

File a Formal Complaint - Johna Thomson

[Johna Thomson](#) reported a month ago (Mon, 17 Jul at 5:07 PM) via Portal Meta

This complaint is against Black Diamond City Councilmember Patricia Pepper for failing to file as a political committee in her Anti-Recall Campaign.

At a Hearing held May 10, King County Superior Court Judge Andrus determined that four charges against Councilmember Pepper met the **criteria to Recall her with "legal and factual sufficiency."**

Two days after that, the anti-recall campaign was initiated when on May 12 a "Decline to Sign" handout was hand delivered to every home in Black Diamond (a city with 4,000 residents). The 8.5"x14" handout was printed on heavy, glossy paper and it clearly directed voters actions by saying, "Don't Sign the Recall Petition." See documents: "Decline to Sign Campaign Initiated 5.12.17" and "Decline to Sign - rest of page 5.12.17"

On June 23, Ms. Pepper's newly hired attorney filed a "Notice of Appearance" with the Washington Supreme Court stating he will be representing Pepper in her appeal. Several documents have been exchanged between the court, Pepper's attorney and the Citizens to Recall Pepper committee since that date, indicating substantial funds being spent on her legal defense.

On July 7, yard signs began showing up around Black Diamond before a July 8 community event in our Historic District. These "Bogus Recall" yard signs instruct voters to "Decline to Sign" and direct them to a web site for additional information.

On July 12, a second "Decline to Sign" yard sign showed up all over town. There are approximately 50 "Decline to Sign" yards signs around Black Diamond now.

Black Diamond voters have the right to know who is funding the handouts, yard signs, web site and attorney fees in support of Pepper's anti-recall campaign. Pepper has failed to make this information public by failing to file with the PDC and reporting her sources of funding. Ms. Pepper is not a

political novice. She ran for her seat on the Black Diamond City Council in 2015, against an opponent. At that time she experienced filing with the PDC. Therefore, she should be fully aware of the importance of following Washington State Laws regarding being open and transparent about donations to political campaigns.

Poof of Pepper's expenditures in her anti-recall campaign are contained in the document "Pepper Motion for Stay 062717" filed by her attorney with the Washington State Supreme Court on June 27. The statement "...Ms. Pepper who has put forth retirement savings to retain counsel..." indicates one source of funding. But voters need proof that Pepper's donations to her own anti-recall campaign stay within the limits allowed by Washington State Law. And as with all campaigns, accurate accounting for loans and in-kind support needs to be transparent.

This is neither a de minimis nor unintentional omission. The citizens who are seeking the recall of Councilmember Pepper have the right to know who has been funding Pepper's anti-recall campaign for the past nine weeks and how much money is being spent on this effort now and in the future.

Thank you for hearing my complaint.

City of Black Diamond Update

Decline to Sign Campaign Underway

Ms. Robbin Taylor is promoting a plan to recall City Council President Pat Pepper. Ms. Taylor's husband was defeated by Pat Pepper by 70% percent in November of 2015.

The recall petition contains false and misleading information. We agree with Pat that the recall is a political ploy to stall reforms at City Hall that the voters supported.

(Note that state law says that recall petitions can be placed on the ballot even if they are not factual. Judges only determine if they are "sufficient" not whether they are factual.)

What is at stake?

The Council currently has a 3-2 majority in favor of controlling and managing growth better. The Mayor and her staff are facilitating the massive Yarrow Bay/Crown Development/Oakpointe Development. If Pepper is recalled, then they will be able to return to giving tax subsidies and environmental variances to that development. Additionally, the tighter controls over budgeting and contracting that the Reform Majority have initiated will be dead. This will return City Hall to the status quo, business as usual system that existed before the landslide elections of 2015.

We Recommend:

Don't sign the Recall Petition. Don't be fooled by one-sided information.

Let's let this year's election proceed without this disingenuous distraction.

City To Elect A New Mayor This Year

The voters will get to decide this fall whether the policies of Mayor Benson will continue or whether the City Council's Reform City Hall movement will finally be able to be implemented.

What is at stake?

The following are all of the reform policies that the "Reform Majority" on the City Council has initiated and that the current Mayor has obstructed and fought for the past 16 months:

- Stop the practice of spending over budget limits (approx. \$4 million over past two years).
- Stop the illegal practice of contracting out without bids or Council approval (\$300,000 last year alone).
- Stop the practice of rubber stamping permit applications from the massive Yarrow Bay/Crown/Oakpointe Development.
- Conduct all Committee Meetings in the evening so that the public can

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- Stop the practice of rubber stamping permit applications from the massive Yarrow Bay/Crown/Oakpointe Development.
- Conduct all Committee Meetings in the evening so that the public can attend.
- Provide transparency of agendas and legislation with mandatory public notices, extra opportunities for public participation, and thorough review of technical and legal issues.

