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I. INTRODUCTION

Employees of the Washington State Bar Association (WSBA) participate in the Public Employees' Retirement System (PERS), administered by the Department of Retirement Systems (Department). The Department received a request under the public records act for the salaries of WSBA employees, as reported to the Department by the WSBA. Having concluded that the salaries did not fall under any exemption in the public records act, the Department advised the WSBA that it was prepared to disclose the records as requested.

The WSBA and four of its employees sought an injunction from the Thurston County Superior Court to enjoin disclosure of the salaries. The Superior Court denied the injunction, and the WSBA and the employees appealed.

II. COUNTERSTATEMENT OF THE CASE

The Department of Retirement Systems administers various pension plans established by the Legislature for employees of public employers. *See generally* RCW 41.50. Among these plans is PERS. *See generally* RCW 41.40. Although the record in this case does not indicate when employees of the WSBA first began participating in PERS, it is undisputed that WSBA employees participated as members of PERS at all times relevant to this case.

In December 2008, the Department received a public records request from Edward Hiskes for:

[D]ocuments which contain a list of Washington State Bar Association Employees and which show the rate of salary which is being credited for each as of this month. I also want historical information showing the name of each WSBA employee who was on the system in the past ten years, and a listing [sic] of highest and termination salary for that employee.

CP 97.

When the Department receives a public records request for an employee's "salary," it provides the "compensation earnable" for that employee. "Compensation earnable" (also referred to as "reportable compensation"¹) equates generally to the employee's salary, with possible additions specified by statute and clarified in the Department's rules. *See* RCW 41.40.010(8); WAC 415-108-441 to -510. PERS employers, including the WSBA, transmit to the Department on a monthly or semimonthly basis, an electronic report on the "compensation earnable" of their employees, as required by statute and rule. RCW 41.50.230, WAC 415-108-495(2)(b).

"Compensation earnable" has multiple uses in the administration of the retirement system. First, both PERS members and their employers are required to make contributions to fund the retirement system, the

¹ *See* WAC 415-108-445.

required contributions being a percentage of each member's "compensation earnable."² These contributions and the investment returns on them create the fund out of which PERS monthly retirement allowances are paid.³ Second, at retirement, "compensation earnable" forms the basis for determining the member's "average final compensation" for calculating the member's retirement allowance.⁴ The member's retirement allowance is based on a statutory formula: $x\% \times \text{years of service} \times \text{average final compensation}$.⁵ Finally, in some cases, a member may withdraw some or all of the money the member has contributed to the retirement system.⁶ All of these administrative activities depend on the accuracy of the "compensation earnable" reported to the Department by PERS employers.

The Department verified that Mr. Hiskes' request was not made for commercial purposes. CP 56, CP 57. The Department then advised the WSBA that the Department did not believe the records requested fell

² See RCW 41.40.048(2) (employer contribution); RCW 41.40.330(1) (Plan 1 member contribution); RCW 41.45.060(2) (setting of employer contribution); RCW 41.45.061(4) (Plan 2 member contribution to be equal to employer contribution); RCW 41.34.020(4)(c), RCW 41.34.040 (Plan 3 member contributions).

³ See RCW 41.50.075(3); RCW 41.50.080.

⁴ See RCW 41.40.010(17)(a), (b) (definition); RCW 41.40.185(2) (Plan 1); RCW 41.40.620 (Plan 2); RCW 41.40.790(1) (Plan 3). In addition, Plan 3 members receive a distribution from their "defined contribution" account under RCW 41.34.070.

⁵ The percentage varies depending on which PERS plan the member is in.

⁶ See RCW 41.40.260 (Plan 1); RCW 41.40.730 (Plan 2); RCW 41.34.070 (Plan 3).

within any exemption from disclosure and was prepared to disclose them to Mr. Hiskes if it was not enjoined from doing so. CP 95.

The WSBA and some of its employees⁷ then brought suit in Thurston County Superior Court and sought an injunction under RCW 42.56.540 to prevent the Department from disclosing the records.⁸ CP 5-6, CP 7-13, CP 14-27. After receiving affidavits and declarations and briefing from the parties, and after oral argument, the trial court denied the injunction and dismissed the case. CP 151-156. The WSBA then appealed to this Court. CP 149-156.

III. ISSUES

1. Are records of salaries (“compensation earnable”) of employees of the WSBA, provided to the Department of Retirement Systems so that the Department can administer the participation by WSBA employees in the public pension system, “public records” subject to the public records act, RCW 42.56?

2. Are such records exempt from disclosure under “right to privacy” exemption to the public records act in RCW 42.56.230(2)?

⁷ For convenience, this brief will refer to all the Appellants as “WSBA.”

⁸ RCW 42.56.540 provides that the court may enjoin examination and copying of a specific public record upon motion and affidavit by a person who is named in the record “if such examination would clearly not be in the public interest and would substantially and irreparably damage any person, or would substantially and irreparably impair vital governmental functions.”

IV. ARGUMENT

A. **While the Standard of Review Is De Novo, It Was Appropriate for the Superior Court to Enter Findings and Conclusions**

The WSBA correctly notes that the standard of review in a case like this, where the trial court denied the WSBA's request for an injunction based on affidavits, declarations, and memoranda of law without live witnesses, is de novo. Brief of WSBA at 11-12. *See, e.g., Spokane Police Guild v. Liquor Control Bd.*, 112 Wn.2d 30, 35-36, 769 P.2d 283 (1989); *Dragonslayer, Inc. v. WA State Gambling Comm'n*, 139 Wn. App. 433, 441, 161 P.3d 428 (2007).

While review by this Court is de novo and while this Court is not required to give deference to the findings and conclusions of the trial court, this does not mean that the trial court erred or acted improperly in entering such findings and conclusions. *See* Brief of WSBA at 2 (claiming that "such findings are superfluous for purposes of appeal"). Even if the appellate court ultimately disagrees with the trial court, it is helpful for the appellate court to consider and understand the trial court's reasoning. *See Northwest Gas Ass'n v. WA Util. & Transp. Comm'n*, 141 Wn. App. 98, 112-13, 168 P.3d 443 (2007); *Dragonslayer*, 139 Wn. App. at 445-46 (remanding to trial court for additional findings, presumably

necessary to know what trial court found initially). The superior court did not err in entering findings and conclusions.⁹

B. The Trial Court Did Not Err With Respect to the Burden of Proof Where the WSBA Did Not Clearly Argue Below That the Records Were Not “Public Records”

The WSBA argues that the trial court erred in placing the burden on the WSBA to show that the salary records held by the Department fell within an exemption to the public records act, rather than initially placing the burden on the Department and the requester, Mr. Hiskes, to show that the records were “public records” under the act. Brief of WSBA at 12-13, 19. However, the WSBA never presented the matter to the trial court in the manner that it is now arguing on appeal.

