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TO: The Edmonds City Council

RE: 2019 Report of the City of Edmonds Prosecuting Attorney

Date: February 12, 2020

### **History of the Firm**

The law firm of Zachor and Thomas was formed in 2004. Prior to our firm working with the City, the now Honorable Judge Jeffrey Goodwin of the South Division of the Snohomish County District Court, was the City's prosecuting attorney. When Judge Goodwin was appointed to the bench, Zachor and Thomas assumed the interim prosecuting attorney position until entering a formal contract to provide full time criminal prosecution services to the City. The Court and the City have all seen many changes over the course of that time. Throughout these changes, our firm has maintained its dedication to the City of Edmonds and its citizens by continuing our aggressive yet progressive approach to holding criminal law violators accountable. Working alongside and in partnership with the Edmonds Police Department we believe we have provided a positive influence and effect for the Citizens of Edmonds.

### **Personnel**

Zachor and Thomas, Inc., P.S. currently employs eight (8) full time attorneys, two (2) full time legal assistants and three (3) part-time legal assistants. In 2019, of those eight attorneys, three (3) attorneys were assigned either full time or part time to the prosecution of City of Edmonds cases. Those attorneys are:

#### **Yelena I. Stock**

Ms. Stock has been an attorney since May 2009. She began her career at Zachor at Thomas in 2009. In 2014, she left Zachor and Thomas for the City of Seattle prosecutor's office. There she quickly excelled and became one of the City of Seattle's top trial attorneys, with a special emphasis on prosecuting crimes of domestic violence. During her tenure there, she also gained experience and knowledge, handling cases in many of the various community court programs

offered by the City of Seattle. In June of 2019, she came home to Zachor and Thomas and brought with her the knowledge and experience in prosecuting DV cases, but also her knowledge and experience with community courts. Ms. Stock is one of two supervising attorneys and handles the bulk of all City of Edmonds criminal matters as well as all cases currently in the newly formed Edmonds community court. Ms. Stock also handles legal updates and training for the Edmonds Police Department.

### **James M. Zachor – “Jimmy” or “Jim Jr.”**

Mr. Zachor has been an attorney since October 2009. He is currently a supervising attorney for the City of Edmonds. His primary responsibilities are defending the City of Edmonds on RALJ appeals and representing the police department in drug, felony and firearm forfeitures. He also handles the out-of-court administrative functions required by the court. Mr. Zachor is also active in assisting Ms. Stock in preparing the legal updates and trainings for the police department. He is the primary point of contact for police officers needing review of search/arrest warrants or with charging/arrest questions and is “on-call” 24 hours a day, 7 days a week. Mr. Zachor is responsible for all charging review cases.

### **Sara Anderson**

Ms. Anderson has been an attorney since October 2019. In her short time as an attorney, she has shown herself to be a smart and capable attorney who is passionate about the prosecution of misdemeanor cases. She currently assists Ms. Stock in the prosecution of the Edmonds criminal caseload and appears frequently at on the jail, arraignment, and review calendars.

### **Our Philosophy**

We consider these two questions in every case we are involved with. Why did the suspect commit this crime and how can we help prevent the individual from committing this or other crimes in the future?

Founded in classical deterrence theory we believe that punishments should be swift, certain, and proportionate to the crime in order to appropriately deter individuals from violating the law. The idea is that individuals who commit crimes and are caught and punished will be deterred from future criminal activity. Therefore, the general population will be deterred from offending when they are aware of others being apprehended and punished. While this theory has a history of success, this theory has also been modified to include a therapeutic aspect of prosecution. This modification serves to ensure that in addition to deterrence, it also attempts to address the underlying cause, or causes, the criminal behavior. Such examples are the use of alcohol, drug, and mental health treatment as well as MRT (Moral Reconciliation Therapy) as alternatives to jail.

