

IN THE COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

MARK DAVID VANNUSSOLE,
Plaintiff,

v.

PIERCE COUNTY, et al.
Defendant.

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STATE OF WASHINGTON
BY *[Signature]*
DEPUTY

FILED
COURT OF APPEALS
DIVISION II

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR PIERCE COUNTY

The Honorable Ronald E. Gulpepper, Depty 17

OPENING APPELLATE BRIEF

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A. ASSIGNMENT OF ERRORS.

1. The Pierce County Department of Assigned Counsel (DAC) is an agency and as such must comply with the PDA provision RCW 42.56.520 (CP 500-552, main pleading pg 4-7; CP 601-627, m.p. pg 9; CP 628-640, Exht. #1, page 5-6; CP 641-648, pg 2; CP 263-361, App. G, pg 3-7), thus the documents (listed in CP 1-187, m.p. pg 6-16 & App B1 & B2; Cp 209-247, m.p. pg 6 & App. #1-5; Cp 628-640, Exht #1, pg 8; and CP 500-552, App #10) sought by Vannausdle with his two Oct 6, 2005 PDA Requests are public records. Consequently, the DAC/Pierce County is in violation of .520 since Oct 20, 2005 which is the day the DAC received these 2 PDA Requests via certified return receipt mail (CP 657-664 & Cp 1-187, App. V) and taciturnly refused to respond at all with 5 business day as required by .520.

2. The trial court in its May 10, 2007 decision (CP 497-499) to dismiss plaintiff's action: (a) Misapplied RCW 42.56.550 (Per Newman v King County & and Limstrom v Ladenburg) by refusing to perform (after promising to do so-- Verbatim @ 31-38) a thorough Show Cause Hearing/Exemption Analysis by physically collecting and reading each contested

record (line item by line item averments listed in CP 1-187, m.p. pg 6-16 & App A1, A2, B1, & B2; CP 209-247, m.p. pg 4-7, App #10 to CP 500-552; Cp 263-361; and CP 261-62) in chambers in order to verify if the exemptions claimed by Pierce County were proper or not and/or over-broadly applied; (b) further misapplied .550 by not factoring in case law (e.g., Hearst v Hoppe & Heidelbrink v Moriwaki) that supports the redaction of exempt portion of documents and the turning over of these documents after redaction to Vannausdle; and (c) misapplied the law in its interpretation and application of the WORK PRODUCT DOCTRINE, which was compounded by the trial court errors in "a" and "b" above.

3. The Process of service in this action on Pierce County through the Pierce County Auditor was timely and complete under RCW 4.28.080 and CR 4(d)(4) (factoring in the GR 3.1 Mail Box Rule), which would require reversal of the trial court's Order dismissing Vannausdle's action (06-2-11214-3) alleging numerous PDA violations, especially factoring in the documented government misconduct of mail tampering, diversion, & delay affecting his process of service on Pierce County and timely Appeal Rights. Based on the fact on the record, this misconduct alone sufficiently prejudiced Vannausdle severely, necessitating reversal of the court's dismissal ruling (CP 601-627; CP 628-640; & CP 471-494).

4. (A) Vannausdle's defense counsel, Richard Whitehead, violated WSBA Formal Opinion 181, the case requirements of Bell v Shaw, and RPC 1.15(d) by refusing to turn over to plaintiff the legal case file after several (non-PDA) written requests were made to Whitehead to do so prior to October 2005 (CP 1-187, M.p. pg 16-17); and (B) opposing counsel made several gross misstatements of fact and case law, which the court relied on that affected its decision (CP 497-499) and resulted in the dismissal of the case. Specifically, counsel (i) mistated and misquoted Hangartner and RCW 42.56.120 as to what is a valid PDA request (especially in regards to copy costs) which basically disregarded the 2 Prong Test in Wood v Lowe as to what is a valid PDA request; (ii) incorrectly stated plaintiff's 4 PDA Requests (CP 1-187, App A1, A2, B1, & B2) made in Oct. 2005 were not valid PDA requests when in fact they satisfied both prongs of Wood v Lowe; and (iii) erroneously stated letters Vannausdle sent to his former lawyer, prior to Oct 2005, were PDA Requests when they were just letters requesting his legal file per WSBA Formal Opinion 181.

B. ISSUES PERTAINING TO ASSIGNMENT OF ERRORS.

1. Is the DAC an agency and as such must it comply with the PDA provision RCW 42.56.520 and doesn't this mean the documents sought by Vannausdle with his two Oct. 6, 2005 PDA Requests are in fact public records? As a consequence, is the

DAC/Pierce County in violation of the ACT (.520) since Oct. 20, 2005, which is the day the DAC received via certified return receipt mail both these PDA Requests and taciturnly refused to respond at all within 5 business days? (Error #1)

2. Did the trial court in its May 10, 2007 decision (CP 497-499) to dismiss plaintiff's action: (a) misapply RCW 42.56.550 by refusing to perform (after promising to do so--Verbatim @ 31-38) a thorough Show Cause Hearing/exemption Analysis by not physically collecting and reading each contested record in chambers in order to verify if the exemptions claimed by Pierce County were proper or not or were over-broadly applied? (b) further misapply .550 by not factoring in case law (e.g., Hearst & Heidelbrink) that supports the redaction of exempt portions of documents so they could be turned over to Vannausdle?; and (c) misapply the law in its interpretation and application of the WORK PRODUCT DOCTRINE, which was compounded by the trial court errors in "a" & "b"?

3. Was the process of service in this action on Pierce County through the Pierce County Auditor timely and complete under RCW 4.28.080 and CR 4(d)(4) (factoring in the GR 3.1 Mail Box Rule), which would require reversal of the court's Order dismissing Vannausdle action (06-2-11214-3) alleging numerous PDA violations, especially taking into account the

documented government misconduct of mail tampering, delay, and diversion that affected his process of service on Pierce County and timely appeal rights? Based on the facts on the record, wouldn't this misconduct alone, which severely prejudiced Vannausdle's rights and process of service, necessitate reversal of the court's dismissal order? (Error #3)

4. Did Vannausdle's defense lawyer, Richard Whitehead, violate WSBA Formal Opinion 181, the case requirements of Bell v Shaw, and RPC 1.15(d) by refusing to turn over to plaintiff his legal case file after several requests in writing were made to him to do so prior to Oct. 2005?; and (B) did opposing counsel make several gross misstatements of fact and case law, which the court relied on that affected its decision that resulted in dismissal of his case? Specifically, didn't opposing counsel (i) mistate and misquote Hangartner and RCW 42.56.120 as to what is a valid PDA request (especially regarding copy costs) that basically disregards the 2 Prong Test in Wood v Lowe as to what is a valid PDA Request?; (ii) incorrectly state plaintiff's 4 PDA Requests (CP 1-187, App A1, A2, B1, and B2) sent in Oct. 2005 were not valid PDA requests when in fact they satisfied both prongs of Wood v Lowe?; and (iii) erroneously state letters Vannausdle sent to Whitehead, prior to Oct. 2005, were PDA request when they were just letters requesting his legal file

per WSBA Formal Opinion 181? (Error #4)

C. STATEMENT OF THE CASE.

Mr. Vannausdle filed on September 8, 2006 a Show Cause Motion and Affidavit (CP 1-187, App A-Z3) with the Pierce County Superior Court asking for a show cause hearing to be held with an in camera review (exemption analysis) of all contested documents under RCW 42.56.550. He then complied with the court's January 31, 2007 Order to Amend Process of Service Under CR 4(d) (CP 253-255, CP 256-259, & CP 260), by serving all three agencies (Pierce County Dept of Assigned Counsel (DAC), Pierce County Prosecuting Attorney's Office, and Pierce County LESA on or about March 5, 2007. Later, Vannausdle came to the realization that under RCW 4.28.080 that Pierce County also needed to be served via the Pierce County Auditor for a complete process of service. Vannausdle served two copies (per the GR 3.1 Mail Box Rule) of the necessary documents on April 3, 2007. CP 553-600, App D, pg 1-3; CP 665-691, App 4-5; CP 399-413, App B. & CP 1-187, App A-Z3.

The trial court dismissed on May 10, 2007 (CP 497-499) his Civil Cause No. 06-2-11214-3 after holding a telelinked Show Cause Hearing on April 27th. An in camera review of the records was not done by the trial court as the Judge stated he would do at this hearing after rounding up the records (Verbatim at pg 5-6 & 31-38). He then filed on May 21, 2007 a

timely "Motion & Affidavit Under CR 59 for Reconsideration & Amendment of Dept 17's Decision to 'Deny Mr Vannausdle's Request For an Order Directing Production of Documents & Dismissal of His Action & To Support His Claim of Judicial Bias/Prejudice by Judge Culpepper..." (CP 601-627 & CP 471-494). A Motion to Supplement this was filed on May 30th (CP 628-640 & CP 471-494). Because the 30 day deadline for filing a Notice of Appeal was fast approaching and the trial court still hadn't ruled yet on the two motions for reconsideration, he filed on June 7, 2007 his Notice of Appeal (CP 641-648 & CP 649-653). On June 15th the trial court issued an order denying the two Motions for Reconsideration without statement of fact and law.