This update provided to you by the all-volunteer, locally based Save Black Diamond. Since 2010 we have been working together to protect our rural town. Find us on www.saveblackdiamond.org.

Contact us at (253) 234-7838 or saveblackdiamond@gmail.com.

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WASHINGTON STATE SUPREME COURT

IN RE THE MATTER OF RECALL
CHARGES AGAINST CITY BLACK
DIAMOND COUNCIL MEMBER PATRICIA
PEPPER

Case No. 94574-8

NOTICE OF APPEARANCE

TO: CLERK OF THE COURT;

AND TO: TYLER FIRKINS, attorneys for Petitioner

AND TO: JANINE JOLY, Senior Prosecuting Attorney

PLEASE TAKE NOTICE that Appellant, Patricia Pepper, hereby appears in this action through the Dennis D. Reynolds Law Office, 200 Winslow Way West, Suite 380, Bainbridge Island, WA 98110, without waiving objections to sufficiency of process, sufficiency of service, lack of jurisdiction, failure to properly identify Appellant, and other defenses, and hereby requests that all future papers and pleadings herein, except original process, be served upon the undersigned at the address shown on this Notice.

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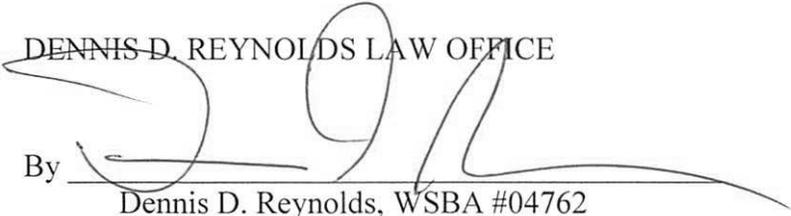
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1 DATED this 23 day of June, 2017.

2 DENNIS D. REYNOLDS LAW OFFICE

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4 By 

Dennis D. Reynolds, WSBA #04762

Attorneys for Appellant, Patricia Pepper

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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify under penalty of perjury under the laws of the State of Washington, that I am now, and have at all times material hereto been, a resident of the State of Washington, over the age of 18 years, not a party to, nor interested in, the above-entitled action, and competent to be a witness herein.

I caused a true and correct copy of the foregoing pleading to be served this date, in the manner indicated, to the parties listed below:

Tyler Firkins Van Siclen Stocks & Firkins 721 45th Street NE, Auburn, WA 98002 Phone: (253) 859-8899 tfirkins@vansiclen.com <i>Attorney for Petitioner</i>	<input type="checkbox"/> <i>Legal Messenger</i> <input type="checkbox"/> <i>Hand Delivered</i> <input type="checkbox"/> <i>Facsimile</i> <input checked="" type="checkbox"/> <i>First Class Mail</i> <input type="checkbox"/> <i>Express Mail, Next Day</i> <input checked="" type="checkbox"/> <i>Email</i>
Danial T. Satterberg, King County Prosecuting Janine Joly, Senior Prosecuting Attorney 500 Fourth Avenue Ste. 900, Seattle WA 98104 Janine.Joly@kingcounty.gov <i>King County Prosecuting Attorney</i>	<input type="checkbox"/> <i>Legal Messenger</i> <input type="checkbox"/> <i>Hand Delivered</i> <input type="checkbox"/> <i>Facsimile</i> <input checked="" type="checkbox"/> <i>First Class Mail</i> <input type="checkbox"/> <i>Express Mail, Next Day</i> <input checked="" type="checkbox"/> <i>Email</i>

DATED at Bainbridge Island, Washington, this 23rd day of June, 2017.



Jon Brenner
Paralegal

BEFORE THE WASHINGTON STATE SUPREME COURT

IN RE THE MATTER OF
THE RECALL OF PATRICIA PEPPER,
Black Diamond Councilmember,

Appellant.

NO. 94574-8

APPELLANT'S MOTION FOR STAY AND
COMMENTS ON EXPEDITED SCHEDULE,
SIGNATURE GATHERING AND RESPONSE
TO RESPONDENT'S MOTION FOR
EXPEDITED REVIEW

1. IDENTITY OF MOVING PARTY

Patricia Pepper, Appellant, asks for the relief designated in Part 2.

2. STATEMENT OF RELIEF SOUGHT

Appellant Patricia Pepper requests a ruling that signature gathering may not continue until the appeal court proceedings are complete. To the extent required to effectuate this request for relief, if the Court's review proceedings do not automatically halt signature gathering Appellant requests a stay on gathering signatures on a recall petition addressing her position as a Black Diamond Councilmember, and further requests relief from expedited review of the captioned matter. Ms. Pepper requests the Court to modify the case schedule for the reasons set forth herein.