While our role as prosecutor is to ensure the safety of the public and hold those accused of committing crimes in and against this community accountable, it is not lost on us that we have an equally compelling role of ensuring that those accused of crimes are treated fairly. Individuals who believe they were treated fairly will continue to hold an abiding belief in the criminal justice system, but also seek to improve themselves by avoiding criminal behavior.

Just as it is important to hold those accused of committing crimes accountable it is equally as important to exercise discretion when choosing whether to prosecute individuals. Not all individuals should be charged with a crime and not all individuals charged with a crime should be convicted. We consider, among many things whether the punishment for the crime will serve a deterrent effect, whether a public interest would be served and whether alternatives such as treatment would serve as a better alternative to jail.

**Case Filing Comparison**

Most criminal cases in Edmonds Municipal Court are filed directly into the court via a program designed by the Washington State Patrol known as SECTOR. A “direct file” case is one where the officer believes that there is probable cause that a crime has been committed. The officer generates the “charging document” and then serves it on the violator and files it directly with the court without prosecutor review. A “prosecutor review” case is begun much in the same way, except the officer generates a SECTOR citation and sends it to the prosecutor for review. In 2019 the prosecutor’s office reviewed approximately 150 cases through this process. Below is a chart comparison for the years 2017, 2018 and 2019 in criminal and civil case filings.

	Traffic Infractions	Non-Traffic Infractions	DUI/Physical Control	Other Criminal Traffic	Criminal Non-traffic	Total	Total Criminal Filings
2017	3825	53	90	331	502	4801	923
2018	4547	29	144	328	466	5514	938
2019	2804	38	135	343	507	3827	985

As can be seen with the chart there has been a steady increase in the number of criminal filings except for DUI cases, where they City saw a slight reduction in number of DUI cases. Non-traffic criminal cases consist of thefts, trespasses and drug charges, but also includes domestic violence cases as well.

**DUI**

DUI cases in Edmonds include charges of drivers under the influence of or affected by alcohol, illegal drugs, prescription drugs or a combination thereof. Investigations and arrests of impaired drivers have become and will continue to be a highly technical practice. Defense attorneys specialize in the defense of DUI offenders and prosecutors and officers must respond by precise in all aspects of a DUI arrest from stop to breath or blood testing. With rise of repeat DUI

offenders, it is even more imperative that officers and prosecutors remain current on their training. Prosecution of DUI cases involving blood draws have been and continue to be hampered by extreme delays in the time it takes from when the State Toxicology lab receives blood samples for testing and the time the blood analysis is actually tested. What took mere weeks just a few years ago, now takes up to 10 months to process. This creates significant case management issues because a DUI case may take up to a year or more to complete, while DUI laws attempt to be tougher on repeat DUI offenders.

### **Jury Trials**

The right to a jury trial of one's peers is one of the oldest traditions in American History. It is a fundamental constitutional right that all criminal defendants, from alleged serial killers to shoplifters, are entitled to. Jury trials are also unpredictable and expensive. Jurors rarely get to hear the "whole" story due to evidence rules. While a vast majority of misdemeanor cases do not reach a jury trial, the prosecutor nor the defense attorney can do their job without the civil service of jurors. In 2019, the City of Edmonds Municipal court held seven (7) jury trials. The breakdown is as follows:

Number of Jury Trials: 7

Number of guilty convictions at trial: 4

Number of not guilty convictions: 1

Number of trials ending in a mistrial: 2

Jury Trials by case type and result:

DUI – 2 trials – 2 guilty verdicts (both on appeal)

Assault 4 Domestic Violence: 3 trials – 1 guilty verdict (on appeal) and 1 mistrial and on retrial defendant was found not guilty.