As a consequence, he mailed his Opening Appellate Brief per RAP 10.2 and other RAPs. Under RAPs 2.1(a)(a), 2.2, 2.3, 2.4, 4.1, 5.1-5.4, and 6.1 he considers this an appeal (a review as a matter of right under USCA 1 and the PDA) because his right under the FIRST AMENDMENT to access public records, as stated in RCW 42.56.520, was violated by Pierce County, and RCW 42.56.550 was violated by the trial court. Vannausdle has with the trial court several pleadings (CP 641-648; CP 601-627; CP 628-640; CP 471-494; CP 500-552, App #1 & CP 553-600) that refutes the court's May 10, 2007 dismissal (CP 497-499) of his case. If for some reason this Court treats his brief as a Dis-

cretionary Review instead of an Appeal By Right, then he would be covered under RAPs 2.1(a)(2), 2.2-2.4, 4.1, 5.1-5.4, and 6.2 for the superior court decision not to do an in camera review of the documents (because the court denied his "Motion For Order For Production of Documents by Defendant... So Judge Culpepper Can Perform a Thorough In Camera Exemption Analysis of Documents Tied to alledged PDA Violations Under RCW 42.56.550" See CP 500-552, under App #11) clearly is in conflict with the Supreme Court Decision in Newman v King County, 133 Wn.2d 583, 947 P.2d 712 (1997) and Limstrom v Ladenburg, 136 Wn.2d 595, 963 P.2d 869 (1998) to conduct an in camera review of documents, especially when the trial court didn't verify if the exemptions cited by Pierce County for withholding the records was proper or not. Quoting Chief Justice Alexander and Limstrom at 615:

"The only way that a court can accurately determine what portion, if any, of a file are exempt from disclosure is by an in camera review of the files."

And, of course, a significant question of law under the Constitution is involved, that is, the 1ST AMENDMENT right under the PDA to access public records. Then there's the government misconduct concerning legal mail tampering, diversion, and delay by Pierce County/opposing counsel and the Clallam Bay Correction Center (CBCC) mail staff and the misapplication of the law and facts by the trial court concerning process of service on Pierce County under RCW 4.28.080 and the GR 3.1

Mail Box Rule. Equally interesting is the Claim by the Pierce County Department of Assigned Counsel it did not have to respond to two of Vannausdle's PDA requests per .520. (received by the DAC on Oct. 20, 2005--See CP 657-664 & CP 665-691) within 5 business days of receipt, stating it is not an AGENCY and and the documents it holds are not public records. These decisions of the trial court affecting the 1ST AMENDMENT and PDA are not only obvious errors impacting Constitutional and Substantial Rights in a civil case but are in conflict with the decisions in the Washington Supreme Court, and definately are issues of great public interest and also shows the trial court has departed from the accepted and usual course of judicial proceedings as to necessitate review by the Court of Appeals in the interest of public justice.

D. ARGUMENTS.

1. The Pierce Count DAC is an agency and as such must comply with the PDA provision RCW 42.56.520 (CP 500-552, m.p. pg 4-7; CP 601-627, m.p pg 9; CP 628-640, Exht. #1, pg 5-6; CP 641-648 pg 2; CP 263-361, App G, pg 3-7), thus the documents (listed in CP 1-187, m.p pg 6-16 & App B1 & B2; CP 209-247, m.p pg 6 & App #1-5; CP 628-640, Exh #1, pg 8; and CP 500-552, App 10) sought by Vannausdle with his two Oct 6, 2005 PDA requests are public record. Consequently, the DAC/Pierce County is in violation of the ACT since Oct 20, 2005 which is the day the DAC received these two PDA requests via certified return receipt mail (CP 657-664 & CP 1-187, App V) and taciturnly refused to respond at all within 5 business days, as required by .520. Sanctions should be awarded to plaintiff under RCW 42.56.550 by the DAC/Pierce County from Oct 20, 2005 to present, based on a high negligence level addressed in WPICs 10.01, 10.07, & 14.01, using the case of Yousoufian (2007) as guidance.

Plaintiff mailed two PDA requests to the Pierce County DAC on Oct 17, 2005 certified with return receipt. From the "Motion & Affidavit to Supplement Record--Certified Witness Statement of Mr Boyd C. Seingley As It Relates to PDA Requests for Cause No. 06-2-11214-3" (CP 657-664, App A, B, & C; CP 665-691, Ap #2, & CP 1-187, App V) this court can see Mr Swingley stated he mailed them on Vannausdle's behalf. The two attached PS Forms 3811, Domestic Return Receipts, show the DAC/Pierce County was very negligent (see WPIC 10.01, 10.07, and 14.01 for degree of negligence) and didn't even respond to these requests, which is required as a bare minimum under RCW 42.56.520. Instead, the DAC returned them to him with no explanation. The following case supports this contention.

DOE I v Washington State Patrol, 80 Wn. App. 296, 303, 908 P.2d (1996). When an agency either fails to respond to an initial PDA Request or doesn't respond until an enjoining action is filed, it violates the ACT under provisions RCW 42.17.320, .270, .280, and .310(4). The distinction between explicit denial as opposed to refusal to respond to the PDA request violates all of this provisions.

Plaintiff's former lawyer, Richard Whitehead, wrote (CP 1-187, App V) in a memo dated Nov 30, 2005 to "appellate attorneys" (the Pierce County Prosecuting Attorney's Office) which says:

"...I received a PDA request for various documents from Mr Vannausdle on about Oct 20, 2005. To the best of my memory, he requested the documents so that he could pursue a PRP. I gave the request to Jack Hill. My understanding is that the request was returned to Boyd Swingley, the person who mailed the documents to this office on behalf of Mr Vannausdle."

This agency, by Mr Whitehead's and Mr Hill's (Director of DAC) actions, acted in extreme bad faith violating the PDA under RCW 42.56.520, subjecting them to sanctions pursuant to RCW 42.56.550 (e.g. must turn over documents and pay sanctions/penalties of between \$5-100 per day per PDA record request set withheld incorrectly by Pierce County since Oct 20, 2005. The degree of negligence can be figured by reading Yousoufian v Office of Ron Sims, and WPIC 10.01, 10.07, and 14.01 (CP 362-393, pg 2 of March 22, 2007 letter to Judge Culpepper & CP 500-552, m.p. pg 2).

Bottomline: The DAC/Pierce County did SILENT WITHHOLDING of PDA requested records. The following case law supports this:

PAWS v University of Washington, 125 Wn.2d 243, 270, 884 P.2d 592 (1994). PDA clearly and emphatically prohibits silent withholding by agencies of records relevant to public records requests...". Cp 209-247, m.p. pg 1.

Citizens For Fair Share v Washington D.O.C., 117 Wn. App 411, 72 P.3d 206 (2003). Failing to state reason for denying disclosure is a PDA violation. CP 209-247, m.p. pg 2.

Opposing counsel makes 2 gross misstatements of law (CP 414-438, m.p. pg 4-5; CP 628-640, m.p pg 5-6; CP 641-648, m.p pg 7, & CP 471-494, Exh #1, pg 5-6) stating the DAC is not an Agency and that the documents plaintiff seeks from the DAC are not Public Records. Opposing counsel even misquotes the case law of Brentwood academy v Tenn Secondary School Ath Ass'n (citing Polk County v Dodson) in a dangerous attempt to rewrite case law using gross misstatements of fact regarding these

cases (CP 601-627, m.p. pg 9 & CP 628-640, Exh #1, pg 5). But first, lets cover the defination of an AGENCY under RCW 42.17.020(1) (CP 601-627, m.p. pg 9):

RCW 42.17.020(1). "Agency includes all state and local agencies. "State Agency" includes every state office, department, division, bureau, board, commission, or other state agency. "Local Agency" includes every County, City town, municipal corporation, quasi-municipal corporation, division, bureau, board, commission, or agency thereof, or other local public agency. Dawson v Daley, 129 Wn.2d 782, 788 (1993).

The DAC, which is part of Pierce County, is an agency for it fits the definition above and elsewhere. The County itself is also defined as an agency. Now the definition of Public Records is covered well under:

Limstrom v Ladenburg, 85 Wn. App 524, 529, 933 P.2d 1055 (1997). "Public Records" are defined as "any writing containing information relating to the conduct of government or the performance of any government or proprietary function prepared, owned, used, or retained by any state or local agency regardless of the physical form or characteristics."

All 3 agencies (DAC, Pierce County Prosecuting Attorney's Office, & Pierce County LESA), especially the DAC, produces and collects writings containing info relating to the conduct of government and the performance of a government function prepared, used, and retained by this agency. What the DAC does do concerns the private conduct of government, to ensure indigent citizens get adequate representation of counsel in court. All the witness statements, police reports, forensic reports, ballistics reports, etc that the plaintiff requested and those which he got

from other agencies (besides the DAC--See Fn # --CP 500-552, App 10-11) through public disclosure are public records, so it's assinine for the DAC to state erroneously these very same records that the DAC possesses are not public records for the DAC/Pierce County fits the defination of an agency. Under RCW 42.56.520 it states:

"Response to requests for pubic records shall be made promptly by AGENCIES...within 5 busniess days of receiving a public record request...by either (1) providing the record, (2) acknowledge that the agency...has received the request and providing a reasonable estimate of the time the agency will require to respond to the request, or (3) deny the public record request."

The DAC is an agency, who violated this provision and fore-mentioned WPICs and Yousoufian can be used to determine the degree of negligence in awarding sanctions under RCW 42.56.550.