3.1 RELEVANT FACTS

On May 10, 2017, the King County Superior Court entered an order that found four of the charges brought by Respondent Robbin Taylor to recall Petitioner Pepper were

factually and legally sufficient for the recall and amended the ballot synopsis for that purpose. Patricia Pepper filed a timely notice of appeal with the Superior Court on May 25, 2017. The Superior Court forwarded a copy of the Petition to the Supreme Court pursuant to RAP 5.4; the Supreme Court received the petition on May 31, 2017.

Thereafter, the Supreme Court issued a letter to the parties on June 1, 2017, in which it set forth a case schedule. Respondent Robbin Taylor filed a motion on June 2, requesting permission to gather signatures on the recall petitions pursuant to RAP 8.1, or alternatively for expedited review pursuant to RAP 8.12. Ms. Pepper was pro se at that time and did not immediately respond to the motion, believing that the clerk of the Supreme Court would provide a schedule for her to respond. The Court should note that the very first correspondence received from the Court by Ms. Pepper included a detailed schedule associated with the Court's review of this matter.

Ms. Pepper was still awaiting direction regarding a deadline for responding to Respondent's motion when the Court issued an order on June 12, 2017, granting expedited review and stating that no stay had been requested to halt gathering signatures, and allowing signature gathering to begin. The Court on the very same date (June 12, 2017) sent Ms. Pepper a "Packet of appeal info for pro se appellants."

Ms. Pepper called the clerk of the Court with an inquiry on June 14, 2017, and through the conversation learned that the court had sent an email June 5th with a schedule for response to the June 2nd motion. Prior to this, Ms. Pepper was not aware of this schedule because she never received the email. Ms. Pepper, who receives email for this case at a new address she set up, "PPepperForThis@gmail.com", reviewed all spam and trash emails

and never found any email from the Court dated June 5, 2017. Ms. Pepper followed up on the conversation with an email asking to receive a copy of the June 5 correspondence. The fact that Ms. Pepper had not received the prior emails setting a response schedule was validated by the court when on June 21st the court issued an email acknowledging the previous problems transmitting messages to the PPepperForThis@gmail.com address. The June 21st court message set a deadline of June 27 to comment on the expedited schedule. This motion is timely filed in accordance with the June 27th deadline and is Ms. Pepper's first chance to respond to the June 2nd motion.

The Court has now established a deadline of June 27, 2017, for Ms. Pepper to comment on the motion for expedited review and to the order setting an expedited schedule.

3.2 FACTS RELEVANT TO EXPEDITED APPEAL SCHEDULE

The Recall petitioner's inference that damage would be done to the City if expedited review is not granted is without basis. As evidence, the petitioner had the opportunity to seek a court mandate compelling some Council duty be performed by Council member Pepper after the trial court's decision, but no mandate was sought. While there may continue to be an active debate over matters of Council business between the legislative and the administrative branches of government in Black Diamond, the debate and time taken by the Council and Mayor in determining how to proceed on city matters is the natural outcome of our form of local government. The Mayor's administrative branch of government brings certain items of city business to the Council, and the Council works on them over time, sometimes changing them and some business is subject to appropriate and lengthy debate. The bottom line is the business of the City of Black Diamond is being

done and the city is meeting its obligations. The petitioner has failed to demonstrate actual harm.

Additionally, the recall petitioner makes the incorrect accusation that this Appeal is an attempt to delay proceedings without real merit. In reality, this recall initiated by Respondent is most likely an attempt to change Ms. Pepper's Council votes/decisions or badger her with so much time and expense for being on Council that Ms. Pepper will resign. The petitioner's spouse (Ron Taylor) was on City Council and lost to Ms. Pepper, and the primary funders of the recall include another former Council member and spouse, Craig and Judith Goodwin. Craig Goodwin was on City Council and lost in the same 2015 election as Taylor. The Goodwins and Taylors have both made it clear they disagree with many of Ms. Pepper's votes on Council. Ms. Taylor's disagreements were voiced starting the first month that Ms. Pepper took office, long before the issues in the Recall petition took place. This strategy of initiating a recall action in order to create a time-consuming and expensive problem for the current holder of the Office could be used on any elected official in our state whether the allegations are true or not. An expedited schedule in this case would set an example that could deter people from running for office and encourage political opponents to harass them.

Patricia Pepper has done everything she can to carry out her oath of office and this Recall effort continues a pattern of burdensome additional time-consuming requirements from Respondent Robbin Taylor that began in January of 2016 when Ms. Pepper took office. The Respondent wants Ms. Pepper to do her work as a council member. During the May timeframe to respond to the Superior Court, Ms. Pepper's time was extremely

limited due to Council activities. Ms. Pepper prioritized the Council work, resulting in a less than ideal defense at the Superior Court level. Ms. Pepper also determined initially that she could not afford an attorney making it even more difficult to respond to the Superior Court.