In its briefing to the trial court, the WSBA’s argument centered almost exclusively on whether the salary records held by the Department were exempt from disclosure under the exemption in RCW 41.56.230(2). CP 14-27, CP 125-139. The WSBA never articulated to the trial court its position that the records are not “public records” in the manner it later did in its brief to this Court. Nor did it suggest to the trial court that the

⁹ Moreover, in this case, the WSBA submitted proposed findings and conclusions to the trial court that were as detailed as those submitted by the Department and adopted by the court. It is disingenuous for the WSBA on appeal to take the trial court to task for entering findings and conclusions when the WSBA itself requested the court to do so.

WSBA and Mr. Hiskes had the threshold burden of showing that the records were public records.

Under these circumstances, this Court may decline to accept the WSBA's invitation to address its argument that the documents are not "public records." See *Dragonslayer*, 139 Wn. App. at 442 (appellate court need not consider issue not raised by party seeking injunction under RCW 42.56.540). However, the Department acknowledges that, in view of the short timeframes for taking action under the public records act, the courts have been lenient in allowing parties in public records cases to raise additional issues on appeal. See *Progressive Animal Welfare Soc'y v. Univ. of WA*, 125 Wn.2d 243, 253, 884 P.2d 592 (1994); *Dragonslayer*, 139 Wn. App. at 442, 448. Accordingly, without waiving its position that the Court need not address the issue of whether the WSBA employees' salaries are public records, the Department will address the WSBA's arguments in that regard.

C. Salary Records of WSBA Employees, Provided to the Department of Retirement Systems to Administer the Public Pension Plans in Which the Employees Participate, Are "Public Records" Under the Public Records Act

The definition of "public record" has three elements. As noted in *Smith v. Okanogan Cy.*, 100 Wn. App. 7, 994 P.2d 857 (2000):

A public record subject to disclosure under the Act includes (1) any writing, (2) containing information relating to the

conduct of government or the performance of any governmental or proprietary function, (3) prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics.

Smith, 100 Wn. App. at 12 (citations omitted). See RCW 42.56.010(2).

All three elements must be satisfied. *Dragonslayer*, 139 Wn. App. at 444.

In addressing these elements, the WSBA improperly conflates some of them. The WSBA states: “A document is not used by a government agency unless it has an impact on an agency’s decision-making process.” Brief of WSBA at 13, citing *Concerned Ratepayers Ass’n v. Pub. Util. Dist. 1*, 138 Wn.2d 950, 961, 983 P.2d 635 (1999). From this, the WSBA later argues that the fact that the records are held by the Department is not determinative “because the Employees’ compensation records have no impact on any governmental decision-making processes of the Department of Retirement Systems.” Brief of WSBA at 15. The WSBA appears to be using this point in connection with element (2) of the definition of public record. However, the issue in *Concerned Ratepayers* was whether documents that the public agency did not have in its possession were nonetheless public records because the agency “used” the documents, thereby fulfilling element (3) of the definition. In the present case, the Court does not need to be concerned

about that element, since the WSBA salary information is “retained” by the Department.

Indeed, both element (1) and element (3) of the definition of “public record” are met here. The salary is [1] a “writing” . . . [3] “retained” by the Department of Retirement Systems. The only remaining issue is whether the reports of compensation earnable “contain[] information relating to the conduct of government or the performance of any governmental or proprietary function.” RCW 42.56.010(2). “In answering this threshold inquiry whether a document is a public record, this court broadly interprets this second element of the statutory definition of public record.” *Confederated Tribes of the Chehalis Reservation v. Johnson*, 135 Wn.2d 734, 746, 958 P.2d 260 (1998).

While the WSBA tries to draw the Court’s attention to the WSBA’s status and its functions, the WSBA reluctantly acknowledges that the proper focus for this analysis is the agency holding the records being requested—in this case, the Department. *See, e.g., Dragonslayer*, 139 Wn. App. at 444-46; *Confederated Tribes*, 135 Wn.2d at 747-48.

It is evident from the statutory functions that flow from the reporting of “compensation earnable” by the WSBA to the Department how this information is used by the Department. As discussed above, “compensation earnable” forms (1) the basis for determining how much

members and their employers must make in contributions to the public pension plans, (2) the basis for determining a member's "average final compensation" for calculating the member's monthly retirement allowance, and (3) how much is in an individual member's account for purposes of withdrawing the member's contributions.

The statutory mission of the Department of Retirement Systems is to administer the provisions of the public pension plans, including PERS, and the foundation for doing so is the "compensation earnable" reported to the Department by public employers. The records of the salary information of WSBA employees retained by the Department clearly "contain[] information relating to the conduct of government or the performance of any governmental or proprietary function." RCW 42.56.010(2).

Contrary to the WSBA's suggestion, no need exists to remand this case to the trial court to make a further determination regarding whether this element of the "public record" definition is met. Brief of WSBA at 20. Unlike the records involved in the *Dragonslayer* case, where it was unclear from the trial court record exactly how the agency used the records, 139 Wn. App. at 433-34, it is evident from the retirement statutes themselves how the Department uses the compensation earnable reported by the WSBA for its employees. As our Supreme Court has stated, the

definition of “public record” in the public records act is to be liberally construed, in light of the statutorily stated policy to assure continuing confidence in governmental processes. *Oliver v. Harborview Med. Ctr.*, 94 Wn.2d 559, 566, 618 P.2d 76 (1980). *See generally* RCW 42.56.030. In *Oliver*, the Supreme Court dealt with patient records maintained by a public hospital. The court noted that the records dealt with administration of health care services and thus “relat[ed] to the conduct of government or the performance of any governmental or proprietary function” under the definition of “public record.” *Oliver*, 94 Wn.2d at 566. Likewise, in the present case, records of the salaries of WSBA employees directly relate to the duties that the Department performs in administering the public pension plans and thus are of interest to the public with respect to how the Department is performing those duties. As the court stated in *Seattle Firefighters Union Local 27 v. Hollister*, 48 Wn. App. 129, 137, 737 P.2d 1302 (1987): “[T]he administration of . . . retirement programs is of legitimate concern to the public.”¹⁰

The salary records of WSBA employees, held by the Department, meet all three elements of the definition of “public record.” Accordingly,

¹⁰ That the purpose of Mr. Hiskes’ request to the Department for WSBA employee salaries may be to ascertain something relating to the WSBA, rather than the Department, is immaterial. The Department is not permitted to ask requesters what their purpose is in making the request (other than to ascertain it is not for commercial purposes), nor is it permitted to differentiate among requesters. RCW 42.56.080.

no need exists for the Court to analyze the status of the WSBA and the Court may proceed to determine whether the records fall within any exemption to the public records act.