Oposing counsel's crowning achievement was their further misstatement of Brentwood Academy v Tenn. Seconard School Ath Ass'n, 531 U.S. 288, 303 (2001) (citing Polk County v Dodson, 454 U.S. 312, 322, n.13 --1981), by using these cases to erroneously state that because the DAC employs Public Defenders that the documents Vannausdle seeks are not public records:

"Because such do not relate to the conduct of government or performance of any government proprietary funciton, but concern private conduct to the government". CP 414-438, pg 5

Plaintiff read both of these cases and neither of them mentions the PDA even once. Neither Brentwood nor Polk County state that the records held by the DAC are not public records when by definition they are. (CP 628-640, Exh. #1, pg 3)

These 2 cases do not even mention the DAC. They actually involve an indigent inmate named Dodson who sued his court appointed attorney for ineffective assistance of counsel under USCA 6, 8, and 14 for withdrawing from his case (CP 628-640, pg 5-6; CP 641-648, pg 7; & CP 471-494, Exh #1, pg 5-6). Opposing counsel misquoted and misapplied these cases stating things these cases don't really say and don't support. The superior court judge either didn't take the time to read these cases, relying on the accuracy and veracity of opposing counsel, or realized their arguments were flawed and misstated but chose to ignore them due to judicial bias (CP 601-627, m.p. pg 1; CP 628-640, & CP 471-494) of plaintiff. The bottomline is that the DAC is defined as an agency and as such must abide by the ACT. There are no magical exclusions (The Sunnyside of truth) or caselaw which state the DAC does not have to comply with the PDA provision .520 within 5 days of receiving a PDA request. Brentwood and Polk County don't support their argument and don't even address the issue. The Plaintiff trusts the Higher Court sees through the misstatements and misapplication of these 2 cases and that they do not apply to the PDA and the violation of its provision under RCW 42.56.520.

CONCLUSION: Based on the facts on the record, this Court should find that the DAC/Pierce County is an AGENCY and as such must comply with RCW 42.56.520, thus the documents sought by plaintiff with his two Oct 2005 PDA requests are public records. Conse-

quently, sanctions should be awarded to Vannausdle under RCW 42.56.550 for violations of .520 by the DAC/Pierce County from Oct 20, 2005 to present, based on a high degree of negligence addressed in WPICs 10.01, 10.07 & 14.10, using the case of Yousoufian (2007) as guidance.

2. The trial court in its May 20, 2007 decision (CP 497-499) dismissing Vannausdle's action: (a) Misapplied RCW 42.56.550 (per Newman v King County & Limstrom v Ladenburg) by refusing to perform (after promising to do one--Verbatim @ 31-38) a thorough show case hearing/exemption analysis by physically collecting and reading each contested PDA document (line item by line item averments listed in CP 1-187, m.p pg 6-16 & App. A1, A2, B1, & B2; CP 209-247, m.p. pg 4-7, App #10 to CP 500-552; Cp 263-361; and CP 261-62) in chambers in order to verify if the exemptions claimed by Pierce County were proper or not or over-broadly applied; (b) further misapplied .550 by not factoring in case law (e.g., Hearst v Hoppe & Heidelbrink v Woriwaki) that supports the redaction of exempt portions of documents and the turning over of the documents after redactions to Vannausdle; (c) and especially misapplied the law in its interpretation and application of the WORK PRODUCT DOCTRINE, which was compounded by the trial court errors in "a" and "b". (Leading up to these trial court errors that violated plaintiff's FIRST AMENDMENT RIGHTS, the defendant (Pierce County) originally violated RCW 42.56.520 by claiming and misstating exemptions (especially WORK PRODUCT) that are not applicable and by not considering document redaction to permit the utmost disclosure of public records to him. The plaintiff has demonstrated a substantial need for the PDA records he requested--especially CP 1-187, App M--although under RCW 42.56.080 he doesn't have to provide a reason in his PDA requests.).

A. At the April 27, 2007 Show Cause Hearing (Verbatim @ pg 31-38) judge Culpepper stated he would examine all contested records in his chamber (in camera), needed to gather them up and asked plaintiff specifically which ones he wanted him to review. Plaintiff verbally provided him with a list in open court of all the records he wanted the Judge to review, which were already listed in 4 clerk paper sets: (1) Sept 8, 2006

Show Cause Motion & Affidavit (CP 1-187, m.p pg 6-16 & App A1, A2, B1, & B2 and the replies to these 4 PDA requests in App K and App L and relevant info in App M and App V); (2) the subsequent "Motion & Affidavit to Supplement Record & Show Cause Motion...As It Applies to Exemption Analysis By This Court In Camera (CP 209-247, m.p pg 4-7 & 1) which lists more updated legal case law support why individual averments are PDA violations under .520; (3) Appendix #10 attached to his "Plaintiff's Reply to Pierce County's Memorandum In Response to Plaintiff's Motion to Show Cause" (CP 500-552, App #10, CP 463-467 & CP 468-470 (See FN1); and (4) the Verified Complaint for Public Disclosure Act Violations (App G, pg 3-7, para 12-15, 17, 21, 28-32 of CP 263-361). However, the trial reneged on this, stating in CP 497-499:

"I am denying Mr Vannausdle's request for an order directing production of documents and dismissing his action."

The court's decision violates the PDA and First Amendment under RCW 42.56.520 and .550 provisions. This misapplication by the

FN1 Appendix #10 shows public records (in CP 1-187 under Appendixes P, Q, R, R1, S, S1, T, U W, X & Y) turned over to plaintiff by other police agencies (WSP & Lakewood Police Dept), some with redactions, which Pierce County improperly refused to turn over to him in violation of .520 by citing phony and inapplicable exemptions. These 2 cases support this:

Tacoma Public Library v Woessel, 90 Wn. App 205, 951 P.2d 357 (1998). Obtaining the record from another source doesn't shield a party from PDA penalties or make an appeal moot...

Limstrom v Ladenburg, 136 Wn.2d 585 (1998). Prosecutor files are subject to the PDA, even if available from other sources. See also Ollie v Highland School Dist., 50 Wn. App. 659 (1988).

trial court of these provisions occurred because it was judicially biased against the plaintiff, especially where the court broke its word by not gathering up the contested documents and performing an exemption analysis on these. The court instead dismissed Vannausdle's case based on the glib assurances, misstatement of law, and misquotation of case law by opposing counsel without verifying the facts. The trial court did not do its homework. The trial court did not even permit the plaintiff and Pierce County to argue each contested PDA record line item by line item at the show cause hearing. Cause and affect: Because the trial court broke its word by not gathering up the contested documents and did not conduct an exemption analysis, it could not make a sound and accurate decision whether each document had a valid or invalid exemption claimed by the defendant Pierce County. It had insufficient evidence to make a decision whether these records were or were not wrongfully withheld from the plaintiff under .520 and other exemption provisions. Bottomline is that the trial court applied RCW 42.56.550 contrary to the law, causing the court also not to rule correctly on the violations of RCW 42.56.520 by the defendant (e.g., by citing inapplicable or over-broad exemptions with no redaction and/or not responding to the PDA request at all within 5 business days). The following case law and provisions support this contention:

Justice Alexander stated it well in Limstrom v Ladenburg at 615:

"We remand to the trial court for an in camera review of the documents...which are claimed to be work product. In our view, the only way that a court may accurately determine what portions, if any, of the files are exempt from disclosure is by an in camera review of the files." See also Newman v King County, 133 Wn.2d 583, 947 P.2d 712 (1997).

RCW 42.17.340(1) & (3) further supports this contention:

"(1) Upon the motion (CP 1-187, App A-Z3) of any person having been denied an opportunity to inspect or to copy a public record by an Agency, the Superior Court in the County in which the record is maintained may require the responsible agency to show cause why it has refused to allow inspection or copying of a record or class of records. The burden of proof shall be on the Agency to establish that refusal to permit public inspection or copying is in accordance with a statute that exempts or prohibits disclosure in whole or in part of the specific...records."

"(3) "...the Court may examine copy of the record in chambers in in any proceeding under this section."

Additionally, the trial court, by not holding an adequate show cause hearing where no exemption analysis was conducted, in affect has taken away the burden of proof on the defendant to prove the exemptions claimed are valid. Bouillet v Cowles Publishing 1, 114 Wn.2d 788, 793-794, 792 P.2d 526 (1994) supports this stating:

"The agency or defendant, claiming an exemption, bears the burden of proof that the documents requested (via a PDA request) falls within the scope of the ACT's claimed exemptions (e.g., RCW 42.17.340(4); .260; .320(4); 315, etc.) or any other statute that explicitly exempts disclosure of specific records."

It must always be the court, not the defendant agency seeking to avoid disclosure, who determines whether an exemption is valid or not based on the physical review of the documents and not the glib assurances of the defendant Pierce County. Each of the

averments listed in the 4 clerk papers sets should have been reviewed in camera by the court and even debated in open court between the plaintiff and defendant. However, the court was judicially biased against the plaintiff and prevented this, showing favoritism towards the defendant Pierce County.

B. The trial court further misapplied RCW 52.56.550 by not factoring in case law that supports retraction of exempt portions of documents so the remainder could have been turned over to Mr Vannausdle. The following case supports this court error:

Hearst Corp. v Hoppe, 90 Wn.2d 23, 580 P.2d 246 (1978). "An Agency has a duty to delete or black out (redact) specific info covered by exemptions and to disclose the remainder of the document. (PDA) statutes must be liberally construed." Cp 209-247, m.p. pg 3 & Verbatim at pg 7.

