

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
 IN AND FOR THE COUNTY OF KING

CAPTAIN BRUCE NELSON

Plaintiff,

vs.

STATE OF WASHINGTON and  
 WASHINGTON STATE BOARD OF  
 PILOTAGE COMMISSIONERS,

Defendants.

No. 10-2-32411-9 SEA

SUMMONS [20 DAYS]

TO: ALL DEFENDANTS LISTED ABOVE

A lawsuit has been started against you in the above-entitled court by Captain Bruce L. Nelson, Plaintiff. Plaintiff's claims are stated in the written complaint, a copy of which is served upon you with this summons.

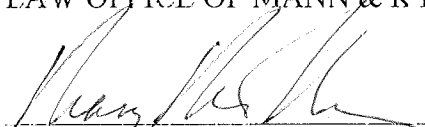
In order to defend against this lawsuit, you must respond to the complaint by stating your defense in writing, and serve a copy upon the undersigned attorney for the plaintiffs within 20 days after the service of this summons, excluding the day of service, if served within the State of Washington (or within sixty (60) days after said service, if served without the State of Washington), or a default judgment may be entered against you without notice. A default judgment is one where plaintiffs are entitled to what they ask for because you have not

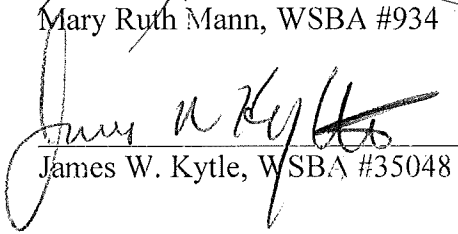
1 responded. If you serve a notice of appearance on the undersigned attorney, you are entitled to  
2 notice before a default judgment may be entered.

3 If you wish to seek the advice of an attorney in this matter, you should do so promptly  
4 so that your written response, if any, may be served on time. This summons is issued pursuant  
5 to Rule 4 of the Superior Court Civil Rules of the State of Washington.  
6

7 DATED December 2, 2010.

8 LAW OFFICE OF MANN & KYTLE, PLLC

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11 Mary Ruth Mann, WSBA #934

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13 James W. Kytile, WSBA #35048  
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Washington State  
Office of the Attorney General  
Acknowledged Receipt, this 3 day  
of December, 2010, Time: 2:55  
in Seattle, Washington.  
Signature: *K.A. Fraser*  
Print Name: R.A. FRASER  
Assistant Attorney General

SUPERIOR COURT OF WASHINGTON  
IN AND FOR THE COUNTY OF KING

CAPTAIN BRUCE NELSON,

Plaintiff,

vs.

STATE OF WASHINGTON, BOARD OF  
PILOTAGE COMMISSIONERS,

Defendant.

NO. 10-2-32411-9 SEA

**COMPLAINT FOR DAMAGES  
AND INJUNCTIVE RELIEF**

COMES NOW Plaintiff, Captain Bruce Nelson and states as his causes of action:

**I. PARTIES AND JURISDICTION**

1.1 The Defendant State of Washington Board of Pilotage Commissioners is headquartered, conducts its business and holds its meetings in King County Washington.

1.2 Plaintiff Captain Bruce Nelson is a resident of King County and has filed a Standard Tort Claim Form and 60 days has passed following the filing of that claim.

1 1.3 Venue is proper in this action because the State of Washington can be sued in  
2 King County Superior Court and because actions adverse to Captain Nelson took place in  
3 primarily in King County as well as in other counties.

## 4 II. FACTS SUPPORTING CLAIMS

5 2.1 The State of Washington established the Board of Pilotage Commissioners as an  
6 agency of State Government in Washington. Its actions are governed by the Revised Code of  
7 Washington including the Washington Administrative Procedures Act, RCW 34.05.001 et seq.;  
8 and the Washington Pilotage Act, RCW 88.16.005 et seq. It is the intent of the legislature in  
9 creating the Pilotage Commission to ensure against the loss of lives, loss or damage to property  
10 and vessels, and to protect the marine environment through the establishment of a board of  
11 pilotage commissioners representing the interests of the people of the state of Washington.