Domestic Violence No Contact order violation – 1 trial, resulted in mistrial, not re-tried

Obstructing a Law Enforcement Officers – 1 trial with a guilty verdict (on appeal)

### **Appeals**

In Washington, defendants have what is called a direct appeal or appeal as a matter of right, meaning the defendant has a right to appeal a finding of guilty to a higher court. Appeals may also result from a prosecutor appealing a decision made by a judge which they believe is against the rule of law. Most often, appeals are a result of a defendant being found guilty after a jury trial. Appeals from jury trials often take several months to process for transcriptions, reviewing, brief writing, and oral arguments before the court are conducted. One such example, is a current DUI case on appeal resulted in a 660-page transcript. Currently, all jury trial guilty verdicts from 2019 are in the appeal process. Including appeals from 2017 and 2018, bring the total to 8 pending appeals (total also includes 2 new appeals already filed in 2020).

## **Notable cases in 2019**

While Edmonds had 985 cases filed in 2019, several cases stand out because of the nature of the case, history of the case, or cases where our office felt we truly made a difference in protecting the community or a victim. We would like to highlight three such cases in this report.

Edmonds v. Sanchez –The defendant was charged with his 4<sup>th</sup> DUI in the last ten years. In Washington, that is considered a felony, but the case was not accepted for felony review. After being found guilty at trial of DUI and Driving on a Suspended License in the 2<sup>nd</sup> Degree, the defendant was sentenced to one year in jail (the maximum allowed under Washington law). The case is currently on appeal and has a transcript of 660 pages.

Edmonds v Bendzak –This case stands out not only because of being a repeat offender, but also highlights the difficulties posed by the long delay in receiving toxicology results from the State Toxicology lab. This case was originally filed in 2018 but had to be dismissed and re-filed almost 8 months later when the toxicology results were finally received. He was found guilty at jury trial and sentenced to 30 days in jail and 5 years of probation with requirements to obtain alcohol/drug treatment. The case is currently on appeal.

Edmonds v. Curtiss – This was perhaps one of the most difficult cases ever handled by this office. This case involved a victim who was stalked for over 5 years by the defendant. Originally filed in 2017, the case highlighted the current problems and issues plaguing Western State Hospital and the competency process. The case was finally resolved just prior to the holiday season and after 5 long years, the family was able to enjoy a holiday season without looking over their shoulder. This case also shows the perseverance of a family that would not be deterred but rather determined to send a message that they were not going to be afraid anymore. The defendant, after numerous and long conversations with the victim and her family, accepted a diversion agreement. While this may not sound like a just outcome because of the nightmare this family endured, the diversion agreement resulted in a permanent/life-time stalking protection order and significant mental health treatment. The diversion agreement also saved the victim from having to testify and relive the horrors she endured during this part of her young life. While the defendant is on this diversion agreement, should he violate any provisions or conditions, he will likely spend a year or more in jail.

## **Prospects for 2020**

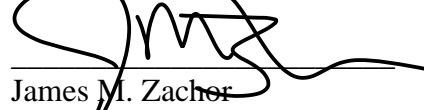
Community Court – Edmonds Municipal Court began its newly formed community court in January of 2020. Currently, the program has had two court calendars and the new program appears to be heading in the right direction by improving the success rate of defendant's on probation.

DWLS 3 post-filing, pre-trial diversion program – The prosecutor's office is currently developing a program improve the re-licensing of criminal defendants charged with driving on a suspended license in the third degree. While there are various reasons for such a driving status, it primarily

is a result of not paying or responding to traffic tickets. This program is designed help people become lawful licensed and insured drivers and therefore less likely to be in the criminal justice system.

Domestic Violence prosecution – Adding Ms. Stock as one of the supervising attorneys for the City of Edmonds instantly brought a wealth of knowledge and experience to the firm’s DV prosecution. Additionally, having the City’s DV coordinator, Jill Schick, significantly increases the contact and success rate of DV prosecutions. Combined, the effect has seen a reduction of repeat domestic violence offenders and improvement in victim/police/prosecutor interaction and this office looks toward continued improvement on Domestic Violence prosecution cases

Respectfully submitted this 13<sup>th</sup> day of February, 2020,

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

James M. Zachor  
WSBA 41688

Zachor and Thomas, Inc., P.S.