This couldn't be any more straight forward and understandable. It says to redact any portions of a record that an exemption applies to **and to disclose** it then to the requester after redaction. Pierce County incorrectly stated that if any portion of a requested record required redactions, then it was not disclosable, which is further from the truth and a misstatement of case law. Pierce County understands all too well that just because a part of a record can be withheld does not mean the entire record should be withheld for that would be a PDA violation. However, it argued to the trial court that if any part of a record was exempt the rest could not be turned over to the PDA requester/plaintiff, which is a misstatement of law and

fact. The trial court chose to disregard Hearst to protect Pierce County under this civil suit. If the court had performed an exemption analysis by reviewing hands on all documents in chambers it likely would have seen some if not most of the records would have been disclosable after small portions were black out, but instead chose to violate .550 and in doing so permitted Pierce County to go unpunished for violating .520 (by citing inapplicable exemptions). Lastly, the following case support that WORK PRODUCT can be redacted (blacked out) from a record so that it then can be turned over to Vannausdle:

Heidelbrink v Moriwaki, 104 Wn.2d 392, 706 P.2d 212 (1985). "Mental impressions of attorney's and other representatives embedded in factual statements shall be redacted (in reference to CR 26(b)(4))". See also Hearst at 123 & 127.

The above states under Heidelbrink and CR 26(b)(4) that the defendant should have redacted the work product out of any of the requested documents and then turned it over to Mr Vannausdle. Plaintiff argued this already in Hearst via several pleadings (CP 1-187, m.p pg 4-5; CP 209-247, m.p. pg 3; CP 601-627, m.p. pg 10; & CP 628-640, Exh. #1 & orally on Verbatim @ pg 7). The trial court committed error by not taking redactions into consideration for if it had most of the contested PDA records in the 4 clerk paper sets could have been turned over to plaintiff after blacking out exempt portions. Opposing counsel twisted around the facts and case law like a GUMBEE stating:

Now, plaintiff's position apparently is that we should excise (redact) something out of what is work product. That is not the law." (Verbatim @ pg 10).

This is the opposite of what both these cases state, which is to black out only the exempt parts and then to turn over the document to the PDA requester. Opposing counsel created confusion for the trial court by twisting the facts of the case law making it sound like non-work product is pulled out of work product and then this is given to the PDA requester. In fact, most documents that have work product in them are mostly made up of non-work product info with only a very small portion being actual work product. It is simple to redact the small portion that's work product and to turn over the redacted document. Redacting only blacks out work product and doesn't extract out the non-work product as opposing counsel states.

C. The trial court in its May 10, 2007 decision (CP 499-497) to dismiss Vannaudle's PDA action misapplied the law in its interpretation and application of the WORK PRODUCT DOCTRINE, which was compounded by the trial court's error (per section "A") of not performing an exemption analysis of all contested records in camera; and by not considering redaction (per section "B") to promote the utmost disclosure of PDA records to plaintiff, and buying like pollyanna opposing counsel's misstatement of law pertaining to what is work product and whether redaction applied. Bottomline is that the defendant has over-reached by broadly applying the work product doctrine in a shotgun approach when a surgeons hand in redacting small portions of exempt work product would permit disclosure of most of the documents Vannausdle requested in his 4 PDA requests to Pierce County through the Pierce County through the Pierce County Dept of Assigned Counsel and Pierce County Prosecuting Attorney's Office.

To prove plaintiff's argument, lets start by defining WORK PRODUCT per Limstrom v Ladenburg, 136 Wn.2d 593:

"Work Product is generally exempt from disclosure under the Public Disclosure Act. Work product was defined in part as 'formal or written statements of fact...gathered by an attorney in preparation for or in anticipation of litigation. Such items are protected from disclosure unless the person requesting disclosure demonstrates substantial need and an inability, without undue hardship, to obtain the requested documents by other means."

Next, we quote Limstrom further, 136 Wn.2d 595, 600, 615:

"We hold that a citizen has a right to inspect documents or portions of documents in public attorney's litigation files unless the documents requested would not be available under the discovery rules set forth in the civil rules for the Superior courts... We remand to the trial court for an in camera review of the files requested, to determine whether the documents or portions thereof should be disclosed..."

Finally, quoting CR 26(B)(4):

"Trial Preparation Materials. A party may obtain discovery of documents and tangible things otherwise discoverable under (b)(1) of this rule and prepared in anticipation of litigation...only upon a showing that the party seeking discovery has a substantial need of the material in the preparation of his case and that he is unable without hardship to obtain...the material by other means. In ordering discovery of such material when the required showing has been made, the court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney...concerning the litigation."

CR 26 is the sole rule to follow as it pertains to work product. What these 3 quotes are collectively saying is that if a record was discoverable originally under CR 26 then it is also disclosable through the Public Disclosure act through a PDA request per RCW 42.56.520. Conversely, if a record was not originally discoverable under CR 26 then it is also not disclosable under the PDA. RCW 42.56.290 covers the Work Product exemption. FN2

GIST: All the documents plaintiff requested through the 4 PDA requests (CP 1-187, App. A1, A2, B1, & B2) to Pierce County were also available to him through CR 26(B)(4) discovery and thus should have been available to him through the PDA provision RCW 42.56.520, according to Limstrom. These 2 cases further support his conclusion:

Ollie v Highland School District, 50 Wn. App 659, 749 P.2d 757 (1988). "PDA doesn't preclude disclosure of same info also available from CR-26(b)(1) discovery." Phrased differently, the PDA permits the disclosure of the same records also available from CR-26 discovery. CP 209-247, m.p. pg 4 & Verbatim @ pg 27-28.

O'Connor v DSHS, 143 Wn.2d 895, 905, 25 P.3d 426 (2002). Court ruled PDA may be used as pre-litigation discovery tool and public records from a public agency available to litigants against the agency by discovery under civil rules are not exempt from the Public Record ACT under RCW 42.17.310 (1)(j) and CR 26. Cp 209-247, m.p. pg 3 & Verbatim @ pg 28-29.

Both of these cases mirror Limstrom, stating if the record was discoverable under the civil court rules (e.g. CR 26) then it is also disclosable under the PDA provision RCW 42.56.520. Plaintiff in fact had both options. Keep in mind these sought after/contested records apply to his very own closed criminal case and not a total stranger's case, so it directly affects him--no one has a more substantial need than he. For the civil

FN2 "RCW 42.56.290 (formerly 42.17.310(1)(j)) Agency Party to Controversy. Records that are relevant to a controversy to which an agency is a party but which record would not be available to another party under the rules of pretrial discovery for causes pending in the trial courts are exempt from disclosure under this chapter."

lawsuit he brought under the PDA, the fact the court stated his mandate issued (CP 497-499) on his criminal case on Dec. 6, 2004 is besides the point. It has no bearing on a civil suit. The PDA lawsuit he brought is a civil issue and separate from the criminal issue, although the above "CR 26=PDA" rule does apply to his civil case, that is, the records he seeks were originally discoverable under CR-26 thus they should be disclosable under the PDA too. RCW 42.56.290 states the same conclusion.

Now, concerning the semantics of the word "closed" in reference to the PDA, checkout this:

Ames v City of Firecrest, 71 Wn.App 285, 857 P.2d 1083. "Investigative police reports of closed internal investigations are disclosable under the PDA." CP 1-187, m.p. pg 4.

Cowles Publishing v Spokane Police, 139 Wn.2d 472, 481, 987 P.2d 620 (1999). "The Court held that investigative records are disclosable upon request once the defendant was arrested and the case was sent to the prosecutor." CP 209-247, m.p. pg 2.

Both of these cases apply to Vannausdle's case at bar for his case has been closed and thus the records from it should be disclosable under the PDA since the same records could have been obtained originally through discovery under CR 26 & RCW 42.56.290.

Now, lets conclude this arguments concerning his Substantial need, but first checkout RCW 42.56.080:

"Public records shall be available for inspection and copying and the agency shall upon request for identifiable public records, make them promptly available to any person. An Agency shall not distinguish among the persons requesting records and such persons shall not be required to provide a reason as to the purpose for the request..."

Based on the underlined portion above, plaintiff does not need to give a reason or "substantial need" at all, although it would be to do a PRP on evidence that was not disclosed to him before trial if had he known he would have gone to trial instead of taking a bad plea deal--which is his situation, especially what's addressed in App M, page 1-8 of CP 1-187 (See Appendix #1 in Appendix section of Opening Appellate Brief) regarding perpetrator identification evidence that was contained in the 911 dispatch tapes and the related transcripts dated February 28, 2002. These 911 tape/transcript records exist and they denied them to plaintiff by citing inapplicable exemptions such as work product (CP 1-187, App K, pg 3-4, #21- See also FN3). As to all the other PDA documents he requested in his 4 PDA requests (CP 1-187, App A1, A2, B1, & B2), they may give him clues to the existence or location of other relevant facts pertinent to his case that he originally was not privy to. Pierce County was under an obligation, under .520, to respond to these 4 PDA requests within 5 business days, but

FN3 "#21. Request for dispatch transcripts of responding officers. There are 4 pages that fulfill the request. The items requested are exempt under RCW 42.17.310(d), (e) and the work product doctrine RCW 42.17.310(1)(j) and CR-26..."

never answered two sent to the Pierce County DAC. Concerning the 2 which were sent to the Pierce County Prosecuting Attorney's Office, Pierce County gave inapplicable exemptions, many times citing work product when work product did not apply or even if some of the documents had work product they could have redacted that part and then turned over the document.

