

## SKAMANIA COUNTY CLAIM FOR DAMAGE FORM

<b>CLAIMANT:</b>	<b>THIS CLAIM MUST BE FILED WITH THE</b>	<b>FOR OFFICE USE ONLY:</b>
	SKAMANIA COUNTY AUDITOR'S OFFICE	CLAIM NO. _____
	Skamania County Courthouse	DATE FILED: _____
	P.O. Box 790	COPIES TO: _____
	240 NW Vancouver Avenue, Room 27	
	Stevenson, WA 98648	
NO DAMAGES CAN BE PAID BY SKAMANIA COUNTY UNLESS THIS FORM IS COMPLETE. THIS PROVISION CANNOT BE WAIVED.		ATTACHMENTS: YES (# <u>4</u> ) NO

1. Name (including spouse if married): (Please Print)

Lance D. Fitzjarrald; Kimberly Fitzjarrald

2. 350 SW Eyrie Rd. , White Salmon, WA 98648

Address

City

State

Zip

3. HM Phone: (206) 499-0845 WK Phone: (509) 637-0471 MSSG Phone: \_\_\_\_\_

4. Date and time of incident: December 3, 2008

5. Location of incident:

Stevenson, Skamania County, Washington

6. Describe in narrative form and in detail exactly how the incident occurred:

Skamania County Prosecuting Attorney Peter S. Banks terminated my employment as a Deputy Prosecuting Attorney because of my disability in violations of the Americans with Disabilities Act and the Washington Law Against Discrimination. The details are provided in the letter of my counsel, Sidney J. Strong, which I attach and incorporate into this Claim as an accurate account.

7. What is the amount of damages claimed arising out of the following circumstances (Include estimates and bills, if available): The damages are continuing, but are believed at this time to be at least \$350,000.

8. Please list name and address of any and all witnesses or persons involved:  
(Please Print)

Peter S. Banks, 240 NW Vancouver Ave, Stevenson, WA 98648

Chris Lanz, 240 NW Vancouver Ave, Stevenson, WA 98648

Pam Bell, 240 NW Vancouver Ave, Stevenson, WA 98648

Joanne Gildersleeve, 240 NW Vancouver Ave, Stevenson, WA 98648

Annette Cook, 240 NW Vancouver Ave, Stevenson, WA 98648

Crescence Morris, 240 NW Vancouver Ave, Stevenson, WA 98648

9. Describe the damages or injuries you sustained as a result of the incident: Loss of Employment and mental suffering
10. Was incident investigated by a police officer? N/A Sheriff \_\_\_\_\_ State Patrol \_\_\_\_\_ City \_\_\_\_\_
11. If a vehicle was involved in the incident, describe: N/A Make \_\_\_\_\_ Model \_\_\_\_\_ Year \_\_\_\_\_ State \_\_\_\_\_ License No. \_\_\_\_\_ Insurance Company \_\_\_\_\_ Policy Number \_\_\_\_\_
12. Describe what you did after the incident occurred: Looked for employment
13. Describe the conversations you had, if any, with County personnel during or after the incident occurred. I asked Chief Deputy Lantz why I was being terminated. He said he did not know.
14. How did you identify the County as the party responsible for your damage? The County is my employer.

I certify under penalty of perjury under the laws of the State of Washington that the information contained in this claim is true and correct.

DATED THIS 2<sup>nd</sup> DAY OF March, 2009

Jance Fitzjarrald  
Claimant's Signature

LAW OFFICES OF  
**SIDNEY J. STRONG**

600 UNIVERSITY STREET, SUITE 2100  
SEATTLE, WASHINGTON 98101  
PHONE (206) 623-5221 FAX (206) 623-5214

**Sidney J. Strong**  
Also admitted in Montana  
email: sid@sidstronglaw.com

February 27, 2009

Peter S. Banks  
Skamania Prosecuting Attorney  
P.O. Box 790  
240 NW Vancouver Ave.  
Stevenson, WA 98648

Re: *Lance D. Fitzjarrald*

Dear Mr. Banks:

I represent Lance Fitzjarrald. We believe you discharged Mr. Fitzjarrald because of his disability. I write to determine whether you or the County has any interest in finding a mutually acceptable resolution of Mr. Fitzjarrald's claim.

Mr. Fitzjarrald began his employment in your office as a deputy prosecuting attorney on, or about, September 11, 2006. Prior to the aforementioned start-date you hired Mr. Fitzjarrald away from a deputy prosecution job in neighboring Klickitat County and told him at the time of hiring that the work hours were flexible and that he need be in the office only two hours a day as long as he completed his work.

