No. 895465

SUPREME COURT
OF THE STATE OF WASHINGTON

ANNE BLOCK,

Petitioner,

vs.

THE CITY OF GOLD BAR,

Respondent.

ANSWER TO PETITION FOR REVIEW

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I. IDENTITY OF RESPONDENT AND INTRODUCTION

Respondent City of Gold Bar ("Gold Bar" or "City") asks this Court to deny review of the decision of Division I of the Court of Appeals designated in Section II of this Answer. Anne Block's ("Block") Petition for Review ("Petition") fails to address, let alone satisfy, the criteria governing acceptance of review set forth in RAP 13.4(b).

The decision of the Court of Appeals is wholly consistent with established case law, and does not present any matter of substantial public interest justifying review here. This Court should uphold the Court of Appeals' well-reasoned decision, and deny Block's Petition.

II. DECISION OF THE COURT OF APPEALS

Division I of the Court of Appeals filed its decision on September 23, 2013, unanimously affirming the trial court's dismissal of yet another of Block's several Public Records Act ("PRA") lawsuits. A copy of the decision of the Court of Appeals is included in Block's Appendix submitted with her Petition.

III. RESTATEMENT OF THE ISSUES PRESENTED FOR REVIEW

A. Should review be denied where RAP 13.4(b)(1) and (2) are unsatisfied because the decision of Division I of the Court of Appeals is fully consistent with the decisions of this Court and other divisions of the

Court of Appeals?

B. Should this Court deny review where RAP 13.4(b)(3) and (4) are unsatisfied because the decision of Division I of the Court of Appeals is fact-specific and does not involve any issue of substantial public interest?

IV. FACTS RELEVANT TO PETITION

A. Block Files Suit in the Trial Court.

On November 11, 2011, Block served the City with a Summons and Complaint alleging violations of the PRA, Chapter 42.56 RCW. CP 316 – 317. Continuing what had by then become a well-established pattern, Block on November 14, 2011 filed a Notice of Unavailability claiming that she would be "unavailable and out-of-state on a family emergency" from December 14, 2011 to January 7, 2012.[1] CP 314.

Block served discovery on the City electronically on November 11 and November 17, and stated that she would seek to depose the Mayor and a councilmember in early to mid-December. CP 233. In an effort to streamline the discovery process, the City e-mailed Block on November 18, indicating that the City would "agree to accept service electronically of these discovery documents, as well as all pleading in this case, if you agree to do

[1] It is unclear to the City how Block could foresee that a "family emergency" would occur one full month *after* the date of her Notice of Unavailability.

the same." CP 238 – 240.

Within minutes Block responded, "I will accept service electronically." CP 238.

The City prepared a Notice of Deposition scheduling Block's deposition for December 1, 2011 at 10:00 a.m., well in advance of the December 14, 2011 commencement of her period of claimed unavailability. On November 19 (a Saturday), at 1:08 p.m., the City's process server attempted previously arranged service on Block at her residence in Gold Bar. CP 32 – 33. The following Monday, November 21, the City served Block with the deposition notice by e-mail, pursuant to Block's written agreement of November 18 to accept e-mail service. CP 238 – 240.

The next day, November 22, the City learned that Block had requested that the Snohomish County Prosecutor reschedule a previously scheduled sufficiency hearing on Block's recall petition against Gold Bar Mayor Joe Beavers from December 2 to December 1, 2011 at 9:30 a.m. – a half hour prior to the time that the City had noted Block's deposition to begin.[2] Upon learning of the conflict between the scheduled deposition and the sufficiency hearing on Block's recall petition, and in order to accommodate both proceedings, the City immediately served Block on

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[2] Block requested that the sufficiency hearing be rescheduled from December 2 to December 1 to accommodate claimed "prior legal engagements." CP 260 – 261.

November 22, 2011 with an Amended Notice of Deposition, voluntarily changing the time of the December 1 deposition from 10:00 a.m. to 1:30 p.m. CP 267 – 273; 288 – 289.

On November 21, 2012, the same day that the City served Block with its first Notice of Deposition, Block filed a second Notice of Unavailability, dated November 19, 2011, stating she would be out of the area from November 21, 2011 to November 24, 2011.[3]

Also on November 21, Block e-mailed City Attorney Margaret King regarding the deposition scheduling, stating, "As you know my life has been threatened; I will remain unavailable until January 2012, only working from my laptop and by a secured telephone line." CP 38. Block later responded that "[u]nless its [*sic*] by telephone, its [*sic*] not going to happen. I sent you notice . . . ." CP 39. Block did not seek a protective order.