Now, getting back to the 911 dispatch tapes/transcripts- they do exist. First, the prosecutor's office does admit having the 4 page dispatch transcripts (CP 1-187, m.p pg 6-16, App K, pg 3, under #21 & CP 500-552, m.p. pg 7). Also, there is on the record (CP 209-247, App #5) an invoice 02-0328-1 (dated March 28, 2002) for \$99 from "CAPCOM Thurston County Communications" to the Pierce County Dept of Assigned Counsel and Richard Whitehead (plaintiff's former lawyer) for the "911 Tape, Shooting Assist, F-5 at Mount's Road". The tape and transcripts were never shown to plaintiff by Whitehead during Vannausdle's pre-trial detention nor did Whitehead tell him they existed. Plaintiff does thank him for sending the plaintiff the legal rope to hang him with (a copy, in App #5 to CP 209-247, of this Dispatch/911 tape invoice) after he filed a Grievance Against A Lawyer #06-000392 to get him disbarred. Whitehead sent Vannausdle the invoice with alot of worthless documents in a lame attempt to pacify him. That is another reason the Pierce County DAC

did not even respond to his 2 PDA requests (App B1 & B2 to CP 1-187), as required by RCW 42.56.520, to cover up this exculpatory evidence which would greatly help prove his innocence and create reasonable doubt someone else did the armed robbery on February 28, 2002 (because Vannausdle does not remotely match the physical description of the crime perpetrator nor the clothes he was wearing). Based on this, Vannausdle does have a substantial need and has proved it under CR-26, although under the PDA this proof is not necessary.

Now, we will conclude on the issue whether the 911 tapes and transcripts (App M, pg 1-8 to CP 1-187) contains or does not contain work product and if the latter is the case, could the records be redacted so the documents then could be turned over to Vannausdle. Lets look first at the following cases:

State v Strady, 49 Wn. App 537, 745 P.2d 43 (1987) "Defense counsel's taped interviews with state witnesses, which contain no opinions, theories, or conclusions of counsel did not constitute work product such that the tape was subject to discovery." Cp 209-247, m.p. pg 4.

State v Coe, 101 Wn.2d 772, 684 P.2d 668 (1984). "Trial court's ruling that portions of police reports were work product were not subject to discovery; however, actual statements of witnesses to officers were discoverable was proper." CP 209-247, m.p. pg 4.

Southern Railroad Co. v Lanham, 403 F.2d 119, 123, 126 (5th Cir 1968). "Raw actual transcripts and tape recording of a witness is not work product nor is it confidential communications. CR 26 and .310(1)(j) do not apply". See also Diamond Offshore Drilling v Smith, 168 F.R.D. 582-85 (S.D. Tex 1996). CP 209-247, m.p. pg 3 and Verbatim at pg 13-15. (See Appendix #2 attached to this Opening Appellate Brief)

All 3 of these cases are persuasive and similar to Vannausdle's case at bar. First, per Ollie and O'Connor the 911 recording and transcripts were discoverable (because he had a substantial need and because they were originally discoverable under CR-26 they were also discoverable under the PDA per Limstrom). The fact his case has been "closed", citing Ames & Cowles Publishing, support disclosure under the PDA too. The 911 Dispatch recording and transcript only contained "raw statements" and no "opinions, theories or conclusions of counsel" and thus according to Southern Railroad Co, Diamond, Strady, and Coe contain no work product and should have been turned over to Vannausdle. And even if, for argument's sake, the tape or transcripts contained work product, under Heidelbrink and Hearst it would simply be redacted and the transcripts turned over to him anyway. As for the other PDA requested records, they were originally discoverable under CR-26/RCW 42.56.290 and thus are disclosible under the PDA.

CONCLUSION: The Court of Appeals should find that the trial court, in its May 10, 2007 decision (CP 497-499) to dismiss Vannausdle's Cause No. 06-2-11214-3 action: (a) Misapplied RCW 42.56.550 by refusing to perform (after promising to do one--Verbatim @ pg 29-38) a thorough show cause hearing/exemption analysis by not physically collecting and reading each contested PDA record (line item by line item averments listed in CP 1-187, m.p. pg 6-16 & App A1, A2, B1, & B2; CP 209-247, m.p. pg 4-7; App #10 to CP 500-552; CP 263-361; & CP 261-62) in chambers in order to verify if the exemptions claimed by Pierce County were proper or not and/or overbroadly applied; (b) further misapplied RCW 42.56.550 by not factoring in case law (e.g. Hearst & Heidelbrink) that sup-

ports redaction of exempt parts of documents and then turning them over to Vannausdle after redaction; and (c) especially misapplied the law in its interpretation and application of the WORK PRODUCT DOCTRINE, which was compounded by the trial court errors in "a" and "b" above of not performing an in camera exemption analysis and not factoring in redaction, if applicable, to promote the fullest disclosure under the PDA to Vannausdle. The Higher Court should also find that the defendant Pierce County originally violated .520 by claiming and misstating exemptions (especially work product) that are not applicable and by not considering redactions to permit the ultimate disclosure of PDA records to the plaintiff; and although Vannausdle, according to RCW 42.56.080, doesn't have to give a reason or substantial need to be granted copies of the PDA records he requested, arguendo he has demonstrated a substantial need according to CR-26(B) (4). Based on this, the Higher Court should direct the lower court and defendant Pierce County to gather up the contested documents listed in the averments (the 4 Clerk Paper set listed above) of the Show Cause Motion and Affidavit and other related pleadings and forward them to the Higher Court so it can do an independent, impartial exemption analysis in chambers to determine if the exemptions claimed by Pierce County are valid or not (factoring in redaction, when necessary, to ensure the maximum disclosure of PDA documents to Vannausdle).

3. The process of service in this action on Pierce County through the Pierce County Auditor was timely and complete under RCW 4.28.080 and CR 4(d)(4) (factoring in the GR 3.1 Mail Box Rule) which would require reversal of the trial court's Order dismissing Vannausdle's action (07-2-11214-3) alleging numerous PDA violations, especially factoring in the documented government misconduct of mail tampering, diversion, & delay affecting his process of service on Pierce County and timely appeal rights. Based on the facts on the record, this misconduct alone sufficiently prejudiced plaintiff severely, necessitating reversal of the court's dismissal ruling (CP 601-627; CP 628-640; & CP 471-494).

Lets start with the GR 3.1 MAIL BOX RULE because it sets up Vannausdle's process of service issue that Pierce County was served on April 3, 2007 throught the Pierce County Auditor, as required by RCW 4.28.080. GR 3.1 states:

"SERVICE AND FILING BY AN INMATE CONFINED IN AN INSTITUTION:

(a) If an inmate confined in an institution files a document in any proceeding, the document is timely filed if deposited in the institution's internal mail system within the time permitted for filing.

(b) Whenever service of a document on a party is permitted to be made by mail, the document is deemed 'mailed' at the time of deposit in the institution's internal mail system addressed to the parties on whom the document is being served."

As required by RCW 4.28.080 and CR 4(d)(4) (see Appendix #3 attached to this Opening Appellate Brief), the process of service of his PDA action against Pierce County through the Pierce County Auditor was timely and complete, being legally made on April 3, 2007 (CP 500-552, m.p pg 1-2; CP 553-600, m. p. pg 5-7) (See Appendix #4 attached to this Opening Appellate Brief for April 3, 2007 Documentation) per this GR 3.1 Mail Box Rule, when he physically presented the CBCC law Librarian with two legal mail envelopes (one sent certified with return receipt and the other sent first class, each containing the Summons, Verified Complaint For Public Disclosure Act Violations, Show Cause Motion and Affidavit, 3 Supplements to this Show Cause Motion and Affidavits, along with other pertinent legal documents marked as Appendixes #1-12 as explained in a March 22, 2007 letter/Affidavit to the Pierce County Superior Court--See CP 362-392 for this letter to Judge Culpepper and a related one to the Pierce County Auditor and and Enclosure #1 so attached to this CP set) for mailing to

the Pierce County Auditor (2 copies as required by CR 4(d)(4).

By postal law and DOC policy legal mail, especially certified with return receipt, must be processed and mailed within 24 hours of receipt, which time starts when the CBCC law librarian receives a piece of legal mail from an inmate. Now, under the MAIL BOX RULE, it doesn't matter that plaintiff's two legal mailings did not reach the Pierce County Auditor until 8 days later on April 11, 2007 due to the fact CBCC Mailroom staff intentionally chose to sit on them until April 10th before finally mailing them out. This was done with the intention of making Vannausdle's process of service on Pierce County through the Pierce County Auditor late under RCW 4.28.080. However, process of service was timely and complete on April 3, 2007 (under GR 3.1) despite this government misconduct/mail obstruction (CP 500-552, m.p. pg 1-2 & CP 553-600).