D. To the Extent the Court Needs to Consider the Legal Status of the WSBA, the WSBA's Status Does Not Affect the Application of the Public Records Act

1. It Is Unnecessary to Consider the Status of the WSBA Because the Department of Retirement Systems Is Clearly a State Agency Under the Public Records Act

The WSBA makes numerous arguments regarding its legal status. However, the request here was made to the Department of Retirement Systems for records that are in the possession of the Department.

RCW 42.56.010(1) reads:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Agency" includes all state agencies and all 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, or special purpose district, or any office, department, division, bureau, board, commission, or other agency thereof, of other local public agency.

It is undisputed that the Department is a "state agency" under the above definition. As such, it is required by statute to disclose public records unless the records fall within an exemption. RCW 42.56.070(1). It is unnecessary for the Court to consider the legal status of the WSBA.

2. The WSBA Is a “State Agency” for Purposes of the Public Records Act

Even if the Court does consider whether the WSBA is a “state agency” under the public records act, the Court should conclude that it is. The definition of “state agency” in RCW 42.56.010(1) is broadly worded. It includes “*every* state office . . . or other state agency.” (Emphasis added.)¹¹ While RCW 42.56 contains numerous exemptions from disclosure for various types of public records, the act contains few, if any, exclusions based on the identity or nature of the state agency holding the records.

The State Bar Act, RCW 2.48.010, provides: “There is hereby created *as an agency of the state* . . . an association to be known as the Washington State Bar Association” (Emphasis added.) On the face of it, it is difficult to see how the phrases “an agency of the state” and “state agency” are not interchangeable.

However, despite the description in RCW 2.48.010 of the WSBA as “an agency of the state,” the Supreme Court has held that the WSBA is not always subject to statutes that otherwise apply to “state agencies.” In

¹¹ In its definition of “agency,” the public records act distinguishes between a “state agency” and a “local agency.” RCW 42.56.010(1). For purposes of some of the statutes administered by the Department of Retirement Systems, a distinction is made between state agencies and local agencies or political subdivisions. Since the definition of “agency” in the public records act encompasses both state agencies and local agencies, it is unnecessary in this case for the Court to determine whether the WSBA is technically a “state agency” versus a “local agency” or “political subdivision” for purposes of other statutes.

Graham v. WA State Bar Ass'n, 86 Wn.2d 624, 548 P.2d 310 (1976), the court held that the WSBA was not subject to statutes that authorized the State Auditor to conduct an audit of “state departments.” The court held that the Legislature did not intend the state audit statute to apply to the WSBA, but that if this had been the Legislature’s intent, it would violate the separation of powers doctrine. In the course of its discussion, the court stated that the characterization of the WSBA as an “agency of the state” in RCW 2.48 was not conclusive. *Graham*, 86 Wn.2d at 626.

The WSBA relies on *Graham* to support its position here. The WSBA cites to the passage in *Graham* to the effect that how the WSBA uses its funds is “not the subject of legislative concern,” *Graham*, 86 Wn.2d at 629, and argues that this shows that the WSBA does not perform a governmental function and thus the records of its employees’ salaries are not “public records.” Brief of WSBA at 17. The WSBA’s argument is misplaced. The *Graham* court ruled that the WSBA was not subject to the provisions of the state audit act because the complete discretion given to the WSBA Board of Governors left the state auditor with no standards against which to detect whether the WSBA’s use of funds constituted malfeasance, misfeasance, or nonfeasance in office, the purpose of the audit act. *Graham*, 86 Wn.2d at 630. The present case, arising under the public records act, involves different principles. Under the public records

act, the purpose of obtaining information about the activities in which a public agency is engaged is not necessarily to ascertain if the agency is doing anything improper, but rather to be in a position to urge the agency to do things differently or to allocate its resources differently. For this reason, the wide discretion given to the WSBA Board of Governors recognized in *Graham* does not defeat a request for public records under the public records act.

Yet another aspect of *Graham* is noteworthy here. In *Graham*, the Supreme Court noted that the WSBA has its books audited by an outside auditor and stated: “The results of these audits have been made known to the members of the bar and the records made available to any who wished to see them.” *Graham*, 86 Wn.2d at 631. In contrast, in the present case, the precise salaries of WSBA employees are apparently not available to Mr. Hiskes or anyone else.

The other Washington cases relied on by the WSBA are also not determinative. In *State ex rel. Schwab v. WA State Bar Ass’n*, 80 Wn.2d 286, 493 P.2d 1237 (1972), the Supreme Court rejected an argument that the WSBA had to have its headquarters in Olympia. The court stated that the requirement that certain offices be headquartered in Olympia applied only to the executive branch, not the judicial branch. Here, the

Department has never contended that the WSBA is an executive branch agency or that it is subject to the public records act on that basis.

In *WA State Bar Ass'n v. State*, 125 Wn.2d 901, 890 P.2d 1047 (1995), the Supreme Court considered the relationship between a court rule it had adopted, which allowed the WSBA Board of Governors to authorize collective bargaining for employees of the WSBA, and a statute enacted by the Legislature that expressly provided that the WSBA was an employer subject to the public employees' bargaining act. A majority of the court held that the provisions of the court rule prevailed over the provisions of the statute. Since the Legislature had mentioned the WSBA by name in its amendment to the collective bargaining act, the characterization of the WSBA in RCW 2.48.010 as an "agency of the state" was not involved in that case. In the present case, the WSBA has never argued that there is any court rule that supersedes the public records act, as was the situation in *WA State Bar Ass'n*.

The WSBA points out that several of these cases refer to the WSBA as being "sui generis." However, that characterization does not resolve whether the WSBA is subject to any specific state statute. None of the Washington cases cited by the WSBA stands for the principle that laws of general applicability cannot apply to the WSBA. In *WA State Bar Ass'n*, the Supreme Court noted that the case was "not about general

employment statutes that are applicable to the Bar Association.” *WA State Bar Ass’n*, 125 Wn.2d at 903. *See also id.* at 913 (Dolliver, J., dissenting) (“the court is more than willing to permit legislative oversight of ancillary administrative functions”).

The Department of Retirement Systems has records of the salaries (“compensation earnable”) of WSBA employees because the WSBA’s employees participate in PERS. PERS defines “employer” as “every branch, department, agency, commission, board, and office of the state” RCW 41.40.010(4)(a), (b) (emphasis added). WSBA employees participate in PERS because the WSBA fits the definition of a public “employer.”¹² It is anomalous for the WSBA and its employees to participate in PERS and at the same time take the position that the public records act that likewise applies to “every state office, department, division, bureau, board, commission or other state agency” does not apply to them. RCW 42.56.010(1). No logical reason exists why the WSBA should be allowed to participate in PERS but be excluded from the public records act.