12 2.2 The purpose of the Board of Pilotage Commissioners is stated as follows, inter  
13 alia: "The legislature further finds and declares that it is a policy of the state of Washington to  
14 have pilots experienced in the handling of vessels aboard vessels in certain of the state waters  
15 with prescribed qualifications and licenses issued by the state.

16 2.3 Washington State law provides that the board of pilotage commissioners shall:

17 (a) Adopt rules, pursuant to RCW Chapter 34.05, necessary for the enforcement and  
18 administration of this chapter; (b)(i) Issue training licenses and pilot licenses to pilot  
19 applicants meeting the qualifications provided for in RCW 88.16.090 and such additional  
20 qualifications as may be determined by the board; (ii) Establish a comprehensive training  
21 program to assist in the training and evaluation of pilot applicants before final licensing; ..."  
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1 2.4 The Board of Pilotage Commissioners appointed members to a Training and  
2 Evaluation Committee also known as the TEC. The State and Board of Pilotage Commissioners  
3 are vicariously liable for actions of the TEC and Commissioners.

4 2.5 "Commissioners" on the Board of Pilotage Commissioners are appointed by the  
5 Governor to fill specific positions specified representing varying interests identified by  
6

7 2.6 The Board of Pilotage Commissioners and its actions are governed by the  
8 Washington Administrative Procedures Act which requires notice and public hearing and other  
9 "rulemaking" procedures for adopting or amending "rules."

10 2.7 Pilot Trainees selected by the Commissioners, including Captain Nelson, were  
11 highly qualified and experienced professionals, selected after testing and performance  
12 simulation, and assigned to a Pilot Trainee Program. Trainees, including Captain Nelson were  
13 paid a stipend of up to \$6000.00 per month subject to meeting specified conditions.

14 2.8 The Board of Pilotage Commissioners awarded "Training Licenses" to Pilot  
15 Trainees, including Captain Nelson, when each began the Pilot Trainee program. Trainees  
16 were started into the Trainee program in sequence of their scores in the selection process, with  
17 the highest scoring trainee starting first.  
18

19 2.9 To receive a monthly "stipend" Pilot Trainees were required to complete at least  
20 18 training trips during that month, and those trips had to have been assigned by the Board of  
21 Pilotage Commissioners. The Board of Pilotage Commissioners periodically assigned Captain  
22 Nelson extensions of less than 18 trips per month, then allowed that factor to be considered  
23 adversely in evaluating him.  
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1 2.10 Trainees, according to the Washington Administrative Code, were allowed; and  
2 limited to a maximum of 3 years on stipend to complete their Trainee Program.

3 2.11 "Successful Completion" of the Pilot Trainee program is the prerequisite to the  
4 awarding of a Pilot License to a Pilot Trainee, by the Board of Pilotage Commissioners.

5 2.12 Establishing scoring and rating standards and measures of trainees for  
6 determining "successful completion" of the Pilot Trainee program constitutes making "rules".  
7

8 2.13 The Board of Pilotage Commissioners did not use "rulemaking procedures" to  
9 establish or make amendments to the trainee rating devices, scoring and rating standards or  
10 measures for successful completion of the Pilot Trainee program or licensing.

11 2.14 The Board of Pilotage Commissioners did not adhere to adopted criteria or to  
12 "rules" in evaluating, scoring, rating, and determining successful completion of Pilot training, or  
13 awarding Pilot Licenses. Rather, criteria and scoring and ratings and interpretation of ratings  
14 for "successful completion" of Pilot Training were left to undefined discretion of  
15 Commissioners, and as a result were subject to discrimination, nepotism, special interests and  
16 arbitrary and capricious application.  
17

18 2.15 State of Washington, during all times relevant to this matter, is an "employer"  
19 with respect to Pilot Trainees for the purposes of RCW 49.60.010 et seq.  
20

21 2.16 The State of Washington allowed "subjective" criteria and criteria not adopted by  
22 the Board of Pilotage Commissioners for evaluation of Pilot Trainees, including determinations  
23 of "successful completion" of the Pilot Trainee program, and determination whether to award  
24 Pilot Licenses.  
25

1 2.17 The State of Washington allowed criteria with disparate impact in the Pilot  
2 Trainee and Licensing functions.