For debate's sake, regarding this process of service delay of his legal mail by CBCC mailroom staff, even if it was accidental and not intentional (CBCC staff sitting on his Certified Return Receipt and First Class Legal Mailings 8 days between April 3-10, 2007), it still by law is Government Misconduct for it broke postal laws (See Appendix #5 attached to the Opening Appellate Brief for a copy of 18 U.S.C. §1701-1703, §1708-09 with related case law) and vio-

his due process, equal protection, and right to access the court timely rights. It severely prejudiced him because the Superior Court ruled (CP 497-499) that he hadn't served Pierce County through the Pierce County Auditor when in fact on the record He had on April 3, 2007 under the GR 3.1 Mail Box Rule. The gist is that this government misconduct by CBCC prison staff severely hurt him (not even factoring in the judicial bias by the Pierce County Superior Court-FN4) & based on this, in the interest of justice (RAPs 1.2(a) & (c), RAP 7.3, and RAP 18.8) this Higher Court should grant plaintiff complete and timely process of service on Pierce County through the Pierce County Auditor in fulfillment of RCW 4.28.080 and CR 4(d)(4). This should be done regardless of whether the Higher Court factors in the GR 3.1 Mail Box Rule for the April 3rd date (read CP 471-494, Exhibit #1 with Appendix A which has all the source documents, such as the postage transfer form and PS Form 3800, which supports this April 3rd date. Also read CO 553-600, m.p. pg 5-7 & 11 with the attached Appendix D, page 1-5 that also supports this April 3rd process of service date) or not and due to the

FN4 Plaintiff had problems with Judge Culpepper's independence dating back to an affidavit brought into the record on October 19, 2006 (CP 188-192) Plaintiff diplomatically stressed to his honor the importance of not breaking Canon 1 (Independence); Canon 2A and 2B (Respect and Impartial Compliance with the law); and Canon 3A & General Rule 29 concerning judges who don't promptly dispose of court business and duties.

good faith efforts to serve Pierce County. Again, the plaintiff does not even have to prove that this misconduct was intentional for the Higher Court to grant him relief. Although his process of service on Pierce County was timely through the Pierce County Auditor, even if this Court found (arguendo) that it was not timely, this Court should grant process of service as timely factoring in the government misconduct committed by CBCC prison staff. (For all the details on the April 3, 2007 process of service being completed on Pierce County through the Pierce County Auditor and regarding this government misconduct, read CP 500-552, m.p. pg 1-2; CP 553-600, m.p pg 5-7 & 11 with App D, pages 1-5; CP 628-640, m.p pg 1-2 and PS Form 2016, Mail Theft and Vandalism Complaint; CP 601-627, m.p pg 4 & 7-8; CP 471-494, m.p pg 1-2 with Exh #3 so attached with the May 7, 2007 letter; and Exhibit #1, page 1 and teh attached App A, pages 1-8 which has related Grievance #0708038 on this government misconduct).

Thus, according to the GR 3.1 Mail Box Rule, Vannausdle served Pierce County April 3, 2007 despite the government misconduct regarding plaintiff's legal mail committed by CBCC prison mailroom staff. However, the Pierce County Superior Court chose to misapply the GR 3.1 Mail Box Rule and RCW 4.28.080 due to the court's judicial bias against him, by

ruling (CP 497-499) that the process of service on Pierce County had not been done when all the on the record facts support that the process of service was accomplished and timely so. (See Appendix #6 for additional related process of service "games" that were played by Pierce County and those that are suppose to be impartial but aren't). On this matter, the court in fact contradicted itself. That is, at the April 27, 2007 Show Cause hearing (CP 601-627, m.p. pg 3-5 along with App A & B and the Verbatim @ pg 34-38) he ruled that process of servie on Pierce County was accomplished. Quoting the Verbatim at pg 36-38:

"THE COURT: Mr Vannausdle, the jurisdictional issue isn't important. Mr Hamilton (opposing counsel) more or less conceded that his arguments would be the same if the County was validly served. And he doesnt-so I'm going to act as though they were validly served...okay. Here's what I'm going to do, I'm going to look through the documents. I'm going to look through the documents that have been filed in this action to review with a description of the documents whether I think the Public Disclosure act applies to it. If it doesn't, then it's not disclosible and there's no violation. If it does apply and is disclosible, I'm going to order the County to disclose it...That's why I want the Specific documents...

MR VANNAUSDLE: I appreciate you granting this as if service of process was proper, because in this case it was.

THE COURT: Okay, well, that's what I'm going to do..within the next day or two."

Then, on May 10, 2007 the court/judge reneged on what he said during the show cause hearing by ruling that the County was not made party (not served) when in fact Pierce County was served (two separate legal mailings which contained the 12 items

listed as appendixes #1-12 on a March 22, 2007 Legal Affidavit plaintiff sent to the Pierce County Auditor, which is in Enclosure #1 to CP 362-392. These 12 items include the Summons, Verified Complaint for Public Disclosure Act Violations, Show Cause Motion and Affidavit along with 3 supplements to this and other pertinent legal documents) twice via the mail (one certified with return receipt and the other first class) on April 3, 2007, as required by RCW 4.28.080 and CR 4(d)(4). Plaintiff in fact had jurisdiction because the County was served two copies of everything through the Pierce County Auditor's Office on April 3, 2007 (according to the GR 3.1). Again, See Appendix #6 attached to this Opening Appellate Brief for info on the 'games' Pierce County and others played with these two legal mailings sent to the Auditor's Office that shows bad faith.

Now, take this additional point into consideration. Since the Show Cause Hearing wasn't until April 27, 2007, the plaintiff had plenty of time to ensure everything was served in duplicate (per CR 4(d)(4)) on Pierce County through the Pierce County Auditor to be in compliance with RCW 4.28.080. There was 24 days between April 3rd to April 27th, so there was enough time. Now keep in mind this other point, that previously on March 25, 2007 (9 days before the second mailing on April 3rd to the correct address of the Pierce County Auditor) in good faith he attempted to complete process of service on the County,

but at no fault of his own both legal mailing sets went to the wrong address because he was provided the wrong address from two independent sources (See Appendix #7 attached to the Opening Appellate Brief which explains briefly the details). However, once he learned of this error on April 2nd (when both mailings were returned to him as undeliverable), he turned it around on a dime by resending both sets out the next day on April 3rd. He even notified the court and defendant Pierce County, via an April 3, 2007 letter/affidavit (CP 601-627, m.p. pg 1-8 & app B), of his intentions to remail everything (everything being defined as the 12 appendixes listed in the March 22, 2007 letter to the Pierce County Auditor in CP 362-392 and the attached Enclosure #1, which include the Summons, Verified Complaint For Public Disclosure Act Violations, Show Cause Motion and Affidavit, etc.) to complete process of service on Pierce County through the Pierce County Auditor to be in compliance with RCW 4.28.080 and CR 4(d)(4). He did this in good faith; however, the defendant's counsel, once they realized he initially sent both legal mailings (on March 25th) to the wrong address, scrambled ass to file a defense the County was not served (CP 393-398, Answer of Defendant Pierce County) on April 6, 2007 even though technically he had ample time to remail both process of service legal sets out to the Pierce County Auditor before the April 27, 2007 Show Cause Hearing.

Even if we discount all the pertinent facts above, he still

served Pierce County 2 sets timely through the Pierce County Auditor on April 3rd via the GR 3.1 Mail Box Rule (See App #4 attached to this Opening Appellate Brief for Supporting April 3rd Documentation) at least 3 days before Pierce County raised the lack of service defense "partially" on April 6th (CP 393-398; CP 500-552, m.p. pg 1-2; & CP 553-600, m.p. pg 5-7). Thus his process of service under RCW 4.28.080 was completed before the defense was raised. And hypothetically speaking, even if he had served the defendant both sets, say between April 4th up to say about a week before the April 27th Show Cause Hearing, process of service still would have been completed timely and the defendant still would have had time to prepare for the hearing. In good faith he even sent the defendant and court an Affidavit (CP 399-413) asking if the defendant needed more time to digest the 2 process of service legal sets (which he mailed to them on April 3rd) before the April 27th hearing and if they wished to reschedule it. Also pertinent is the fact the defendant failed to timely answer the averments he made in the Show Cause Motion and Affidavit (CP 1-187, m.p. pg 6-16, along with App A1, A2, B1, B2) and the Supplement to this Show Cause Motion and Affidavit (CP 209-247, m.p. pg 4-7. The averments in this pleading were never answered by the Defendant), but only answered on April 6th the the averments in the Verified Complaint For Public Disclosure

Act Violations (CP 263-361 & App G) The defendant waited until April 19th to answer the averments in the Show Cause Motion (but not answering the averments to the Supplement to the Show Cause Motion in CP 209-247) and to raise the defense Pierce County was not served (See CP 414-438 entitled "Pierce County Memorandum in Response to Plaintiff's Motion to Show Cause" mailed out April 19th). Because he completed process of service on both sets on April 3rd (per the mail box rule), the defendant's defense was not just 3 days late but actually was 16 days late since they only answered 1/2 of the averments on April 6th and then the rest were answered 16 days later on April 19th for the Show Cause Motion and Affidavit. And of course, the averments (CP 209-247, m.p. pg 4-7) to the Supplement to the Show Cause Motion & Affidavit were never answered. Bottomline is that Pierce County was served 2 sets, was served timely, and their defense, not only being premature before the April 27th hearing, was made subsequent to plaintiff already serving, on April 3, 2007, the County through the Pierce County Auditor as required by RCW 4.28.080 and CR 4(d)(4).

Based on all of the above, plaintiff in fact should have been granted Summary or Default Judgment (Per CR 54-56) by the Superior Court on this due to the answered and untimely answered averments, as required by CR 8(d). This CR 8(d) states:

"CR 8(d) Affect of Failure to Deny. Averments in a pleading to which a responsive leading is required...are admitted when not denied in the responsive pleading." CP 601-627, m.p. pg 4-6.