Oddly, you or the County also required Mr. Fitzjarrald to have medical examination weeks after his hiring and commencement of work. Such a requirement under the circumstances of Mr. Fitzjarrald's employment raises questions of its lawfulness under the Americans with Disability Act.

Although hired, ostensibly, to handle misdemeanor cases and Juvenile Court matters, Mr. Fitzjarrald also successfully tried felony cases and successfully argued felony and juvenile matters. Mr. Fitzjarrald could be relied upon to handle all aspects of prosecutorial work while under Adam Kick's immediate supervision; after Mr. Kick was forced out, and up until the day Mr. Fitzjarrald was fired, Mr. Fitzjarrald continued this level of support during the months when Skamania County was without a chief deputy prosecutor and during the period he worked under Mr. Kick's replacement, Christopher Lanz.

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Skamania County Prosecuting Attorney  
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Mr. Fitzjarrald performed his job well. You did not conduct any performance evaluations, but expressed satisfaction with Mr. Fitzjarrald's job performance, periodically, and approved several substantial step pay increases. More importantly, you never disciplined or threatened discipline of any kind. Until the day of his termination neither you nor anyone under your direction told Mr. Fitzjarrald that his job was in jeopardy. You never provided Mr. Fitzjarrald with performance criteria. You never provided any guidance whatsoever about what type of cases to take to trial, or, conversely, what type of cases to not take to trial. You never told him that he must win a given number of his trials. In short, Mr. Fitzjarrald was left to perform his duties as would any other prosecuting attorney in a similar position, allowed to exercise the professional discretion and judgment inherent in that role. While employed as a deputy prosecutor Mr. Fitzjarrald had cultured a healthy working relationship with and had earned the respect of judges, peer professionals, law enforcement, and court staff.

In November 2007, you forced your chief deputy Adam Kick to resign. As a new parent, Mr. Kick attempted to exercise his leave rights under the Family and Medical Leave Act (FMLA). Rather than working with Mr. Kick to permit some flexibility as to his requested leave, you summarily forced his termination. Jobless, the termination forced Mr. Kick to leave the area to find employment for the support of his family. This action gave a clear message to your office of your intolerance for anyone needing leave of any kind for reasons beyond their control.

In July/August Mr. Fitzjarrald scheduled a week vacation for October. The vacation was approved. On September 2, 2008 Mr. Fitzjarrald sustained life-threatening injuries in a windsurfing accident. He required emergency hospitalization in a Portland hospital where he remained until September 6<sup>th</sup>. He then continued his recovery at his home and was released to return to work on September 22<sup>nd</sup>. His time away from work was covered by accumulated sick leave. He kept his office informed of his absence and intended return.

Due to major nerve and tissue trauma, Mr. Fitzjarrald returned to work with a right hand that he could not use. His doctor also restricted him from any weight bearing or grasping work. Mr. Fitzjarrald is right handed. He found it difficult to use a keyboard and almost impossible to take handwritten notes, a requirement for his trial work. However, upon his return, Mr. Fitzjarrald asked only that he be provided a signature stamp, because of the difficulty he had in signing his name. Your office ignored even that accommodation request. Instead, you adopted an attitude of benign neglect, preferring that Mr. Fitzjarrald suffer through his employment responsibilities without assistance of any kind. It was quite clear to Mr. Fitzjarrald that because of his limitations and pain, you expected him to fail, thus providing a pretext for his termination.

Peter S. Banks  
Skamania County Prosecuting Attorney  
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However, Mr. Fitzjarrald did not fail in his duties. Judge Reynier required shoulder surgery thus disrupting Mr. Fitzjarrald's normal trial schedule. At this time, Mr. Fitzjarrald still had no appreciable function in his right hand. His middle finger, index finger and thumb lacked nerve function. He had to wear a glove and felt self-conscious about wearing it in court. He even required the chief deputy to button his shirt cuff. On the first scheduled trial since his return to work, the defendant took a guilty plea the day of trial. You still refused to provide Mr. Fitzjarrald with the name stamp. At around that same time, Mr. Fitzjarrald also learned that you refused to provide an ergonomic adjustment to one of the secretary's work-spaces on the ground that it was not worth the cost.