¹² Where the Legislature has intended to exclude from PERS public corporations that otherwise might fit the definition of a PERS employer, it has done so expressly. *See* RCW 41.40.105, RCW 67.40.020(3) (Washington State Convention and Trade Center exempted from PERS).

3. The WSBA Is Not a Private Entity

The WSBA argues that it is a private entity, not a public one, and analogizes its situation in providing reports of its employees' compensation earnable to the Department of Retirement Systems to the providing of card room financial statements to the State Gambling Commission in the *Dragonslayer* case. Brief of WSBA at 14.

However, aside from the problem of how employees of a private entity can be participating in the Public Employees' Retirement System, and aside from the Legislature's characterization of the WSBA as "an agency of the state" in the State Bar Act, our Supreme Court has already held that the WSBA is a public entity. In *In the Matter of Bannister*, 86 Wn.2d 176, 543 P.2d 237 (1975), the court stated:

The Washington State Bar Association is created by RCW 2.48.010 as an "agency of the state." It is therefore *a public rather than a private agency*.

Bannister, 86 Wn.2d at 186 (emphasis added). *See also Graham*, 86 Wn.2d at 627-28 (Legislature enacted State Bar Act out of concern about whether public corporations are encompassed by constitutional prohibition against creation of corporations by special act).

Thus, nothing in statute or case law supports the WSBA's assertion that it is a private, rather than a public, entity. Moreover, it would be anomalous to characterize an entity, membership in which is compulsory

in order to practice a profession, as a private association. Prior to the State Bar Act in 1933, membership in the Bar Association was voluntary, and it might be appropriate to describe the WSBA at that time as being private. *See Graham*, 86 Wn.2d at 626-27; *Application of Schatz*, 80 Wn.2d 604, 612, 497 P.2d 153 (1972) (Hale, J., dissenting). Since the enactment of the State Bar Act, the WSBA can no longer be described as a private association.

4. That the WSBA Is Not Funded From Tax Revenues Does Not Bring It Outside the Public Records Act

The WSBA argues that records of its employees' salaries are not subject to the public records act because the WSBA is not funded from tax revenues. Brief of WSBA at 15, 22. The WSBA calls attention to some decisions under the public records act to the effect that records fell within the act because the public as taxpayers has an interest in how their taxes are being used. *See Tacoma Pub. Library v. Woessner*, 90 Wn. App. 205, 218, 951 P.2d 357, 972 P.2d 932 (1998); *Yakima Newspapers, Inc. v. City of Yakima*, 77 Wn. App. 319, 328, 890 P.2d 544 (1995).

That the WSBA is not funded from tax revenues does not, however, bring it outside the public records act. There are other state agencies that are not funded by taxes that are subject to the public records act. For example, the approximately 24 agricultural commodity boards

and commissions, created pursuant to legislative act or authorization, derive their revenue from assessments agreed to by the producers of the respective commodities.¹³ These boards and commissions and their records are subject to the public records act, with some specific exemptions. *See* RCW 42.56.380, RCW 15.65.203, RCW 15.66.105.

In addition to these agencies that are funded entirely through other than tax dollars, there are many agencies that are funded in part by user fees, by assessments to revolving funds made by regulated industries, by grants and endowments, and so forth. No court decision has suggested that agencies should parse the source of their funding to determine whether a certain public record was paid for from taxpayer dollars or from some other source. Thus, the source of a public agency's funding does not bring an agency outside the public records act.¹⁴

Moreover, while it is not funded from general tax revenues, the WSBA has available to it the coercive power of the state to extract payments from a specified group of citizens, i.e., those who have or want

¹³ *See, e.g.*, RCW 15.24 (apple commission); RCW 15.44 (dairy products commission); RCW 15.62 (honey bee commission); RCW 15.88 (wine commission); *see generally* RCW 15.65 (agricultural commodity boards); RCW 15.66 (agricultural commodity commissions).

¹⁴ The WSBA also seems to suggest that a determination can be made as to records on the basis of each individual employee's duties and the source of funding for those activities. *See* Brief of WSBA at 5, 27. Such an approach would be completely unworkable, even for an agency that knows what the employees do and how their positions are funded, let alone for an agency like the Department of Retirement Systems, which does not have that type of information.

to obtain a license to practice law. *See State ex rel. Schwab*, 80 Wn.2d at 269 (membership in WSBA and authorization to continue in the practice of law coexist under authority of the Supreme Court).

In any event, nothing in the public records act limits the ability to make public records requests to taxpayers. Rather, the touchstone of the act is whether the agency in question has been created to serve the public, not the source of its funding. RCW 42.56.030 provides: “The people of this state do not yield their sovereignty to the agencies that serve them. . . . The people insist on remaining informed *so that they may maintain control over the instruments they have created.*” (Emphasis added.) The WSBA was created by an act of the Legislature, RCW 2.48.010, and serves the people of the state through conducting functions that it has been authorized to perform by statutes adopted by the Legislature and by court rules adopted by the Supreme Court. “The state has a substantial interest in maintaining a competent bar” *WA State Bar Ass’n v. State*, 125 Wn.2d at 908 (quoting 7 Am. Jur. 2d *Attorneys at Law* § 2, at 55-56 (2d ed. 1980) (emphasis omitted)). As such, the public has an interest in the operations of the WSBA.

5. The WSBA Is Not Exempt From the Public Records Act as Part of the Judicial Branch

The WSBA argues that records of its employees' salaries are exempt from the public records act because the WSBA is part of the judicial branch. The WSBA argues that the act "has been limited to the legislative and executive branches of government" Brief of WSBA at 18. The WSBA is incorrect. While the public records act has been held to not apply to some court records, our Supreme Court has never held that there is a blanket exemption from the public records act for the judicial branch.

Nothing in the public records act states that the act is not applicable to the judicial branch. On the contrary, the inclusive language defining "agency" and "public record" indicates an intent to include all parts of government. RCW 42.56.010(1), (2). Where the act treats different branches of government differently, this is expressly stated. *See* RCW 42.56.010(2), setting forth a different definition of "public records" for legislative records. Moreover, what is now RCW 42.56 was originally part of the public disclosure act, RCW 42.17, and was part of that statute for decades. *See* Laws of 1973, ch. 1 (Initiative No. 276); Laws of 2005, ch. 274 (creating separate public records act). The definition of "agency" in RCW 42.17 and in RCW 42.56 are identical. *See* RCW 42.17.020(2);

RCW 42.56.010(1). It is unquestioned that the public disclosure sections of RCW 42.17 apply to candidates for judicial office. No reason exists why the people, in passing the original act that dealt with both public disclosure and public records, would have intended for the judicial branch to be included in part of the act but not in the remainder of the act.