Any compressed schedule for the recall case will have the effect of making it difficult for Ms. Pepper to also complete Council business at the same time. While Ms. Pepper has now retained legal counsel, that does not reduce the time needed to work on and provide information for this Appeal. More importantly, Ms. Pepper does need significant time to put forward City Council business. Her duties include the role of Council President, which is instrumental in setting out the schedule of Council business and committee meetings. She also chairs the Growth Management committee which reviews a large amount of the city's most complex legislation. Further, there are at least three Council meetings each month plus committee duties all of which require hours of preparation. The City Council work can take up to forty hours per week. It often takes extra time because the Mayor provides little information to Council and obstructs their work at Council meetings. In addition, the platform of Council member Pepper has always been to do more fact-finding and meeting preparation than might typically be done or has been done in the past.

3.3 FACTS RELEVANT TO STAY OF SIGNATURE GATHERING

In the case of a recall, the court will review the exact language of the recall petition. While we intend to prove that none of the charges are valid grounds for recall, if there is a change in the wording or removal of even one of the charges, the signatures gathered would

be invalid because there would be a change required to the petition. While the appeal is ongoing, it would be contrary to the interests of the public to have signature gatherers distribute petitions with a ballot synopsis that may well be amended or rejected by this Court.

4 **GROUNDS FOR RELIEF AND ARGUMENT**

A party may request stay of enforcement of a superior court judgment pending appeal. Per RAP 8.1(b)(3), in civil cases other than those affecting money or property, the Court has the authority to stay enforcement of the judgment upon such terms as are just upon motion of a party seeking stay. There is no deadline in the rule for a party to request a stay of judgment. In other words, a party can request a stay at any time during appeal. See RAP 8.1. The Court should consider and grant Ms. Pepper’s motion for a stay in signature gathering during the pendency of the appeal. There is no financial judgement or effect on property, so Ms. Pepper asks that no bond be required. Any bond would be an insurmountable burden on Ms. Pepper who has put forth retirement savings to retain counsel which she can ill afford in this matter (Ms. Pepper is a retired public school teacher). Ms. Pepper is committed to her oath of office and Council duties and wishes this matter to be pursued to the fairest end for the citizens of Black Diamond.

Respondent is flat wrong in asserting that there would not be any prejudice to Ms. Pepper if the Court allows the signature gathering to continue pending the appeal. The public is being misled by a petition filed against a hard-working council member. The public deserves the correct information before being asked to participate in the recall. As this appeal will show, the items on the petition are part of a well-orchestrated, long-term

campaign to discredit the discretionary council decisions of Ms Pepper, or in the case of the Open Public Meeting Act accusations, falsely accuse her without any supporting evidence. The case will show that in all cases, such as delay of minutes or cancelling of meetings, that Ms. Pepper acted in the only way she felt she responsibly could to uphold her oath of office. The people should not be asked to sign a petition that is inaccurate as that is a waste of time and money. Ms. Pepper should be allowed her chance to have this case heard on appeal, and the people should as well.

Finally, the schedule posted by the Court as of June 1, 2017, is reasonable and the parties should not be required to unnecessarily rush this matter. There is no immediate harm from allowing the process to take place as ordered by the Court. Ms. Pepper is willing to accept some reasonable expediting of the schedule if the motion for a stay on signature gathering is granted. However, there is real and substantial harm that will occur to Ms. Pepper if the expedited schedule requested by Respondent is not denied. The case cannot possibly proceed to conclusion within 4 weeks as requested by Respondent without seriously undercutting the due process rights of Appellant Pepper. The Court should exercise its discretion and caution to ensure that all relevant facts and arguments are before it, and not short-shifted in Respondent's desire to over-run and exhaust Ms. Pepper in a strategy to push her out of office.

5 CONCLUSION

For all the reasons set forth herein, the Court should grant Appellant Patricia Pepper's motion for stay and should order that the schedule established in its June 1, 2017, letter to the parties is the governing schedule in this appeal.

RESPECTFULLY SUBMITTED this 27th day of June, 2017.

DENNIS D. REYNOLDS LAW OFFICE

A handwritten signature in black ink, appearing to read 'D. Reynolds', written over a horizontal line.

By: _____

Dennis D. Reynolds, WSBA #04762
Attorney for Appellant Patricia Pepper

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify under penalty of perjury under the laws of the State of Washington, that I am now, and have at all times material hereto been, a resident of the State of Washington, over the age of 18 years, not a party to, nor interested in, the above-entitled action, and competent to be a witness herein.

I caused a true and correct copy of the foregoing pleading to be served this date, in the manner indicated, to the parties listed below:

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DATED at Bainbridge Island, Washington, this 27th day of June, 2017.



 Jon Brenner
 Paralegal