Block failed to appear for her deposition on December 1, 2011. In response, the City filed a motion to compel Block's attendance, and for

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[3] Although Block claims to have served the City with the new Notice of Unavailability on November 19, the City did not receive it until November 22, 2011. Also, the envelope in which the Notice was mailed was postmarked November 21. CP 42 – 44. Further, e-mails obtained from the Snohomish County Prosecutor's Office reveal that, in separate litigation against Snohomish County, Block had noted the deposition of a county employee for November 22, 2011 – a date on which she claimed to the City that she would be unavailable because she was "out of the area" until November 24. *Id.*; CP 47 – 48. It should also be noted that on November 19, the same day Block claims to have filed and served her November 21 - 24 "unavailability," she e-mailed the County to demand that a deposition that she scheduled for November 22, 2012 be conducted by telephone, not because she was out of the area, but because of an alleged "death threat" by the deponent. CP 50.

sanctions for her willful and deliberate failure to appear. CP 286 – 298. In addition to the e-mails from Block referenced above, the City's Motion for Costs, Expenses and Fees, and Motion to Compel was supported by the Declaration of Councilmember Chris Wright, who testified that he had twice encountered Block dining out in public, during the same time period in which Block had claimed that "my life has been threatened and will not be making no [sic] in person appearances." CP 67, 207 – 285. The City served its motion on Block by e-mail on December 12, 2011. CP 204 – 206, 238, 298. Block did not file a response to the City's motion.

On December 20, Commissioner Gibbs granted the City's motion. The Order required Block to appear for deposition on January 9, 2012, and awarded the City its costs and fees expended in preparing for the December 1 deposition, as well as those expended in preparing the motion. The Order further authorized the City to present an attorneys' fees affidavit to the Ex Parte Department on December 30, 2011 (within 10 days of the date of the Order). CP 75 – 76.

Block was served by e-mail and regular mail with a copy of Commissioner Gibbs' Order on December 20, 2011, the same day it was issued. CP 60 – 61. Block acknowledged receipt of the Order, by e-mail on December 22, 2011. CP 78.

The City provided Block with a copy of its requested fees and proposed order by e-mail on December 29, 2011. CP 185 – 197. Although Block does not dispute that she received the documents and notice of the ex parte presentation, Block did not appear or respond. The City presented its fee affidavit to the Ex Parte Department on December 30. Commissioner Pro Tem Corrigan entered an Order Awarding City of Gold Bar's Costs, Expenses and Fees in the amount of $7,049.10 against Block to be paid at or before the date and time of her deposition scheduled for January 9, 2012. CP 198 – 200. The Order further authorized the City to set a show cause hearing if Block failed to pay, and also specified that, in the absence of good cause, the case would be dismissed. *Id.*

Block appeared for her deposition on January 9. When asked whether she had brought payment, she replied, "I did not, I will not. I will be appealing to the Washington State Court of Appeals." CP 86 at 7:13 – 17. When asked why she did not bring payment as required by the court's Order, she replied, "Because it was an unlawful filing." *Id.* at 7:19. Block disagreed that Commissioner Gibbs' use of the word "shall" in the Order was mandatory rather than discretionary, and claimed that she retained the right to appeal Commissioner Gibbs' Order. CP 88 at 15:8 – 17. Block further asserted that Superior Court orders are invalid until after expiration of an appeal period. *Id.* at 16:17 – 19.

On January 9, 2012, Block filed yet another Notice of Unavailability, dated January 5, 2012, stating that she would be "out of the country and thus unavailable from January 18 to January 25, 2012." CP 181. Despite this claimed "unavailability," on January 19, 2012, Block filed an untimely "Motion to Modify" the Commissioner's ruling,[4] a full thirty days following the date of Commissioner Gibbs' Order and twenty days after Commissioner Pro Tem Corrigan's Order.[5] CP 161 – 180. On the same day, Block also filed a Notice of Discretionary Appeal of Commissioner Gibbs' Order. CP 159.

