DATED this 11th day of March 2020 in Tacoma, Washington.

21 GOODSTEIN LAW GROUP PLLC

22 By: s/ Richard Sanders

23 Richard B. Sanders, WSBA # 2813

24 Seth S. Goodstein, WSBA # 45091

25 Carolyn A. Lake, WSBA # 13980

Attorneys for Defendants Tim Eyman and Tim Eyman
Watchdog for Taxpayers, LLC

DEFENDANT EYMAN'S REPLY ON MOTION TO
RECONSIDER AND REVISE-4

Hearing Date: Friday, March 13, 2020
Hearing Time: 9:00 a.m.
Judge: Hon. James Dixon

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THURSTON COUNTY

STATE OF WASHINGTON,

Plaintiff,

v.

TIM EYMAN et al.,

Defendants.

NO. 17-2-01546-34

DEFENDANT EYMAN'S REPLY ON
MOTION TO RECONSIDER AND REVISE

Comes now Tim Eyman and for his reply to the State's Response on his motions to reconsider and revise provides the following to this Court.

I. INTRODUCTION

The objective of these two motions is modest: decide Mr. Eyman's case on the merits. This was not done when the Court granted the State's motion for Partial Summary Judgment and denied Mr. Eyman's cross motion based on its CR 37 order of September 13, 2019. That order should be revised or set aside for reasons outlined in Eyman's cross motion and supplemented by the pending motion materials.

As outlined, the order for CR 37 sanctions didn't comply with CR 37 because it was unjust, didn't purport to establish facts but legal conclusions, and the remedy didn't match the wrong.

DEFENDANT EYMAN'S REPLY ON MOTION TO
RECONSIDER AND REVISE-1

200311.pld.Eyman Reply to Recon Revision (002)

**GOODSTEIN
LAW GROUP** PLLC
501 South G Street
Tacoma, WA 98405
Fax: (253) 779-4411
Tel: (253) 779-4000