

HONORABLE LONNIE R. SUKO

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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

ESTATE OF OTTO ZEHM, deceased, and  
ANN ZEHM, in her personal capacity and  
as representative of the Estate of Otto  
Zehm,

Plaintiffs,

v.

CITY OF SPOKANE, JIM NICKS, KARL  
THOMPSON, STEVEN BRAUN, ZACK  
DAHLE, ERIN RALEIGH, DAN TOROK,  
RON VOELLER, JASON UBERAGA, and  
THERESA FERGUSON, each in their  
personal and representative capacities,

Defendants.

NO. CV-09-80-LRS

DECLARATION OF  
DANIEL J. TOROK

I, DANIEL J. TOROK, declare under penalty of perjury, that the following is true and correct.

1. I make the following declaration based upon my own personal knowledge.

DECLARATION OF DANIEL J. TOROK - 1

HOWARD F. DELANEY, City Attorney  
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5<sup>th</sup> Floor Municipal Building  
Spokane, WA 99201-3326  
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1           2.     I am employed as a police officer for the City of Spokane Police  
2 Department (SPD). I currently hold the rank of Sergeant.

3  
4           3.     I am a named defendant in this lawsuit.

5           4.     I was on scene during the incident which is the subject matter of this  
6 lawsuit. I was involved with maintaining control of Mr. Otto Zehm.

7           5.     I have conferred with the Office of the City Attorney regarding the  
8 claim for damages and lawsuit in this matter. I have reviewed letters and claims  
9 from the Center for Justice with my attorney, Assistant City Attorney Rocco N.  
10 Treppiedi of the Spokane City Attorney's Office.

11  
12           6.     I received a subpoena from the U.S. Attorney's Office to testify before  
13 a Grand Jury. I testified in November, 2008, before the Grand Jury.

14  
15           7.     During the questioning before the Grand Jury, I was asked about  
16 communications I have had with Assistant City Attorney Rocco N. Treppiedi  
17 and/or the Office of the City Attorney. These questions were in violation of my  
18 personal legal privilege with respect to attorney/client communication.

19  
20           8.     I have not seen a transcript of the Grand Jury testimony, but I'm sure  
21 it will reflect repeated questions by Assistant U.S. Attorney Timothy Durkin about  
22 my personal, privileged communication with my attorney(s).

23  
24           9.     I am not aware of any gag order from SPD to prevent me from  
25 speaking to an attorney of my choice or the City Attorney's Office. I do not believe  
26 it would be appropriate for my employer to tell me I cannot talk to a lawyer. SPD  
27 policy directs us to the City Attorney's Office for advice regarding matters related  
28

DECLARATION OF DANIEL J. TOROK - 2

**HOWARD F. DELANEY, City Attorney**  
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1 to job duties. Everything in this matter – including the Grand Jury subpoena – is  
2 related to my job duties and I conferred with the City Attorney’s Office regarding  
3 my rights and responsibilities in those regards.  
4

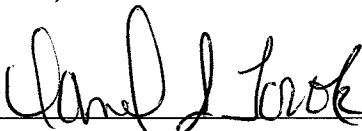
5 10. This incident occurred in March, 2006, approximately three and one-  
6 half years ago. Prohibiting discovery in the civil case will only further delay  
7 resolution of this matter. The continuing delay in this matter is not only unfair  
8 and unreasonable to the plaintiffs, but also to the defendants.  
9

10 11. As a defendant in this matter, I seek to be absolved from these  
11 allegations in a timely fashion. The delay of discovery significantly impacts my  
12 ability to seek dismissal from this suite in any sort of reasonable time frame, as  
13 well as impedes this case from proceeding to trial.  
14

15 12. The cloud of suspicion that this has placed on me has affected both  
16 my personal and professional life.  
17

18 13. I would hope that the court would consider the significant impact that  
19 further delay would have on all of the involved parties in this matter.  
20

21 DATED this 17<sup>th</sup> day of September, 2009.

22   
23 DANIEL J. TOROK

CERTIFICATE OF SERVICE

I hereby certify that on the 21<sup>st</sup> day of September, 2009, I electronically filed the foregoing "Declaration of Daniel J. Torok" with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following:

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