Some decisions have dealt with the applicability of the public records act to specific documents generated or held by parts of the judicial branch. In *Nast v. Michels*, 107 Wn.2d 300, 308, 730 P.2d 54 (1986), the Supreme Court held that the public records act (then part of the public disclosure act) “does not apply to court case files because the common law provides access to court case files, and because the PDA does not specifically include courts or court case files within its definitions”¹⁵

In *Beuhler v. Small*, 115 Wn. App. 914, 918, 64 P.3d 78 (2003), the Court of Appeals, relying on *Nast*, held that the public records act did not apply to a trial judge’s notes and computer files. But in *Smith v. Okanogan Cy.*, 100 Wn. App. 7, 16-17, 994 P.2d 857 (2000), the Court of Appeals held that a request to the Okanogan County Superior Court Administrator for the oath of office of the county’s judges was a request

¹⁵ In two earlier decisions, the Supreme Court determined it was unnecessary to reach the issue of whether the public records act applied to courts or court documents. *Cohen v. Everett City Council*, 85 Wn.2d 385, 389-90, 535 P.2d 801 (1975) (transcript of city council meeting being reviewed by trial court, error to seal transcript); *Cowles Pub. Co. v. Murphy*, 96 Wn.2d 584, 588, 637 P.2d 966 (1981) (documents related to search warrants, balancing test announced).

for a public record that should have been fulfilled. The court characterized several other requests relating to the courts as requests for information, rather than requests for records, which therefore did not need a response. However, nothing in the Court of Appeals' discussion suggests that the court viewed there to be any blanket exemption from the public records act for courts or other parts of the judicial branch.

In *Spokane & Eastern Lawyer v. Tomkins*, 136 Wn. App. 616, 150 P.3d 158, *review denied*, 162 Wn.2d 1004 (2007), the Court of Appeals, relying on *Nast* and *Beuhler*, held that the public records act did not apply to communications from the judges of the superior court to the WSBA or to the Spokane County Bar Association. The court interpreted *Nast* and *Beuhler* broadly and concluded that “the Spokane County Superior Court is not an agency under the PDA.” *Spokane & Eastern Lawyer*, 136 Wn. App. at 622.

Even assuming that the court in *Spokane & Eastern Lawyer* was correct in interpreting the prior cases as standing for the proposition that the public records act does not apply to the courts (which the Department does not concede), this does not mean that all parts of the judicial branch are excluded from the act. As the Supreme Court noted in the *Nast* case, the Legislature has expressly exempted certain records generated by entities in the judicial branch from the public records act.

See RCW 2.64.111 (certain records of the Judicial Conduct Commission¹⁶); RCW 10.29.030(3) (petitions to the statewide special inquiry judge). If the entire judicial branch was excluded from the public records act, it would have been unnecessary to create these express exemptions from the act.¹⁷

The Supreme Court currently has under consideration a case that may clarify the extent to which the public records act applies to courts and the judicial branch. *City of Federal Way v. Koenig*, No. 82288-3 (argued June 9, 2009).¹⁸ The Supreme Court has never held that all parts of the judicial branch are exempt from the public records act. The WSBA has not shown that its records are exempt from the public records act because it is part of the judicial branch.

6. Releasing Records of the Salaries of WSBA Employees Does Not Violate the Separation of Powers Doctrine

Many of the cases involving the WSBA and some of the cases involving court records and the public records act have been based on the

¹⁶ At the time of the *Nast* decision, the Commission was the Judicial Qualifications Commission and the exemption was in former RCW 2.64.110.

¹⁷ Exemptions from the public disclosure act that are not in the act itself are incorporated into the act by the “other statute” exemption in RCW 42.56.070(1). However, that exemption statute had not been enacted at the time of the *Nast* decision. Accordingly, that may explain why the language of *Nast* was written so broadly.

¹⁸ In another recent decision, *Morgan v. City of Federal Way*, ___ Wn.2d ___, 213 P.3d 596 (2009), the Supreme Court resolved the case without addressing the issue of the extent to which the public records act applied to the courts.

separation of powers doctrine. Releasing the salaries of WSBA employees would not violate the separation of powers doctrine.

The salaries of the officers and employees in the judicial branch are readily available to the public. Specifically, available on the website of the state Office of Financial Management—without the need for any public records request—are the names and salaries of seemingly all other officers and employees in the judicial branch, from the Chief Justice of the Washington Supreme Court to the library clerk at the State Law Library. CP 68-76. When the salaries of all other employees in the judicial branch are available, it cannot be said that releasing the records of the salaries of WSBA employees intrudes on the functions of the judicial branch to the extent that it violates the separation of powers doctrine.

7. The Court Should Decline to Follow the Decision of the Utah Supreme Court Relied Upon by the WSBA

The WSBA urges the Court of Appeals to follow the decision of the Utah Supreme Court in *Barnard v. Utah State Bar*, 804 P.2d 526 (Utah 1991), in which that court held that salaries of employees of the Utah State Bar were not subject to disclosure because that state's bar association was not a "public office" or "state agency" under that state's Records Act and Writings Act. Brief of WSBA at 17-18. Whether or not that case was correctly decided under the statutes of Utah, it is not binding on the courts

of Washington State. A significant factor in the Utah Supreme Court's decision appears to be that the Utah State Bar did not have any final decision-making role but at most made recommendations to the Utah Supreme Court. However, nothing in Washington's public records act makes a distinction between agencies that have final decision-making authority and those that are advisory only.

Both the Utah Supreme Court in *Barnard* and the WSBA point to the United States Supreme Court's decision in *Keller v. State Bar of California*, 496 U.S. 1, 110 S. Ct. 2228, 110 L. Ed. 2d 1 (1990), as describing the State Bar of California as more akin to a labor organization than a governmental entity for purposes of the bar association's members' First Amendment challenge to compulsory dues for political activities. *Barnard*, 804 P.2d at 529; *Keller*, 496 U.S. at 11-13; Brief of WSBA at 18. But the Court in *Keller* was discussing the status of the California State Bar with respect to First Amendment issues, not the applicability of that state's public records act. Moreover, in *Keller*, the California State Bar was asserting that it was a governmental agency because of the wide discretion the state bar had with respect to the activities in which it engaged. *Keller*, 496 U.S. at 7. Again, the WSBA is trying to have it both ways: It relies on the wide discretion given to the WSBA board of governors as making the WSBA not a state agency in *Graham*, but when

the same wide discretion is asserted by a sister state in *Keller* as making that state's bar association a state agency, it rejects that approach. The differing outcomes in *Graham* and *Keller* show, at a minimum, that a court's determination that a bar association is or is not a state agency or governmental entity for one purpose is not controlling on its status for other purposes.