3 2.18 The Board of Pilotage Commissioners determined the number of Pilot Licenses  
4 that would be awarded by the Board of Pilotage Commissioners.

5 2.19 The Board of Pilotage Commissioners and individual commissioners repeatedly  
6 denied Captain Bruce Nelson a determination of "successful completion" of his Trainee  
7 Program and denied him a Pilot License regardless of his repeated completion of assigned  
8 extensions; and in so doing, applied different training methods, different performance standards  
9 and different criteria and scoring standards than were applied to other trainees.  
10

11 2.20 Younger trainees than Captain Nelson were determined to have "successful  
12 completion" of their Pilot Training with equal or lower ratings and scores, less trips, and other  
13 less favorable indications than Captain Nelson.

14 2.21 The Board of Pilotage Commissioners allowed TEC members and  
15 Commissioners to overrule established scoring and rating standards, and to overrule "training  
16 point" evaluations, and allowed anonymous individuals, under the heading of the TEC, to  
17 submit misrepresentations of Captain Nelson's performance and training to the Pilotage  
18 Commissioners prior to their voting, without notice or opportunity for Captain Nelson to  
19 respond to submissions.  
20

21 2.22 The "evaluation" of Pilot Trainees, which was to be done at after completion of  
22 the Pilot Trainee program, to the extent one was established by the Board of Pilotage  
23 Commissioners, did not meet government, nor industry, nor international standards for  
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1 assessing marine pilots. Such evaluation further did not comply with all Washington  
2 Administrative Code provisions adopted by the Board of Pilotage Commissioners nor RCW  
3 88.16.005 et seq, or statute.

4 2.23 In determinations of "successful completion" of the Pilot Trainee program and in  
5 determinations as to award of Pilot Licenses, each TEC member and each Commissioner used  
6 any basis or criteria that commissioner chose for licensing, denying licensing, requiring added  
7 training, successful completion of pilot trainee programs, or termination of a trainee program.

8 2.24 Captain Nelson was assigned additional trips in repeated "extension" periods in  
9 his training. All trips possible to obtain were completed. Despite his performance and ratings  
10 and completion at or above the level of prior applicants and subsequent applicants, he was not  
11 determined to have "successfully completed" the Pilot Trainee program after any of the  
12 extensions, from September 2007 through April 2008.

13 2.25 Substantial factors in denying Captain Nelson a determination of successful  
14 completion of his pilot trainee program included adverse evaluation factors not adopted by the  
15 Board of Pilotage Commissioners, and factors adverse to law and public policy. Arbitrary and  
16 capricious factors were applied to Captain Nelson's trainee program evaluation and licensing  
17 decisions. Commissioners applied adverse evaluation factors for Captain Nelson's taking a  
18 recommended rest period, adverse evaluation factors based on assumption that taking  
19 recommended rest break indicating a bad "attitude" or being "stressed out"; an adverse  
20 evaluation factor based on Pilot Training being perceived an "endurance" trial period; and  
21 adverse evaluation based on speed of completion of the training program.  
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1           2.26   The Board of Pilotage Commissioners obtained professional input to establish an  
2 “evaluation” tool for scoring and rating Pilot Trainees in every aspect of performance and in all  
3 routes and types of piloting in Puget Sound.

4           2.27   The Board of Pilotage Commissioners, after establishing that evaluation and  
5 rating and scoring device by vote, did not adopt it as a “rule” and inconsistently applied it or  
6 ignored it in determining successful completion of Pilot Trainee programs.

7           2.28   In the State of Washington, the public, including Captain Nelson as a Pilot  
8 Trainee, and applicant for Pilot licensing, is entitled to have decisions of the Board of Pilotage  
9 Commissioners made by application of rules, properly adopted and applied. Rules which are  
10 not properly adopted with statutory rulemaking procedures cannot be used to deny licenses or  
11 benefits. Captain Nelson should be granted “successful completion” and a Pilot license, or in  
12 the alternative, restored to Pilot Trainee status and to his Trainee License and his Trainee  
13 program with retroactive benefits, until determinations about his successful completion and  
14 licenses are made by application of properly adopted Rules.

