1		Honorable Barbara Mack Hearing Date: June 1, 2016
2		Without Oral Argument
3		Trial Date: July 11, 2016
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6		
7		OF WASHINGTON
8	FOR KINC	G COUNTY
9	MARIA LUISA JOHNSON, CARMELIA DAVIS-RAINES, CHERYL MUSKELLY,	Case No.: 15-2-03013-2 SEA
10	PAULINE ROBINSON, ELAINE SEAY- DAVIS, TONI WILLIAMSON, and	REPLY IN PLAINTIFFS' MOTION
11	LYNDA JONES	TO COMPEL
12 13	Plaintiffs,	
13	v.	
14	SEATTLE PUBLIC UTILITIES, a	
16	department of the CITY OF SEATTLE, a municipality,	
17		
18	Defendants.	
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	REPLY IN PLAINTIFFS' MOTION TO COMPEL	THE SHERIDAN LAW FIRM, P.S. Hoge Building, Suite 1200 705 Second Avenue Seattle, WA 98104 Tel: 206-381-5949 Fax: 206-447-9206

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1	I. REPLY		
2	Instructing a witness not to answer a question is an improper and sanctionable		
3	violation of the Civil Rules:		
4	Instructions Not to Answer. Instructions to the deponent not to answer questions are improper, except when based upon privilege or pursuant to rule		
5 6	30(d). When a privilege is claimed the deponent shall nevertheless answer questions related to the existence, extent, or waiver of the privilege, such as		
7	the date of communication, identity of the declarant, and in whose presence the statement was made.		
8	CR 30(h)(3). The defendant claims that the deposition was closed, but at the first		
9	deposition, the defendant produced current SPU Supervisor Faustino, and he brought		
10	documents pursuant to the subpoena not in paper form, but on a thumb drive, which could		
11	not be opened at the deposition, so they could not be reviewed or used. A second deposition		
12	was required. At his first deposition, Faustino admitted to making ageist statements (calling		
13	older women workers "old hags"), and denied that he made a racist video of two of the		
14	plaintiffs. Moments after the deposition, he apologized to Plaintiff Toni Williamson for		
15	lying at the first deposition.		
16	In setting up the follow up deposition, plaintiffs' counsel agreed, "not to cover		
17	ground already covered." At the second deposition, he did not cover old ground. Defense		
18	counsel improperly instructed Faustino not to answer the questions about his admissions to		
19	Ms. Williamson even though those questions could not have been posed at the first		
20	deposition, because Faustino's admissions did not happen until after the deposition		
21	concluded for the day.		
22	No doubt opposing counsel prepared in advance to improperly instruct the witness		
23	not to answer in violation of the Civil Rules, because he came armed with printed emails to		
24	justify his misconduct, which he entered into the record at the deposition, and he made a		
25	speech, which was prepared in advance, for the record, again to justify his misconduct.		
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1	Opposing counsel's misconduct also amounted to coaching Faustino, because he
2	interrupted a pending question, which is also improper under the Civil Rules.
3	A defendant or his counsel cannot unilaterally determine the relevancy of
4	evidence during discovery nor unilaterally limit the scope of the deposition. Counsel must instruct witnesses to answer all questions directly and without
5	evasion to the extent of their testimonial knowledge, unless properly instructed not to answer. Also, evidence objected to in the deposition must be
6	taken subject to the objection. Because Jones did not assert a privilege nor seek an order to cease or limit the scope of Mermis's deposition, Jones's
7	instructions not to answer questions were improper.
8	Johnson v. Jones, 91 Wn. App. 127, 134, 955 P.2d 826, 831 (1998). There, "Jones violated
9	the Civil Rules when he privately conferred with Mermis between a question and an answer
10	during Mermis's deposition." Id. at 134-135. The Court of Appeals found that, "[s]uch a
11	private consultation is expressly prohibited except for the purpose of determining the
12	existence of a privilege." <i>Id.</i> at 135. The Johnson court "ordered another deposition of
13	Mermis and appointed a Special Discovery Master to supervise it. The court properly found
14	that Jones and Mermis's conduct was obstructionistic and sanctionable." Id. Here, the
15	prejudice to plaintiffs is severe. Since the deposition, Faustino has entered into a "private
16	consultation" with opposing counsel, and been heavily coached between question and
17	answer. Proof of that coaching is the submission of a declaration purportedly answering the
18	very questions he was instructed not to answer before. This is witness tampering.
19	Opposing counsel's conduct is sanctionable, but need not be addressed here. For
20	now, plaintiff seeks to redepose Faustino. Sanctions can be addressed after the next
21	deposition, so that any further misconduct by the defendant can be considered <i>in toto</i> .
22	II. CONCLUSION
23	Plaintiffs' motion to compel should be granted. The Court should make the
24	following findings:
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1	1. Attorney Arthur Simpson's instruction to Mr. Faustino not to answer a	
2	question properly posed at his deposition was a willful violation of CR	
3	30(h)(3).	
4	2. By submitting a declaration of Mr. Faustino, Mr. Simpson's conduct	
5	amounted to coaching the witness between the question and the answer,	
6	which was obstructionistic and sanctionable under Johnson v. Jones, 91 Wn.	
7	App. 127, 134, 955 P.2d 826 (1998).	
8	3. By coaching the witness between the question and the answer, plaintiffs have	
9	been prejudiced.	
10	The Court should order the following:	
11	1. Plaintiffs' motion to compel the testimony of Mr. Faustino is GRANTED.	
12	2. Mr. Faustino shall appear at a time and place to be determined by the	
13	plaintiffs.	
14	3. The Court will consider at a later time whether and what types of sanctions	
15	are appropriate.	
16	4. The attorneys for the defense are ordered not to interfere again in the conduct	
17	of any deposition.	
18	Respectfully submitted this 31 st day of May, 2016.	
19	THE SHERIDAN LAW FIRM, P.S.	
20		
21	By: s/John P. Sheridan John P. Sheridan, WSBA # 21473	
22	Hoge Building, Suite 1200 705 Second Avenue	
23	Seattle, WA 98104 Phone: 206-381-5949 / Fax: 206-447-9206	
24	Email: jack@sheridanlawfirm.com Attorneys for Plaintiffs	
25		
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1	CERTIFICATE OF E-FILING AND E-SERVICE	
2	I, Melanie Kent, certify under penalty of perjury under the laws of the State of	
3	Washington, that on May 31, 2016, I electronically filed the foregoing document with the	
4	Clerk of the Court using the ECR E-Filing system, and served the following persons using	
5	the ECR E-Serve system:	
6	Sarah E. Tilstra	
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14	Davis Wright Tremaine LLP 1201 Third Avenue, Suite 2200	
15	Seattle, WA 98101 Phone: (206) 757-8089	
16		
17	Attorneys for Defendant Seattle Public Utilities	
18	DATED this 31 st day of May, 2016.	
19	s/Melanie Kent	
20	Melanie Kent, Legal Assistant	
21		
22		
23		
24		
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