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SUPREME COURT
STATE OF WASHINGTON
Nov 06, 2013, 10:56 am
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NO. 89321-7

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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

THE STATE OF WASHINGTON,

Petitioner,

v.

MARTIN ARTHUR JONES,

Respondent.

ANSWER TO MOTION
TO STRIKE APPENDIX
"C" OF THE PETITION
FOR REVIEW

I. IDENTITY OF RESPONDING PARTY

The responding party is the petitioner, the State of Washington.

II. STATEMENT OF RELIEF SOUGHT

The State respectfully requests that the Court DENY the motion to strike Appendix C of the Petition for Review.

III. FACTS RELEVANT TO MOTION

The State filed a petition for review. The sole issue raised in the petition for review pertains to the Court of Appeals' conclusion that respondent Jones's right to public trial was violated when a court clerk drew alternate juror numbers from a box during a short break in the closing arguments of a superior court trial. The trial occurred in Pierce County Superior Court. The issue presented necessarily involves a discussion of the manner in which the jury was selected.

The State cited Pierce County's jury selection procedures in its petition for review and appended a copy of the procedures to the petition. Jones moves to strike the exhibit on grounds that it is "irrelevant" and was "not offered or considered by the trial court or the Court of Appeals."

IV. ARGUMENT

Jones cites RAP 10.3 and 10.4 as authority for his motion to strike. These rules apply to briefs filed on direct review, not petitions for review. The provisions governing the content of a petition for review are found in Title 13 of the RAP 13.

Even if applicable, RAP 10.4(c) provides that if a party presents a "statute, rule, regulation, jury instruction finding of fact, exhibit, or the like," it should be quoted verbatim or a copy of the text appended to the brief. RAP 10.4(c) contemplates a party citing a "court rule" or "the like." Here, the administrative rules of the court are "the like" of a local court rule and are appropriate to cite. The administrative rules were not attached as "Exhibit C" as described by respondent Jones. The administrative rules were attached as "Appendix C" because the State cited the rules as legal authority and, pursuant to RAP 10.3(c), appended the text to the brief.

Pierce County's administrative guidelines are analogous to a local court rule. Like a court rule, the court and its staff are bound to follow its

own administrative rules. Indeed, the rules here include a general order of the court signed by the presiding judge. The administrative rules of the court are in essence part of “the record” of every superior court case because they apply to every case.

The “experience and logic” test at issue in the petition for review requires the Court to examine whether certain administrative tasks of the clerk historically occur in public. *See generally State v. Sublett*, 176 Wn.2d 58, 292 P.3d 15 (2012). The State argued below and in its petition for review that the administrative tasks of the clerk historically occur off the record and therefore the public trial right does not attach to them.

Pierce County’s administrative rules provide examples of administrative tasks that are delegated to the court staff in Pierce County. The administrative rules of the court are analogous to a local court rule and were appropriately cited by the State. The State appended the text of the rules to its brief in this case for ease of reference for the Court.

Pierce County Superior Court is also a public agency and, like a state agency, it is appropriate to cite to the administrative rules of that agency. The State submits that just as it would be appropriate to cite to the WAC in regards to the rules of a state agency, it is also appropriate to cite to the rules of a county agency (like Pierce County Superior Court) when the county agency’s rules are relevant.

The State cited the administrative rules because consideration of the rules is helpful to the “historical analysis” that is a necessary part of the “experience and logic” test. The Court should deny the motion to strike.

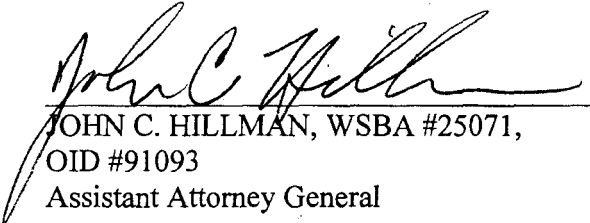
V. CONCLUSION

Pierce County Superior Court’s administrative rules for the selection of jurors are akin to a local court rule. The administrative rules were appropriately cited by the State’s petition for review in light of the jury selection issue presented in the petition. The State appended a copy of the rules for ease of reference for the Court. The Court should deny the motion to strike.

RESPECTFULLY SUBMITTED this 6 day of November, 2013.

ROBERT W. FERGUSON
Attorney General

By:


JOHN C. HILLMAN, WSBA #25071,
OID #91093
Assistant Attorney General

NO. 89321-7

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

THE STATE OF WASHINGTON,

Petitioner,

v.

MARTIN ARTHUR JONES,

Respondent.

DECLARATION OF
SERVICE

DAISY LOGO declares as follows:

On November 6, 2013, I deposited into the United States Mail,
first-class delivery, postage fully prepaid and addressed as follows:

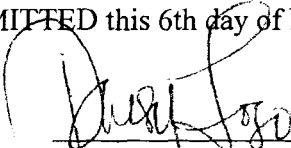
Thomas Kummerow
Washington Appellate Project
1511 Third Avenue, Suite 701
Seattle, WA 98101

Copies of the following documents:

- 1) Answer to Motion To Strike Appendix "C" Of The Petition For Review
- 2) Declaration of Service

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

RESPECTFULLY SUBMITTED this 6th day of November, 2013.



DAISY LOGO
LEGAL ASSISTANT

OFFICE RECEPTIONIST, CLERK

From: OFFICE RECEPTIONIST, CLERK
Sent: Wednesday, November 06, 2013 10:56 AM
To: 'Logo, Daisy (ATG)'
Cc: tom@washapp.org; Hillman, John (ATG)
Subject: RE: State v. Martin A. Jones, #89321-7

Rec'd 11-6-13

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Cc: tom@washapp.org; Hillman, John (ATG)
Subject: State v. Martin A. Jones, #89321-7
Importance: High

Attached for filing for the case referenced above, please find the following documents:

1) Answer to Motion to Strike Appendix C of Petition For Review & Declaration of Service

On behalf of:

JOHN C. HILLMAN
WSBA #25071, OID #91093
Assistant Attorney General
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Seattle, WA 98104
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Thank you,

The logo for Daisy Logo, featuring the words "Daisy Logo" in a stylized, cursive script font.

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