On January 27, 2012, and consistent with Commissioner Pro Tem Corrigan's Order, the City moved for an order of dismissal with prejudice. CP 151 – 157. The City courteously scheduled the hearing on its motion for the same date that Block had set her motion to modify. CP 131, 177. On February 3, 2012, after hearing oral argument on both motions, the Honorable Linda C. Krese denied Block's Motion to Modify as untimely. Judge Krese then found Block to be in contempt of court for willfully violating the Commissioner's Order, that Block's action had prejudiced the

[4] Block's motion is correctly known as a "motion for revision" pursuant to RCW 2.24.050. The timing of Block's motion is a good example of the pattern she regularly follows, first filing Notices of Unavailability and then shortly thereafter filing her own motions, lawsuits, and/or public record requests during the time that she purports to be "unavailable." CP 161 – 172.

[5] RCW 2.24.050 requires a motion for revision to be filed within 10 days from the date of the order. Failure to file within that time period deprives the Superior Court of jurisdiction.

City, and that lesser sanctions would not be adequate. Her Honor accordingly dismissed Block's lawsuit. CP 22.

B. Block Appeals to the Court of Appeals.

On Block's appeal to Division I of the Court of Appeals, the Court unanimously affirmed the superior court's decision in an unpublished decision. *See* Petition, Appendix A (*Block v. City of Gold Bar*, No. 68163-0-I/Consold. w/ No. 68561-9-I, slip op. (Div. I, 2013) ("*Block*")). The Court of Appeals first noted that Block's briefing was inadequate on several bases: (1) Block failed to cite to the record contrary to RAP 10.3(a)(5); (2) Block relied on facts outside of the Court's record; and (3) Block failed to clearly identify the basis of her challenges to the various trial court orders. *Id.* at 6.

The Court of Appeals next found that Block had misrepresented the standard of review. Unlike the underlying PRA issues, which are reviewed de novo under ordinary circumstances, this case was dismissed as a discovery sanction. The Court of Appeals accordingly found the proper standard to be whether the trial court exercised its discretion in a manifestly unreasonable manner or on untenable grounds. *Id.* at 7.

After applying the proper standard, the Court of Appeals found that the trial court had not improperly exercised its discretion by entering the discovery orders and ultimately dismissing Block's suit. Further, the

Court determined that Block had failed to assign error to any of the trial court's findings of facts or conclusions of law and had failed to establish any abuse of discretion on behalf of the trial court. *Id.* at 10.

C. Block's Erratic Behavior Continues.

Even after the Court of Appeals affirmed the trial court's dismissal, Block's later actions emphasize the very reasons dismissal was proper.

On September 16, 2013, Block filed a Motion to Include Additional Evidence, in which she alleged new irrelevant and unsupported "facts."[6]

Then, after the Ports of Tacoma and Olympia filed a motion to publish with the Court of Appeals on October 15, 2013, Block, without being requested to do so, filed a Response and a Motion to Strike the Port of Tacoma's Motion to Publish on October 22, 2013.[7] Block served both pleadings on the City via e-mail. Block again alleged irrelevant and unsupported "facts." Block also proclaimed that she "has already

[6] Block served her September 16, 2013 motion on the City by fax. The Court denied her motion.

[7] Block filed two pleadings that day – one entitled "Appellant Anne Block's Response to Port of Tacoma's Motion to Publish in Favor of Appellant's Motion to Strike Pursuant to Washington State's Anti-SLAPP, RCW 4.24.525 and in Favor of Costs, Sanction, Fees, Expenses for Having to Answer an Untimely Filed Motion"; and one entitled "Appellant Anne Block's Special Motion to Strike Port of Tacoma's Motion to Publish in Favor of Appellant's Motion to Strike Pursuant to Washington State's Anti-SLAPP, RCW 4.24.525 and in Favor of Costs, Sanction, Fees, Expenses for Having to Answer an Untimely Filed Motion." Both pleadings are essentially the same.

submitted declarations to this Court affirming that she is withdrawing this case to pursue a 42 USC 1983/1988 complaint in US Fed. District Court as a more appropriate avenue based on advice of counsel . . . ."[8]

The very next day, October 23, 2013 – the day her Petition for Review was due[9] – Block sent an e-mail to the City stating, "Since you refused to accept electronic service in this Petition to be filed with the Div. I today, a hard copy will be placed in USPS today." The City did not receive Block's Petition until five days later.

