

PR  
AR

FILED  
IN SUPERIOR COURT STEVENS COUNTY  
MAY 18 2010  
PATRICIA A. CHESTER  
COUNTY CLERK

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32

SUPERIOR COURT, STATE OF WASHINGTON, COUNTY OF STEVENS

STATE OF WASHINGTON, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
TODD MICHAEL CHISM, )  
DOB: 7/29/1966 )  
 )  
Defendant. )

No. 10-1-00091-1

AFFIDAVIT OF CARL J. ORESKOVICH  
SUPPORTING DISQUALIFICATION  
OF ATTORNEY RASMUSSEN

STATE OF WASHINGTON )  
 ) ss.  
County of Spokane )

CARL J. ORESKOVICH, being first duly sworn on oath, deposes and says:

1. I have personal knowledge as to the facts contained in this Affidavit and am counsel for the defendant in the above-captioned matter.

2. On or about April 22, 2010, I spoke with Stevens County Prosecuting Attorney, Timothy D. Rasmussen, about one of the States' likely trial witnesses in this case and the subject of a prior investigation conducted by Mr. Rasmussen which led him to question the credibility of said witness.

3. More specifically, Mr. Rasmussen advised that he had prosecuted a Negligent Driving Infraction case involving State Trooper Greg Birkeland. According

A

1 to the complete police report, the hit and run accident occurred at approximately 2:30  
2 in the morning on New Year's day 2004 in Spokane, Washington. The homeowner,  
3 whose property had been damaged, reported that Trooper Birkeland "smelled like a  
4 brewery" when he contacted him the next morning. Through an apparent clerical  
5 error, the investigating officer's complete report was not available to all parties prior  
6 to the contested hearing so it was excluded by the Court and therefore could not be  
7 used for purposes of cross examination. Mr. Rasmussen cross examined Trooper  
8 Birkeland without benefit of the complete investigative report and it was later  
9 determined that Trooper Birkeland did not testify truthfully while he was previously  
10 under oath regarding his hit and run accident in the early morning hours of New  
11 Year's Day 2004. Officer Birkeland is one of the arresting troopers in the instant  
12 case against Mr. Chism so his credibility will be a material issue.  
13  
14  
15  
16  
17  
18

19 4. Based on this conversation, the undersigned anticipates that he will call  
20 Mr. Rasmussen to testify at trial as a witness for the defendant. It is expected that  
21 Mr. Rasmussen's testimony will be material to impeach the credibility of the State's  
22 witness. This testimony will be material to the determination of the issues being  
23 litigated in this case. Mr. Rasmussen's testimony will not be obtainable from another  
24 source. Mr. Rasmussen's testimony will be or may be prejudicial to the State.  
25  
26  
27  
28

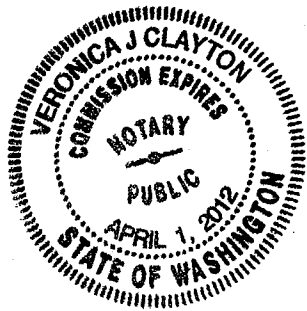
29 5. The undersigned believes that Mr. Rasmussen cannot simultaneously  
30 serve as a witness for the defense and Stevens County Prosecuting Attorney. This  
31  
32

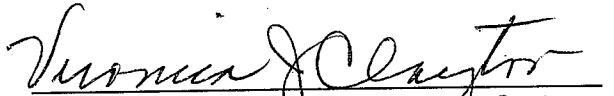
1 dual relationship violates RPC 3.7 – the so-called “advocate-witness” rule. A brief  
2 outlining relevant authorities and supporting his disqualification and likely the entire  
3 Stevens County Prosecutor’s office is being filed contemporaneously herewith under  
4 separate cover.  
5  
6

7 DATED this 17 day of May, 2010.

8  
9  
10  
11   
12 CARL J. ORESKOVICH

13 SUBSCRIBED AND SWORN to before me this 17 day of May, 2010.



33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47  
48  
49  
50  
51  
52  
53  
54  
55  
56  
57  
58  
59  
60  
61  
62  
63  
64  
65  
66  
67  
68  
69  
70  
71  
72  
73  
74  
75  
76  
77  
78  
79  
80  
81  
82  
83  
84  
85  
86  
87  
88  
89  
90  
91  
92  
93  
94  
95  
96  
97  
98  
99  
100  
  
101 NOTARY PUBLIC in and for the State  
102 of Washington, residing at Spokane, WA  
103 My appointment expires: 4/1/2012

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32

**DECLARATION OF SERVICE**

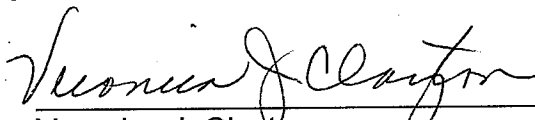
I certify that I served a true and correct copy of the foregoing by the method indicated below:

**Tim Rasmussen  
Stevens County Prosecuting Attorney  
215 S. Oak, Room 114  
Colville, WA 99114  
(509) 684-7589 Fax**

**Personal Service**  
 **U. S. Mail**  
 **Hand-Delivered**  
 **Overnight Mail**  
 **Facsimile**  
 **Electronic Mail ("E-Mail")**

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated this 17<sup>th</sup> day of May, 2010, at Spokane, Washington.

  
\_\_\_\_\_  
Veronica J. Clayton

[Q:\Carl\Carl's E&M Client Files\Chism (4924)\Pleadings\Atty Disqualification\CJO Affidavit.doc]