For the reasons discussed earlier in this brief, the Court of Appeals here should decline to follow the *Barnard* decision and should affirm the trial court's determination that the records of the WSBA's employees' salaries are subject to the public records act.

E. The Salaries of WSBA Employees Are Not Exempt From Disclosure Under the Public Records Act

1. The WSBA Concedes That Salaries of Public Employees Are Not Exempt From Disclosure Under the Public Records Act

The WSBA argues that, even if the records of its employees' salaries held by the Department of Retirement Systems are public records, they are nonetheless exempt from disclosure. The WSBA concedes that the burden of showing that the records fall within an exemption to the public records act rests with the WSBA and its employees. Brief of WSBA at 21. The WSBA further acknowledges that the salaries of public employees are not exempt from disclosure under the public records act.

Brief of WSBA at 22. *See Tacoma Pub. Library v. Woessner*, 90 Wn. App. 205, 218, 951 P.2d 357, 972 P.2d 932 (1998). *See also Tiberino v. Spokane Cy.*, 103 Wn. App. 680, 690, 13 P.3d 1104 (2000); *King Cy. v. Sheehan*, 114 Wn. App. 325, 57 P.3d 307 (2002).

The WSBA cites to cases holding that certain personnel or financial records of public employees are not subject to disclosure. Brief of WSBA at 23. However, the records or information at issue in those cases either did not involve employee salaries or went beyond the employees' salaries. Here, the only thing the requester, Mr. Hiskes, asked for was the salaries of WSBA employees, and certainly all that the Department was prepared to disclose to him was the salaries ("compensation earnable") of WSBA employees in its records. Cases in which the request is broader than salaries are simply not applicable.

2. Promises of Confidentiality by the WSBA Cannot Override the Public Records Act

The WSBA argues that the salaries of its employees should be exempt from disclosure because the WSBA adopted policies and made representations to its employees that their salaries would be kept confidential. Brief of WSBA at 22. However, it has long been settled that promises or representations of confidentiality cannot contravene the mandate for disclosure under the public records act. *See Hearst Corp. v.*

Hoppe, 90 Wn.2d 123, 137, 580 P.2d 246 (1978) (“Promises cannot override the requirements of the disclosure law.”); *Spokane Police Guild v. State Liquor Control Bd.*, 112 Wn.2d 30, 40, 769 P.2d 283 (1989); *Broullet v. Cowles Pub. Co.*, 114 Wn.2d 788, 794, 791 P.2d 526 (1990) (WAC rule adopted by state agency purportedly making records confidential cannot override public records act).

Furthermore, that the salaries of individual WSBA employees may have been negotiated with those employees is immaterial. *See* Brief of WSBA at 23. The courts have never suggested that how a public employee’s salary is established could make the salary exempt from public disclosure. While the salaries of many public employees are established through the adoption of salary schedules that apply to all employees in the same job class with the same length of service,¹⁹ the salaries of many other public employees are set through negotiations or unilaterally by management within a salary range or band based on the individual employee’s experience and performance.²⁰ Accepting the WSBA’s argument that salaries are somehow exempt from disclosure because they are negotiated could result in the public not having access to the salaries

¹⁹ *See, e.g.*, RCW 41.06.133(10); WAC 357-28-010 to -030 (authority of Director of Personnel to adopt salary schedule for state civil service employees).

²⁰ *See, e.g.*, RCW 41.06.500, WAC 357-58 (Washington Management Service statute and rules); RCW 41.06.070-.078 (exemptions from state civil service act); RCW 41.80.020(1) (subjects for collective bargaining by state employees includes compensation).

the public is most interested in, i.e., those of highly compensated public employees. It could also result in the salaries of large numbers of public employees being exempt contrary to the intent of the public records act.

3. Cases Involving Employees of Private Organizations Are Immaterial Because the WSBA Is Not a Private Organization

The WSBA cites numerous cases involving the confidentiality of salary and other personal and financial information of employees of private organizations. Brief of WSBA at 23-26. None of these cases assists the WSBA, however, because, as discussed earlier, the WSBA is not a private organization as both the Legislature and the Supreme Court have recognized. *See* RCW 2.48.010 (State Bar Act creating the WSBA as “an agency of the state”); *Bannister*, 86 Wn.2d at 186 (WSBA is “a public rather than a private agency”).²¹

Furthermore, any reliance by the WSBA on any public policy in favor of confidentiality referred to in these cases is misplaced. The state public records act establishes the public policy of this state, and the policy set forth there requires disclosure of public records unless the records fall within an exemption to disclosure. RCW 42.56.030.

²¹ The cases relied on by the WSBA may also be distinguishable in that they do not arise under a public records act or they involve records or information that goes beyond salaries.

4. Disclosure of the Salaries of WSBA Employees Does Not Fall Within the Exemption in RCW 42.56.230(2) as Violating the Employees' Right to Privacy

The WSBA argues that the salaries of its employees are exempt from disclosure under RCW 42.56.230(2).²² Brief of WSBA at 20-21. The public records act requires that exemptions be narrowly construed. RCW 42.56.030. RCW 42.56.230(2) exempts from public disclosure: “Personal information in files maintained for employees, appointees, or elected officials of any public agency *to the extent that disclosure would violate their right to privacy; . . .*” (Emphasis added). The right to privacy is defined in the public records act as:

A person’s “right to privacy,” “right of privacy,” “privacy,” or “personal privacy,” as these terms are used in this chapter, is invaded or violated only if disclosure of information about a person: (1) Would be highly offensive to a reasonable person, and (2) is not of legitimate concern to the public.

RCW 42.56.050.

The above definition has two prongs: (1) highly offensive to a reasonable person, and (2) not of legitimate concern to the public. If either prong is not met, then the public records are not exempt. The WSBA cannot meet either prong.

²² The WSBA has not relied on any other exemption from disclosure. RCW 42.56.540, under which the WSBA sought to enjoin the Department from disclosing the records, is a procedural statute only and does not add any exemptions to the public records act. *Progressive Animal Welfare Soc’y v. Univ. of WA*, 125 Wn.2d 243, 257-58, 884 P.2d 592 (1994).

As discussed above, it has been held, and the WSBA does not dispute, that the disclosure of the salaries of public employees is not offensive to a reasonable person. It is only when the requester seeks information in addition to the employee and his or her salary that privacy interests may become implicated. *See Tacoma Pub. Library*, 90 Wn. App. at 221-23 (when coupled with employee identification numbers). That is not involved in Mr. Hiskes' request here.