Vannausdle did motion the trial court for Summary or default judgment on this legal issue (CP 553-600, m.p. pg 1-7) under CR 54-56 because Pierce County either had not answered some averments and answered other averments untimely, violating CR 8(d). Specifically, Pierce County answered the averments late on April 6th, 2007 for the Verified Complaint (CP 263-361, App G) and answered some averments untimely on April 19th for the Show Cause Motion & Affidavit (CP 1-187, m.p. pg 7-11, para #1-24 averments; pg 11-13, para #1-10 averments; & pg 13-15, para #1-13 & "C" averments. Thirdly, Pierce County did not answer the averments in the Nov 12, 2006 Supplement (CP 209-247, m.p. pg 4-7) to the original Show Cause Motion & Affidavit. The trial court failed to conduct court business by not ruling (CP 641-648, m.p pg 6-7) on his "Motion & Affidavit For Court Order To accept Porocess of Service on Pierce County & 3 Defendant Agencies As Timely and Complete Under CR 4 So Show Cause hearing...Proceeds On The Merits & Motion For Order of Default Judgment or Summary Judgement, Under CR 54-56, Because Defendant Pierce County In Their 'Answer of Defendant Pierce County' Violated Both CR 8d and RCW 42.17.340 By Not Answering And Denying Numbered Allegations/averments In the Sept 8, 2006 Show Cause Motion and Affidavit..." where he asked for summary or default judgement so he would get everything he asked for as relief in all three of the pleadings. This would in es-

sense give him all contested records held by Pierce County and would award him sanctions under RCW 42.56.550, CR 8, and CR 54-56. This Higher Court should grant him the he requested in para v. (a)-(c) of CP 1-187, m.p Pg 18-19 under the "Conclusion" & in para. 28-33 of CP 263-361, m.p pg 6-8 & App G), citing RCW 42.56.550, CR 8(d), CR 54-56, and CR 12f (to strike the defense of "service of process").

On a related matter, the Pierce County Superior Court (Judge Culpepper) denied (CP 496), without statement of fact of law, plaintiff's Motion For An Evidentiary Hearing (CP 471-494, with Exh #1-3 and CP 601-627, m.p pg 1 & 5, para #3) regarding the mail delay/government misconduct that occurred between April 3-10, 2007 and two other related mail crimes (See Appendix #8 attached to this Opening Appellate Brief for these two related, additional mail crimes and their impact/prejudice on his case) that are on the record. The court's denial was bscially aiding and abetting the cover-up of mail tampering (to inlcude theft, delay, prying, and diversion under 18 U.S.C. §1701-03, §1708-09). The trial court did this so it wouldn't have to review and comment on the evidence; to prevent the interview of the alleged perpetrators in the CBCC mailroom (to include Lt Riddle and Sgt Schneider) and the Pierce County Prosecuting Attorney's Office (to include the Pierce County Prosecuting Attorney Gerald Horne and Opposing Counsel Daniel

Hamilton); to prevent the obtaining of a handwriting expert at public expense to determine who changed the address on a PS Form 3811, Domestic Return Receipt, to divert it away from the trial court to the prosecuting attorney's office and opposing counsel (See Appendix #8 attached to this Opening Appellate Brief for details on this theft and diversion of legal mail); and so it would not have to coordinate an investigation with the Port Angeles, Clallam Bay (City), and Tacoma post offices and other mail watchdog agencies. The Court was unconstitutionally biased (See FN4 for another example of this court partiality) and did not want any incriminating findings and testimony on the record besides the source documents (e.g., postage transfer forms, PS Forms 3800, and PS Forms 3811) that already are on the record/in CPs (e.g., CP 553-600 to include App D, pages 1-5 for the April 3-10, 2007 mail crime of mail delay to harm process of service to Pierce County through the Pierce County Auditor as required by RCW 4.28.080).

CONCLUSION: The process of service in this action on Pierce County through the Pierce County Auditor was timely and complete under RCW 4.28.080 and CR 4(d)(4) (factoring in the noted GR 3.1 Mail Box Rule), which would require reversal of the Superior Court Order dismissing Vannausdle's action 06-2-11214-3 alleging numerous PDA/First Amendment violations, especially concerning the documented government misconduct of mail tampering, diversion, and delay affecting both his process of service on Pierce County and the related appeal rights on this case. Based on the facts on the record, there was sufficient government/prosecutorial miscon-

duct that prejudiced Vannausdle severely necessitating reversal of the trial court's May 10, 2007 ruling (CP 601-627; CP 471-494; and CP 628-640).

4. (A) Vannausdle former defense counsel, Richard Whitehead, violated WSBA Formal Opinion 181, the case requirements of Bell v Shaw, and RPC 1.15(d) by refusing to turn over plaintiff's legal file after several (non-PDA) requests were made to him to do so prior to October 2005 (CP 1-187, m.p. pg 16-17); & (b) Opposing counsel made several gross misstatements of fact and case law, which the trial court relied on that affected its May 10, 2007 ruling (CP 497-499) and resulted in the dismissal of his case. Specifically, opposing counsel (i) misstated and misquoted Hangartner and RCW 42.56.120 as to what is a valid PDA request (especially in regards to copy costs for PDA records) which basically disregarded the 2 Prong Test in Wood v Lowe as to what is a valid PDA request; (ii) incorrectly said plaintiff's 4 PDA requests (CP 1-187, App A1, A2, B1, & B2) made in Oct. 2005 were not valid PDA requests when in fact they satisfy both requirements of Wood v Lowe; and (iii) erroneously stated letters Vannausdle sent to his lawyer, prior to Oct 05, were PDA requests when in fact they are just letter requesting parts of his legal file according to WSBA Formal Opinion 181.

A. Vannausdle's former defense lawyer, Richard Whitehead, violated WSBA Formal Opinion 181 (CP 1-187, App H), time honored case law, and RPC 1.15(d) by not turning over, upon his written requests (CP 1-187, App A, pg 1-3 & App G, pg 1-5), his legal case file so he could use it to perfect his direct & collateral appeals under RCW 10.73.090 and RCW 10.73.100. Under USCA 5, 6, 8, & 14-this violated his due process/equal protection rights to access the courts timely and with a complete record for his closed criminal case no. 02-1-00998-2 (CP 1-187, App I). Instead of turning over the file, Whitehead deflected him by telling plaintiff he must pursue the prosecutor or the

or the Pierce County LESA for the file. (See App #9 attached).
It is interesting to note that the prosecutor said (CP 1-187,
App K, pg 1 & App L, pg 1):

"The prosecutor has already turned over the requested records
in our file to your attorney for use in the case before your
conviction (on 9/4/02) in Pierce County Superior Court."

Whitehead refused, in an Aug 4, 2004 letter (App G, p 5 to CP
1-187) to provide the plaintiff with portions of his legal file,
stating under CrR 4.7 he could not provide the file to him
when in fact this court rule does no longer apply to his situ-
ation. CrR 4.7 only applies to pre-trial discovery situations
(CR 26 is the main discovery rule that applies not CrR 4.7)
but after the trial court rendered a verdict on 9/4/2002, the
appeal process kicked in, which means WSBA Formal Opinion 181
started applying at that point in time, mandating that the
lawyer turn-over to him the file to the plaintiff so he could
perfect his appeal. By refusing to give to give him the file
in writing) & failing to respond to other letters asking for
the file, Whitehead (App G, pg 1-5 of CP 1-187) violated both
WSBA Formal Opinion 181 and RPC 1.15(d). The following 3
quotes support this. WSBA Formal Opinion 181 states:

"A client's need for the file will always be presumed from the
request for the file at the conclusion of representation, with
limited exceptions the file must be turned over to the client
at the client's request..."

The case of Bell v Shaw, 99 Wn.2d 569, 657 P.2d 315 (1983) fur-
ther supports WSBA Formal Opinion 181:

"This rule obligates the lawyer to deliver the file to the client." CP 1-187, pg 16-17 & CP 601-627, pg 6-10.

Thus, Whitehead's failure to comply with WSBA Formal Opinion 181 is a violation of RPC 1.15(d):

"A lawyer, upon termination of representation, must take steps to the extent reasonably practical to protect a client's interest, such as giving reasonable notice to the client, allowing time for employment of other counsel, including the surrendering of papers and property to which the client is entitled...".

Based on all of this, the court should find Richard Whitehead violated both WSBA Formal Opinion 181 and RPC 1.15(d).

B. Opposing counsel made several gross misstatements of fact and case law, which the trial court relied on, that affected its May 10, 2007 decision dismissing Vannausdle case. Plaintiff earnestly request this Court, in order to get a complete "Big Picture" overview of his arguments below, to read CP 500-552, m.p. pg 1-8 before proceeding:

(i) Opposing counsel incorrectly cited Hangartner v City of Seattle (CP 471-494, Exh #1, pg 6), stating that since the plaintiff asked in his PDA request for the records at no cost, that they were not proper PDA requests and thus they did not have to answer them in writing under RCW 42.56.520. Opposing counsel misquoted/misstated what Hangartner actually says. The true facts in Hangartner is that the PDA requester's PDA request was not valid because it was "over-broad" and did not describe specific identifiable records in the request. It says nothing about PDA copy costs in the case. This case does not support counsel's

twisted (like a "GUMBEE") argument. Bottomline is that no where in Hangartner, the PDA, or any other Washington State case law does it ever state that if a person asks for the PDA records at no cost that it is not a valid PDA request.

Opposing counsel also misquotes/misinterpretes RCW 42.56.120 (FN5) stating a copy fee MUST be charged for making copies of PDA documents; however, the actual wording to this provision uses the word "MAY" leaving it to the discretion of the agency to charge or not to charge on a case by case basis. Also, counsel's statement that the plaintiff knew of their local policy PCC 2.04.070A (FN6) of charging a copy fee for PDA records is not true for Pierce County never wrote plaintiff stating this policy to him nor is this local policy mentioned in any of the law books or the computer system at the CBCP Prison Law Library. The Cold Hard Truth is the DAC/Pierce County chose SILENT WITHHOLDING (per Per PAWS v University

FN5 RCW 42.56.120 states (CP 471-494, exh #1, pg 7):

"No fee shall be charged for the inspection of public records. No fee shall be charged for locating public records and making them available for copying. A reasonable fee "MAY" be imposed for providing copies of public records..."