As discussed in detail below and contrary to her assertion that she "submitted declarations to this Court affirming that she is withdrawing this case,"[10] Block's Petition not only contains *additional* unsupported factual assertions, but it also fails to address any of the criteria for a Petition for Review pursuant to RAP 13.4(b).

V. ARGUMENT FOR DENIAL OF REVIEW

This Court should deny discretionary review because Block's Petition fails to satisfy the criteria for accepting review in RAP 13.4(b).

A. Criteria Governing Acceptance of Discretionary Review.

Under RAP 13.4(b), a petition for review will be accepted by the

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[8] Block's Response and Motion at 5 (Block failed to provide page numbers to her response and motion).

[9] It is unclear whether the due date of Block's Petition for Review was shifted pursuant to RAP 13.4(a) since the Ports' motion to publish was not ruled timely until after the Petition deadline would have passed.

[10] *Id.*

Supreme Court only:

> (1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or
>
> (2) If the decision of the Court of Appeals is in conflict with another decision of the Court of Appeals; or
>
> (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or
>
> (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

Block's Petition does not cite to RAP 13.4(b), and her "Issues Presented for Review" do not include discussion of the criteria included in RAP 13.4(b). Rather, her Petition appears merely to restate the legal arguments unsuccessfully offered to both the trial court and the Court of Appeals. Block's failure to even address, let alone satisfy, RAP 13.4(b) is by itself sufficient basis for this Court to deny review.

To the extent that this Court proceeds, the City offers the following additional argument.

B. The Decision of the Court of Appeals is Consistent with Decisions of This Court and Other Divisions of the Court of Appeals.

Block states, without citation, that:

> Basic constitutional principles are at stake in this case and are not only necessary to a [sic] sustain a free democratic and open government here in Washington but are

> basic fundamental guaranteed rights secured under Washington and the United States Constitutions: (1) the fundamental right of the public to know the workings of their government through public records requests made under the Public Disclosure Act, RCW 42.17.250, et set.,; and (2) the right of a citizen to be afforded noticed [sic] *and* a meaningful opportunity to be heard prior to any judgment entered into the record.[11]

Petition at 2 (emphasis in original). Block also argues that the *Block* decision "rewrites Washington Court Rule 45 which mandates that all subpoenas' [sic] be physically served upon a deponent." Petition at 10. In reviewing Block's Petition, however, the City is unable to identify any portion in which Block actually identifies a conflict with other appellate decisions, as opposed to her mere disagreement with the decision of the Court of Appeals below. "Where contentions raised on appeal are not supported by citation of authority [this Court] will not consider them unless well taken on their face." *Griffin v. Dept. of Social and Health Svcs.*, 91 Wn.2d 616, 630, 590 P.2d 816 (1979) (citing *State v. Kroll*, 87 Wn.2d 829, 558 P.2d 173 (1976)). Block merely announces that due process requires notice and a meaningful opportunity to be heard, but then fails to explain how or why the decision is in conflict with precedent.

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[11] Block cites to the former Public Disclosure Act, RCW 42.17, which was recodified in 2006 in Chapter 42.56 RCW, and renamed the "Public Records Act." The City will refer to Chapter 42.56 RCW or the "PRA" for purposes of this Answer.

Petition at 5.

The City has no quarrel with the general principles of due process law as announced by Block, and the Court of Appeals certainly did not overturn those principles below.

Block simply misstates the Court of Appeals' holding. The *Block* court did not find that Block was not entitled to due process. Instead, in response to Block's arguments regarding the violation of CR 45, the *Block* court found:

> Block's reliance on CR 45 is unavailing . . . Block, as the plaintiff, was entitled to "reasonable notice in writing" of her deposition. CR 30(b)(1). Only a party seeking to compel the attendance of a deponent who is not a party of managing agent of a party is required to serve a subpoena on that deponent in accordance with CR 45. CR 30(b)(1). Block cites no authority supporting her claim that the City was required to use a subpoena. The City's attempt to personally serve Block with notice and a subpoena does not establish that compliance with CR 45 was mandatory.

Block, at 8 – 9. Furthermore, in response to Block's arguments that the City impermissibly noted motions during Block's claimed unavailability, the Court found:

> Due process requires only that a party receive proper notice of proceedings and an opportunity to present his or her position to the court. Here, the City filed and served its

> motion for sanctions and to compel on December 12, before Block's period of unavailability began. Block failed to respond to the motion in any manner. She did not request an extension of time to respond, seek to continue the hearing, nor request to participate by telephone . . . Block had an opportunity to present her position and have the trial court consider it. Due process requires no more.