The declarations filed by WSBA employees express concern that disclosure of their salaries could lead to identity theft. Without diminishing in any way the need for all members of the public to take precautions to minimize identity theft, the courts have rejected efforts to preclude the disclosure of non-exempt information through such "linkage" arguments. *See Sheehan*, 114 Wn. App. at 345-46. Such concerns are properly addressed by seeking an additional exemption for salaries from the Legislature. *Id.* at 348-49. The WSBA has not shown that disclosure of the records of its employees' salaries meets the "highly offensive to a reasonable person prong" of the definition of right to privacy.

Nor can the WSBA meet the "not of legitimate interest to the public" prong of the privacy definition. As discussed above, the records are being requested from the Department of Retirement Systems, and it has been held that the manner in which the Department administers the

public pension plans is of legitimate interest to the public. *Hollister*, 48 Wn. App. at 137. Even if just the WSBA itself were considered, the WSBA carries out functions that serve the public and thus the salaries of its employees are of legitimate interest to the public.

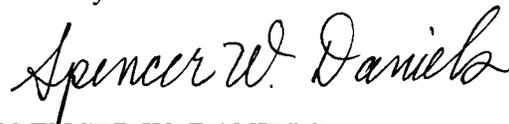
The WSBA has not met its burden of showing that the records of its employees' salaries, provided to the Department so that the WSBA's employees can participate in the Public Employees' Pension System administered by the Department, are exempt under RCW 42.56.230(2).

V. CONCLUSION

For the reasons set forth above, the Department requests this Court to affirm the decision of the trial court denying an injunction to the WSBA to prevent disclosure of the salaries of its employees.

RESPECTFULLY SUBMITTED this 9th day of October, 2009.

ROBERT M. MCKENNA
Attorney General



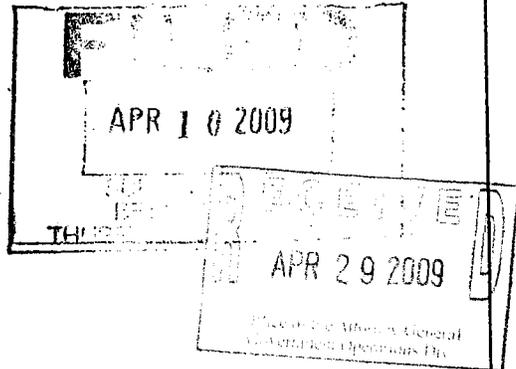
SPENCER W. DANIELS
Assistant Attorney General
WSBA No. 6831

Attorneys for Respondent
Department of Retirement Systems

APPENDIX A

1 EXPEDITE
2 Hearing is Set:

3 Date:
4 Time:



7 **STATE OF WASHINGTON**
8 **THURSTON COUNTY SUPERIOR COURT**

9 WASHINGTON STATE BAR
10 ASSOCIATION, CANDACE
11 BARBIERI, ELIZABETH
12 TURNER, DAVID POWELL, and
13 STEPHANIE G. BENSON GREER,

14 Petitioners,

15 v.

16 STATE OF WASHINGTON,
17 DEPARTMENT OF RETIREMENT
18 SYSTEMS, and EDWARD
19 HISKES,

20 Respondents.

NO. 09-2-00692-7

**ORDER DENYING MOTION
FOR PRELIMINARY
INJUNCTION AND
DISMISSING COMPLAINT**

21 This matter came before the Court on April 10, 2009, on Petitioners' motion for
22 an order granting a preliminary injunction pursuant to RCW 42.56.540 to enjoin
23 Respondent Department of Retirement Systems (Department) from disclosing records
24 of salary information (compensation earnable) of current and former employees of the
Washington State Bar Association (WSBA) in its possession in response to a public
records request by Respondent Edward Hiskes. Petitioners were represented by
Jeffrey S. Myers, Attorney at Law. Respondent Department was represented by

ORDER DENYING
MOTION FOR PRELIMINARY INJUNCTION
AND DISMISSING COMPLAINT

1 Spencer W. Daniels, Assistant Attorney General. Respondent Edward Hiskes
2 represented himself pro se.

3 The Court heard oral argument for counsel for Petitioners and counsel for
4 Respondents. The Court considered the pleadings filed in this action and the following
5 evidence:

6 Complaint filed March 19, 2009.

7 Motion for preliminary injunction, filed March 20, 2009.

8 Declaration of Robert Welden.

9 Declaration of Jeffrey S. Myers.

10 Declaration of Candace Barbieri.

11 Declaration of Elizabeth Turner.

12 Declaration of David Powell.

13 Declaration of Stephanie G. Benson Greer.

14 Respondent Edward Hiskes's Response to Motion for Preliminary Injunction.

15 Declaration of Edward V. Hiskes and Appendices A-E thereto.

16 Response of State Department of Retirement Systems to Motion for Preliminary
17 Injunction.

18 Declaration of Spencer W. Daniels.

19 Declaration of Allen T. Nguyen.

20 Petitioner's Reply Brief in Support of Motion for Preliminary Injunction.

21 Second Declaration of Jeffrey S. Myers in Support of Motion for Preliminary
22 Injunction.

23 The Court has determined that there are no issues of fact that require resolution
24 through further proceedings and that the court should consolidate the hearing on the
motion for preliminary injunction with the trial on the merits pursuant to CR 65(a)(2)
and so announced that determination to the parties during the hearing.

Findings of Fact

1
2 Based on the argument of counsel and the evidence presented and being fully
3 advised in the premises, the Court finds:

4 1. The State of Washington Department of Retirement Systems is a state
5 agency located in Thurston County, Washington, which is established pursuant to
6 RCW 41.50. The Department administers public pension systems established by
7 Washington statute.

8 2. The WSBA participates as an employer in the Public Employees'
9 Retirement System, one of the systems administered by the Department, and WSBA
10 employees, including the individual Petitioners, are members of the retirement systems
11 administered by the Department.

12 3. The WSBA reports to the Department the monthly compensation
13 earnable (reportable compensation) of its employees. Compensation earnable equates
14 to salary, with certain additions and subtractions specified in statute and rule.

15 4. On December 11, 2008 Edward Hiskes submitted to the Department a
16 public records request under the public records act, RCW 42.56, for the salaries of
17 individual current employees of the Bar Association, as well as for the highest and
18 termination salaries for WSBA employees in the previous 10 years.

19 5. The Department advised Mr. Hiskes and the WSBA that the Department
20 did not believe the records fell within any exemption to RCW 42.56 and was prepared
21 to provide Mr. Hiskes with the public records requested unless precluded from doing
22 so by order of the court. The Department has not provided Mr. Hiskes with any public
23 records.