15           2.29   The Pilot Trainee program training and evaluation were negligently carried out  
16 by the State of Washington and Board of Pilotage Commissioners and caused Captain Nelson  
17 psychological harm, vocational harm and economic harm.

18           2.30   Supervising Pilots, Training Pilots and Evaluating Pilots were inadequately  
19 selected, trained, monitored and supervised in the Pilot Trainee program. Parts of the  
20 “training” provided Captain Nelson damaged him.  
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1 motivating Defendants' adverse actions. Plaintiff alleges that a factor in holding him back from  
2 licensing may have been a perceived need to "fail" a comparator male, in anticipation of the  
3 first female trainee who was beginning training at approximately the time Captain Nelson was  
4 held back from licensing, and thus gender discrimination may have been a substantial factor  
5 affecting his licensing and trainee program.

6  
7 3.2 Plaintiff claims that Defendants violated RCW 49.60 by subjecting him to  
8 practices that had a disparate impact on older trainees, and that had a disparate impact on  
9 trainees with disabilities or perceived disabilities.

10 3.3 Plaintiff alleges that Defendant treated Plaintiff differently based on perceived or  
11 actual disability in determinations about his trainee program and licensing and that defendants  
12 to the extent they acted based on perceived or actual disability, failed to make reasonable  
13 accommodation before and after his termination from the Trainee program;

14  
15 3.4 Plaintiff claims that Defendants denied him a determination of "successful  
16 completion," thus denying him a Pilot License. Defendants took those actions and terminated  
17 his trainee program in violation of clear public policies.

18 3.5 Plaintiff claims that Defendant failed to comply with the Administrative  
19 Procedures Act in adopting and amending criteria, scoring and ratings for evaluating and  
20 determining "successful completion" of the Trainee Program.

21 3.6 Plaintiff claims that the Defendant failed to comply with the Administrative  
22 Procedures Act in adopting and amending the criteria, scoring, ratings and permissible factors  
23 for Pilot Licensing.  
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1 3.7 Plaintiff claims that Defendant failed to comply with the Administrative  
2 Procedures Act in adopting and amending the criteria and procedures for assigning and  
3 evaluating and scoring and rating "successful completion" of extensions of the Trainee  
4 Program.

5 3.8 Plaintiff claims that Defendant through its employees and agents and managers,  
6 violated the common law of torts either intentionally, or by acting negligently in violation of  
7 their duties and accepted standards, including but not limited to negligent training, supervision,  
8 and evaluation of trainees.

9 3.9 Plaintiff claims that Defendant's conduct through its agents and employees  
10 violated the law of torts by its negligent and/or intentional treatment of Plaintiff, causing him  
11 extreme emotional distress and other harm.

12 3.10 Plaintiff claims that the unlawful acts of Defendant, *inter alia*, caused Plaintiff  
13 economic, vocational and psychological damage, pain and suffering, loss of enjoyment of life,  
14 and humiliation.  
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#### 16 IV. DAMAGES

17 4.1 Plaintiff asks that a Judge and a jury of 12 consider awarding him the following  
18 as remedy for damage to him:  
19

- 20 A. Restoration of Plaintiff to the Pilot Trainee Program.
  - 21 B. Determination of Plaintiff's Successful Completion of the Pilot Trainee  
22 Program.
  - 23 C. Issuance to Plaintiff of a Pilot License.  
24
- 25

1 D. Lost past and future stipends, wages and benefits as a trainee and what  
2 would have been earned as a licensed pilot.

3 E. Pre-Judgment interest on lost wages.

4 F. Cost of reasonably necessary past and future vocational and counseling  
5 services.

6 G. Compensation for the humiliation, anxiety, pain and suffering, and  
7 vocational damage and damage to employability past and future.

8 H. Compensation for other damage caused by Defendants' conduct which is  
9 determined to be unlawful.

10 I. Reasonable attorney fees and costs.

11 J. Such other damages and relief as the law allows.

12 K. Injunctive relief to require compliance with the Administrative  
13 Procedures Act, to restore Plaintiff and make him whole and restrain future violations of law.  
14  
15

16 DATED: September 9, 2010.

17  
18 **MANN & KYTLE, PLLC**

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