Block, at 9 – 10 (citations omitted).

"Procedural due process is not a fixed standard, but a relative concept changing in form case by case, providing that process of law which is due in each circumstance." *Reilly v. State,* 18 Wn. App. 245, 250, 566 P.2d 1283 (Div. III, 1977) (citations omitted). Here, Block does not contend that she did not receive notice, only that the City was legally bound by her notices of unavailability, and that any action by the City during her unavailability violated due process.[12] Despite her assertions, Block had an opportunity to be heard – she simply did not take it. Block's own failures do not establish a due process violation. Thus, the Court of Appeal's holding does not modify due process requirements in any way.

C. No Substantial Public Interest Justifies Review.

Although Block's Petition fails to include an argument that

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[12] The Court properly rejected that argument finding that there was no authority to support Block's claim that a litigant may unilaterally bind opposing counsel by filing notices of unavailability. *Block*, at 9 – 10.

substantial public interest justifies review under RAP 13.4(b)(4), she submits that:

> The *Block* decision chips away at basic due process and if allowed to stand will trickle down to trial courts and agencies, and encourage agencies to file Motions after being notified of a requester's unavailability. Petitioner respectfully submits that the *Block* decision frustrates the purpose of RCW 42.56 by weakening its fundamental provisions that places the burden on the agency not the requester in public records cases.

Petition at 10 (italics in original). Block's arguments regarding implications to the PRA are misplaced. The *Block* decision is based on Block's failure to comply with the Civil Rules and court orders, not on the substantive merits of a PRA action. Under the same procedural facts, the outcome would have been the same regardless whether the underlying cause of action impacted the PRA. The Court of Appeals merely applied well-established due process standards to the specific facts in *Block*. Given the fact-specific inquiry in a discovery sanction dismissal case, no substantial public interest justifies review here.

VI. CONCLUSION

This Court should deny review. The Court of Appeals correctly applied precedent to decide a fact-specific case involving a plaintiff's abuse of the discovery process and willful violations of court orders. The

criteria in RAP 13.4(b) have not been met, and Block has not cited to a single case in support of her arguments. Accordingly, Supreme Court review is unwarranted here, and Block's Petition should be denied.

RESPECTFULLY SUBMITTED this 25th day of November, 2013.

KENYON DISEND, PLLC

By _____

Michael R. Kenyon
WSBA No. 15802
Ann Marie J. Soto
WSBA No. 42911
Attorneys for Respondents

DECLARATION OF SERVICE

I, Mary Swan, declare and state:

1. I am a citizen of the State of Washington, over the age of eighteen years, not a party to this action, and competent to be a witness herein.

2. On the 25th day of November, 2013, I served a true copy of the foregoing Answer to Petition for Review on the following individuals using the method of service indicated below:

Anne K. Block 115 ¾ West Main St., Suite 204 Monroe, WA 98272	☐ First Class, U.S. Mail, Postage Prepaid ☒ Legal Messenger ☐ Overnight Delivery ☐ Facsimile ☒ E-Mail: anne.k.block@comcast.net, lifeisgood357@comcast.net

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

DATED this 25th day of November, 2013, at Issaquah, Washington.

Mary Swan

OFFICE RECEPTIONIST, CLERK

From: Mary Swan <Mary@kenyondisend.com>
Sent: Monday, November 25, 2013 12:30 PM
To: OFFICE RECEPTIONIST, CLERK
Cc: Mike Kenyon; Ann Marie Soto; Margaret Starkey
Subject: Anne Block v. City of Gold Bar - Case No. 89546-5
Attachments: PLD - Answer to Petition for Review-efile.pdf

Dear Sir/Madam:

Please accept for filing the attached Answer to Petition for Review in Supreme Court Case No. 89546-5, Anne Block v. City of Gold Bar, which includes a Declaration of Service.

This Answer to Petition for Review is filed on behalf of attorneys for the City of Gold Bar, Michael R. Kenyon (WSBA No. 15802) and Ann Marie Soto (WSBA No. 42911). Their e-mail addresses are: mike@kenyondisend.com and annmarie@kenyondisend.com. Mr. Kenyon and Ms. Soto can be reached by telephone at 425-392-7090.

Thank you.

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