FN6 As for the local Pierce County policy PCC 2.04.070A, the PDA thrumps it because the latter is a statute/law. Brouillet v Cowles Publishing, 114 Wn.2d 788 (CP 471-494, Exh #1, pg 6-7) hits it on the nail-head:

"AN AGENCY REGULATION (POLICY) CANNOT SERVE AS A BASIS TO WITHHOLD PUBLIC RECORDS."

of Washington, 125 Wn.2d at 243 & Citizens For Fair Share v Washinton D.O.C., 117 Wn. App at 411) instead of complying with RCW 42.56.520 by responding to both PDA requests (CP 1-187, App B1 and B2) in writing within 5 business days in one of 3 ways under this .520 provision. Common sense, ethics, and this provision put the onus on the DAC/Pierce County to respond within 5 days writing there are "x" number of pages that are disclosible under .520 and that they cost "y" amount per page and to remit "z" amount for the copies and/or to deny them with a valid exemption. Plaintiff certainly would have sent the DAC a check, but wasn't given that opportunity since the DAC never responded to both PDA requests. Bottomline is that the DAC/Pierce County has not been in compliance with RCW 42.56.520 since Oct 20, 2005 & sanctions need to be awarded to Vannausdle under RCW 42.56.550.

(ii) All 4 of Plaintiff's PDA requests (CP 1-187, App A1, A2, B1, & B2) received by the Pierce County Dept of Assigned Counsel and the Pierce County Prosecuting Attorney's Office between Oct 20-31, 2005 met the 2 Prong Test of Wood v Lowe and thus are valid PDA requests. Both stated they were a PDA request (citing RCW 42.17.320) and both requested specific public records. There is no 3rd prong or condition stating if one ask for the records at no cost it is not a valid PDA request.

Now, DAC's counterpart, the Pierce County Prosecuting Attorney's Office was sent 2 very similar PDA requests (CP 1-187, App A1 & A2) written in the same format asking basically for the same specific documents and identifying themselves as PDA requests under RCW 42.56.520. The Prosecutor's Office in fact answered both of them (CP 1-187, App K & L) and asked for \$1.65 on one for 11 pages of documents and cited exemptions on the rest. Plaintiff asked for these records at no cost on both requests and still this other agency responded within 5 business days are required by RCW 42.56.520. Again, these 2 PDA requests were virtually identical to the 2 sent to the DAC. The DAC was under the same obligation to comply with .520 within 5 business days, since it's defined as an agency. It was DAC's option to provide these free or to ask for so much a page for them (again, the word "MAY" in RCW 42.56.120). Either way the DAC had to respond to the 2 PDA requests and failed to do so violating .520 since Oct. 20, 2005. It is interesting to note in a 'Declaration of Allen P. Rose' (CP 439-447), brought into the record on April 29, 2007, where he writes:

"I received a PDA request from Vannausdle...on Oct 27, 2005. On Oct 31, 2005, I responded to a second PDA Request from Vannausdle..."

It is clear from this statement that they treated both as PDA requests and referred to both as PDA requests.

(iii) Opposing counsel in its April 18, 2007 Reply Brief (CP 414-438, m.p pg 2-3, 5, 9-10) and the trial court in its May 10, 2007 ruling (CP 497-499) incorrectly inferred the plaintiff treated the pre_october 2005 letters (App A, pg 1-3, & App G, pages 1-5) as PDA requests when they were only requests under WSBA Formal Opinion 181 for his legal file from his former lawyer, Richard Whitehead. Neither letter mentioned the PDA nor was there any attempt by plaintiff to meet the 2 prong test of Wood v Lowe.

PRAYER FOR RELIEF

E. Plaintiff respectfully requests the following relief/ruling:

(1) A ruling that the Pierce County Department of Assigned Counsel is legally defined as an agency, that the contested records in question are public records, and as a direct consequence, the DAC is in violation of RCW 42.56.520 since Oct 5, 2005 (the day it received both PDA requests from Vannausdle via certified return receipt mail) because it never responded within 5 business days as required by .520. Thus, it must pay sanctions to plaintiff of between \$5-100 per day for both PDA requests under RCW 42.56.550 (based on the degree of negligence determined by this court).

(2) The trial court's decision to dismiss plaintiff's action (a) Misapplied RCW 52.56.550 due to its refusal to perform an adequate show cause hearing/exemption analysis by physically gathering and

and reviewing each contested PDA record in chambers in order to verify if the exemptions claimed by the Perce County were proper or not; (b) further misapplied .550 by not factoring in case law which supports redacting out exempt portions of documents so they then can be disclosed to the plaintiff; and (c) misapplied the law in its interpretation of WORK PRODUCT. Plaintiff requests for a proper, impartial exemption analysis in camera of all contested documents, preferrably by the Court of Appeals due to the total bias by the Superior Court against plaintiff.

(3). The process of service of plaintiff's action on Pierce County through the Pierce County Auditor was timely and complete per RCW 4.28.080 and CR 4(d)(4) (factoring in the GR 3.1 Mail Box Rule) which requires reversal of the court's dismissal order. Based just alone on the prejudice that plaintiff suffered from government misconduct of mail tampering, diversion, and delay (under 18 U.S.C §1701-10), this also justifies reversal of the court's dismissal order.

(4) (a) Vannausdle's former lawyer, Richard Whitehead, violated WSBA Formal Opinion 181, RPC 1.15(d), and the case of Bell by refusing to turn-over to plaintiff his legal file after written non-PDA requests were made to him to do so; and (b) opposing counsel made several mistatements of case law and RCWs (e.g., Hangartner, Wood v Lowe, and RCW 42.56.120) as to what is a

valid PDA request, that the trial court relied on resulting
in the dismissal of plaintiff's case.

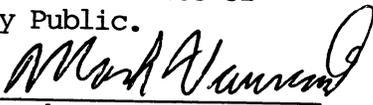
Respectfully Submitted on May 11, 2008.


Mark Vannausdle, DOC 845800
Clallam Bay Correction Ctr
1830 Eagle Crest Way
Clallam Bay, WA 98326-9724

DECLARATION

I, Mark Vannausdle, state under oath pursuant to RCW 9A.72.085 that the fore-going facts are true to the best of my knowlege, based on personal observations, facts, evidence, experiences, and conclusions, and that the Appendixes #1-9 so attached herein are true and correct and are what they are represented to be. Dickerson v Wainwright, 626 F.2d 1184 (1980). Affidavit sworn as true and correct under penalty of perjury has full force of law and doesn't have to be verified by a Notary Public.

Under Penalty of Perjury I sear above is true.


Mark Vannausdle
DOC 845800

IN THE COURT OF APPEALS
FOR THE STATE OF WASHINGTON
AT DIVISION II

Mark Vannausde

Plaintiff
vs.

Pierce County, et al

Defendant

Court of Appeals
Case No. 36440-9-II

FILED
COURT OF APPEALS
DIVISION II
03 MAY 13 PM 2:37
STATE OF WASHINGTON
BY _____
DEPUTY

PROOF OF SERVICE

I, Mark Vannausde, pro se, do declare that on the 11th day of May, 2008, I have served the enclosed per the GR361 Mailbox Rule, the revised opening appellate brief to replace older version dated January 27, 2008. The court was sent 2 original certified mail under tracking # 7002-2030-0001-5345-3328. Plaintiff was sent his copy. on ever other person required to be served, by presenting an envelope to state prison officials at the Clallam Bay Corrections Center, containing the above documents for U.S. mailing properly addressed to each of them, and with first-class postage prepaid. Both originals were sent to court of appeals via certified return receipt mail # 7002-2030-0001-5345-3328.

The names and addresses of those served are as follows:

Court of Appeals, Division II, 950 Broadway, Suite 300, Tacoma, WA 98402

Pierce County Prosecuting Attorney's Office, 955 Tacoma Ave S, Suite 301, Tacoma, WA 98402

I declare under penalty of perjury under the laws of the State of Washington, pursuant to RCW 9A.72.085, and the laws of the United States, pursuant to Title 28 U.S.C. § 1746, that the forgoing is true and correct.

Executed on this 11th day of May, 2008.

Mark Vannausde
Mark Vannausde, Doc 845800, Pro se
Clallam Bay Corrections Center, CC-2
1830 Eagle Crest Way
Clallam Bay, WA 98326-9723



Washington State Court of Appeals
Division Two

*Amended
App. Brief*

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General Orders, Calendar Dates, Issue Summaries, and General Information at <http://www.courts.wa.gov/courts>

May 19, 2008

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CASE #: 36440-9-II
Mark Vannausdle, Appellant v. Pierce County, et al., Respondents

Mr. Vannausdle & Counsel:

The action indicated below was taken in the above-entitled case.

A RULING SIGNED BY COMMISSIONER SKERLEC:

Consistent with this court's order dated 05/13/08, the amended brief is accepted for filing. However, the appendices constitute additional argument and they are struck. The motion to file a supplemental brief is denied. Respondent's brief is due 60 days from the date of this ruling.

Very truly yours,

David C. Ponzoha
Court Clerk