24 6. The WSBA is provided for by the state bar act, RCW 2.48, and by court
rules adopted by the Washington Supreme Court, GR 12.1, GR 12.2, GR 12.3. All

1 active attorneys admitted to practice in Washington State must be members of the
2 WSBA and pay the required dues to the WSBA.

3 7. The WSBA's operations and the salaries of its employees are funded by
4 mandatory dues collected from members (attorneys admitted to practice in Washington
5 State), bar examination fees, revenue from advertising, and other sources, and are not
6 funded by appropriations from the legislature.

7 *In part, the public records section personnel records of employees are*
8 ~~8. The by-laws of the WSBA provide that salaries of individual employees~~ *exempt from public disclosure, except for information relating to com*
9 ~~of the WSBA Association are confidential.~~ *However, promises of confidentiality of*
10 *information in public records cannot override the requirement in the public records act*
11 *to disclose public records that are not exempt under an exemption in or incorporated*
12 *into RCW 42.56. The By-Laws, in their entirety, are part of*
13 *the record.*

14 9. Petitioners have the burden of establishing that the requirements for an
15 injunction under RCW ²42.56.540 are met. Petitioners have the burden of establishing
16 that the disclosure of salaries of individual WSBA employees would violates the
17 employees' right of privacy, which requires a showing that the salaries would be
18 highly offensive to a reasonable person and that they are not of legitimate interest to
19 the public.

20 10. Petitioners have not met their burden of showing that release of the
21 salaries of employees of the WSBA would be highly offensive to a reasonable person.
22 Salary information of many public employees, including many other officers and
23 employees in the judicial branch of government, is readily available to the public
24 without a public records request.

11 *DN*
12 *SD*
13 *SK*
14 *SK*
15 *SK*
16 *SK*
17 *SK*
18 *SK*
19 *SK*
20 *SK*
21 *SK*
22 *SK*
23 *SK*
24 *SK*

11. Petitioners have not met their burden of showing that the salaries of
employees of the WSBA are not of legitimate interest to the public. The public has an
interest in the activities of any public agency, which interest is not limited to the
public's interest as taxpayers. That the WSBA is a part of the judicial branch and is

1 ultimately subject to the authority of the Washington Supreme Court does not mean its
2 activities are not of legitimate interest to the public. The operations of the WSBA
3 impact not only the attorneys who are compelled by law to be members of the WSBA,
4 but also the public at large. The allocation by the WSBA of its revenues to its various
5 operations, as reflected by the salaries paid to its employees, is of legitimate interest to
6 the public.

7 12. The WSBA has not asserted, nor does the Court find, any other
8 exemption in or incorporated into RCW 42.56 under which the salaries of individual
9 WSBA employees would be exempt from disclosure.

10 Conclusions of Law

11 Based on the foregoing Findings of Fact, the court enters the following
12 Conclusions of Law:

- 13 1. The court has jurisdiction over the subject matter and parties.
- 14 2. Petitioners are not entitled to relief. Disclosure of salary information of
15 employees of the WSBA would not violate the employees' right to privacy as defined
16 by RCW 42.56.050 and is not exempt from disclosure under RCW 42.56.230(2).
- 17 3. The salary information of employees of the WSBA is not exempt under
18 any other provision in or incorporated into RCW 42.56.
- 19 4. Petitioners' complaint should be dismissed.

20 Order

21 For the reasons set forth in the above Findings of Fact and Conclusions of Law,
22 IT IS ORDERED:

23 1. Petitioners' motion for a preliminary injunction is denied, and
24 Petitioners' complaint for a permanent injunction is dismissed with prejudice.

2. This is a final, appealable order. However, release of salary information
of individual WSBA employees by the Department is stayed ^{during the pendency of} ~~for thirty days from entry of~~ *of*

SR
US
ISS

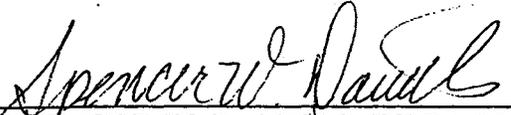
1 of this order in order to allow Petitioners to exercise their right to seek appellate
2 review. ^{pursuant to CR 62(a)} If appellate review is timely sought, any further stay shall be determined by
3 the appellate court. The Department shall be authorized to
4 disclose the requested records upon completion of appellate review.
5 3. Each party shall bear its own costs and attorneys fees.

DATED this 10 day of April, 2009.

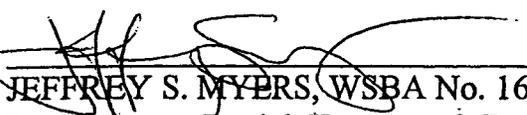

Hon. Wm. Thomas McPhee, Judge

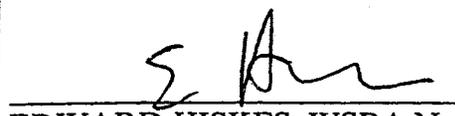
8 Presented by:

9 ROBERT M. MCKENNA
10 Attorney General

11 
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13 Assistant Attorney General
14 Attorneys for Defendant

15 Approved as to form and notice of presentation waived:

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JEFFREY S. MYERS, WSBA No. 16390
17 Law, Lyman, Daniel, Kamerrer & Bogdanovich, PS
18 Attorney for Petitioners

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20 EDWARD HISKES, WSBA No. 8322
21 Pro Se

FILED
COURT OF APPEALS
DIVISION II

NO. 39224-1-II

09 OCT 12 AM 10:53

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

STATE OF WASHINGTON
BY _____
DEPUTY

WASHINGTON STATE BAR
ASSOCIATION, CANDACE
BARBIERI, ELIZABETH TURNER,
DAVID POWELL, and STEPHANIE
G. BENSON GREER,

Appellants,

v.

STATE OF WASHINGTON,
DEPARTMENT OF RETIREMENT
SYSTEMS, and EDWARD HISKES,

Respondents.

CERTIFICATE OF
SERVICE

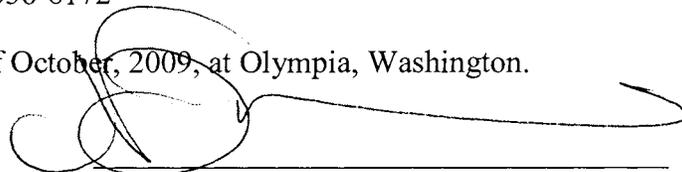
I hereby certify that on October 9, 2009, I served a copy of the
Brief of Respondent State of Washington Department of Retirement
Systems on all parties or their counsel of record via first class mail,
postage prepaid, as follows:

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DATED this 9th day of October, 2009, at Olympia, Washington.



NANCY J. HAWKINS
Legal Assistant