There were two hard-set trials scheduled for December 2<sup>nd</sup>. Mr. Fitzjarrald had been negotiating with Randall Krog and David Schultz for weeks in an effort to avoid an unnecessary trial on their respective cases. Mr. Fitzjarrald had paid special attention to Mr. Schultz's case concerning Adam Hord and in the weeks leading up to trial had contacted the Sheriff's Office in an effort to get a video of the traffic stop, had interviewed Sheriff Deputy Summer Scheyer, had discussed plea bargains with the deputy and Mr. Schultz, and had reviewed a deposition transcript with Deputy Scheyer. According to Mr. Schultz, Mr. Hord would settle for nothing less than a dismissal, yet, Dep. Scheyer was adamant that Mr. Hord was guilty of Driving Under the Influence. On December 1<sup>st</sup>, Mr. Fitzjarrald worked in his office on pretrial matters and handled arraignments in the afternoon. He suffered considerable pain. His right hand was cold with throbbing pain. He worked in his office until 8:00 pm, preparing questions and jury instructions for the next day's trials. The continuing pain made it difficult for Mr. Fitzjarrald to sleep. Nonetheless, he appeared the next morning and was as prepared as he could be for trial. The trial was a particularly difficult one as the defendant had refused all tests. The trial ended in a verdict of acquittal.

On December 3<sup>rd</sup>, Mr. Fitzjarrald came to work at about 9:00 am. He met defense counsel for a set-over pretrial hearing. At noon, chief deputy Chris Lanz met with Mr. Fitzjarrald and said he was terminated effective immediately. When Mr. Fitzjarrald asked for a reason, Mr. Lanz said he had none to give, but that the termination was at your direction. Subsequently, in a submission to the Department of Employment Security, you said that Mr. Fitzjarrald was discharged because of, "Lack of preparation for a jury trial which resulted in...not guilty verdict."

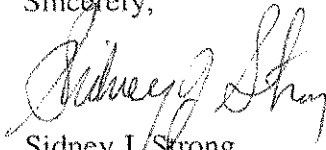
We believe your actions to constitute a prima facie claim of disability discrimination under the Americans with Disabilities Act and the Washington Law Against Discrimination. You should know that under those Acts you are responsible for all losses attributed to the loss of employment, including back and front pay, prejudgment interest, noneconomic damages and

Peter S. Banks  
Skamania County Prosecuting Attorney  
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attorney fees. He remains unemployed with the likelihood of comparable employment most doubtful. The termination has caused Mr. Fitzjarrald a major disruption to his life and that of his families. Thus Mr. Fitzjarrald's damages and injuries continue.

We are preparing and will file a tort claim with the County as required. We are also filing a charge with the Equal Employment Opportunity Commission formalizing a claim under the Americans with Disability Act. Mr. Fitzjarrald prefers an amicable solution. Please let us know no later than March 11, 2009 if you or the County shares this interest. Lacking a response, we will assume that you prefer presenting your explanation to a jury and we will respond with dispatch.

Sincerely,



Sidney J. Strong

cc: Lance Fitzjarrald



LAW OFFICES OF  
**SIDNEY J. STRONG**

600 UNIVERSITY STREET, SUITE 2100  
SEATTLE, WASHINGTON 98101  
PHONE (206) 623-5221 FAX (206) 623-5214

**Sidney J. Strong**  
Also admitted in Montana  
email: sid@sidstronglaw.com

February 27, 2009

Skamania County Auditor's Office  
Skamania County Courthouse  
PO Box 790  
240 NW Vancouver Avenue, Room 27  
Stevenson, WA 98648

Re: *Lance Fitzjarrald v. Skamania County*

Dear Claim's Department:

I represent Lance Fitzjarrald. Please accept for filing Skamania County Claim For Damage Form from Lance Fitzjarrald.

If you have any questions, feel free to call the office.

Sincerely,



Sidney J. Strong  
Enclosure

cc: Lance Fitzjarrald

Law Office of Sidney J. Smith  
One Union Square  
601 University Street, 20th Floor  
Seattle, WA 98101

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT  
OF THE RETURN ADDRESS. FOLD AT DOTTED LINE.  
**CERTIFIED MAIL**



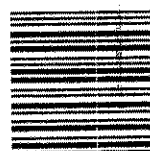
7008 0150 0003 7904 8936

**RETURN RECEIPT  
REQUESTED**

Skamania County Auditor's Office  
Skamania County Courthouse  
PO Box 790  
240 NW Vancouver Avenue, Room 27  
Stevenson, WA 98648



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AMOUNT

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