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COURT OF APPEALS
DIVISION II

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No. 40865-1-II

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

ARTHUR WEST

Vs.

**THURSTON COUNTY AND
THE PORT OF OLYMPIA**

**Appeal from the rulings of the honorable
Visiting Judges Hillyer and Heller**

APPELLANT'S OPENING BRIEF

**Arthur West
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I. INTRODUCTION-SUMMARY OF ARGUMENT

This appeal concerns the basic issue of whether the intent of the people in adopting the PRA to require that the people continue to be informed as to the operation of government so that they may maintain control of the instruments that they have created actually requires that the people be informed of the operations of their government in Thurston County so that they can even understand who their local law enforcement officers are and whether they have been lawfully appointed.

The plaintiff brought this case against the County to compel disclosure of attorney invoices after the enactment into law of RCW 42.56.110, due in part to the claims by defendants that the law should not be applied retroactively to require disclosure of the Broyles invoices.

In addition to the Broyles invoice issues plaintiff also sought (1) records concerning other invoices of payments to Patterson, (2) records of all communications regarding Patterson's representation of the county, and (3) records of any law enforcement commission issued to Patterson by the county, or any authority for such appointment or commission.

Plaintiff also sought a ruling as to whether or not a formal recorded commission was necessary for Patterson to act as a deputy prosecutor to control

the County's public disclosure process and represent the county when the law requires the County prosecutor to do so.

In this case, after the Mason County Court had refused to compel the disclosure of invoices, and declined to rule on the issue of whether the County had properly commissioned Patterson as a law enforcement officer. (See *West v. Thurston County*, 144 Wn. App. 573, 183 P.3d 346 (2008). and after the law had been clarified, and the new bill clarifying that the invoices were public records was enacted into law, West filed the additional requests for disclosure that appear in the record at CP 1120-1123.

To recap, West's records requests sought not only (1) the Broyles invoices (necessary because the County had maintained that the law was not retroactive) but also (2) invoices for the other PRA cases that Patterson was defending, as well as (3) communications concerning Broyles and those related to the representation of the County by Patterson and (4) the commissions and commissioning authority for Patterson to act as a county prosecutor.

Instead of ruling as required by the precedent of *West*, the Court refused to follow the precedent of this Court and denied disclosure of the invoices regarding Patterson's defense of the county in cause No 07-2-00108-2 and the Court of Appeals, and, in addition somehow "deferred" these PRA issues. (CP 1420-1422)

Significantly, while the April 26 Order of Judge Heller states that it does

not affect the 9/2/08 deferral of certain PRA issues to the Mason Superior Court, the Order of May 27 of Judge Hilyer states that the April 26, 2010 Order shall not be modified, yet it dismissed all of the causes of action against Thurston County with prejudice, without ruling on the improperly deferred issues, despite the fact that plaintiff expressly notified the court of this circumstance.

Thus this case is further complicated by the circumstance that Thurston County obtained an improper “deferral” of claims in another PRA case, on the basis that they would be referred to Judge Sheldon for determination, yet never informed Judge Sheldon of the “deferral”, and then subsequently moved for and obtained a dismissal the “Deferred” claims without even a pretense of a hearing.

Significantly, as CP 1420-22 and the brief in *West v Thurston County (I)* demonstrates, the improperly “deferred” claims were never properly referred to the judge by the defendants or adjudicated by either court, despite the strenuous objections of the plaintiff in both of the cases.

A further and more troubling aspect is the court's improper appointment itself, since a judicial assistant like Lyndsey Downs or a King County Judge is not an appointing authority under the RCW or State Constitution.

Therefore, Judge Heller could not have properly commissioned Patterson, and his commission was invalid, and the Court's actions in commissioning him *ex parte*, and then ruling that the plaintiff did not have standing and the commission

was unnecessary in any case raise grave doubts as to the Court's impartiality.

Justice deserves better than the comedy of errors that comprised this case. A judge should not act ex parte to remedy the very commissioning defect that a plaintiff brings into court and then deny him standing to raise the issue, and then state that the commission he issued was unnecessary anyway.

A Trial court should not rule in direct opposition to the clear precedent of this Court to conceal attorney invoices especially when the very same parties are before it. Finally, a court should not misplace issues for over a year and defer issues to other courts without orders of deferral, and if it does, it should not dismiss such claims if the deferree court refuses to act.

If the rulings of the trial court are correct, the people have no right to timely information to identify who is acting on behalf of the county, or how much they are paying for it, and no use for the information even in the event that it demonstrates illegal appointments and abuse of the authority of the county, since they have no standing to object in any case, even if they have been and continue to be injured by the actions of improperly appointed de facto officers, and continue to have the impartiality and regularity of the administration of justice eroded by Thurston County's judicial forum shopping in the visiting judge appointment process. .

As far as the Trial Court's dismissal of the Port is concerned, Plaintiff

suffered from a debilitating injury and the burdens of preparing on short notice for the only trial ever held in regard to the PRA in the State of Washington.

It was improper for the court to deny plaintiff a reasonable amount of time to respond to the Port's motion, especially in light of the large number of exhibits and the time and effort that was required for plaintiff to prepare for trial of the AWC issues in may and June of 2010., and in light of his adverse health issues.

It was also improper for the Court to conflate a CR 12(b)6 motion with a motion under CR 56, and to fail to grant all reasonable inferences in plaintiff's favor or recognize that a PRA claim could possibly be made when it was apparent from the record that the Port had a regular business practice of obstructing disclosure and hiding records to further the projects it sought to have approved and constructed without assessment of their reasonably foreseeable impacts.

As the record demonstrates, the Port initially refused to comply with plaintiff's request as it was "too burdensome" and then failed to promptly comply with plaintiff's records requests for records of the East bay development, which was a "facilitated" project advanced by shadowy east bay consortium whose purpose appeared to be to provide a vehicle for agencies to meet and confer in secret without compliance with the OPMA or PRA.

As the news article on file at CP demonstrates, the plaintiff was not the only one whose requests for information were delayed and denied.

In addition, the Port failed to provide information to West or others interested in the project that a portion of it was located on federal wetlands, and that the site included areas contaminated with toxic waste.

The Court improperly dismissed the Port when a response to the port's motion for CR 12(b) 6 dismissal was in the record, and when the severe medical complications suffered by plaintiff reasonably justified any minor delay or technical defects in his response.

This Court should declare that the invoices and communications requested by West, and partially produced by the County are public records, and issue an order that will ensure that the rest of the records are disclosed and an adequate and appropriate penalty issue in a reasonable and timely manner. Since the communications and invoices at issue have been at least partially disclosed, a finding of violation of the act is mandatory.

In addition, this Court should recognize that the appointment of Judge Heller by Lyndsey Downs was defective and void, and it should also act to require the County to follow State law when it commissions counsel, retains attorneys, and allows Patterson to Act as its de facto prosecuting attorney.

ASSIGNMENTS OF ERROR

I The Court erred in failing to compel disclosure of attorney fee invoices as required by the legislature's clarification of RCW 42.56 110 and the published decision of Division II in West v. Thurston County.....

II The Court erred in failing to recognize that the suit had resulted in disclosure of a class of appointment related records and in disclosure of invoices and communications previously claimed exempt and that as such a penalty was appropriate.....

III The Court Erred in improperly delaying and deferring ruling on the plaintiff's PRA claims concerning communications related to Patterson's representation of the County, the communications related to the Broyles invoices, and the Broyles attorney invoices themselves. and in failing to preserve a record on 3- 31-2010.....

IV The Court Erred in acting ex parte in King County to improperly issue (de facto) the very deputy prosecutor commissions West had brought suit to compel, then expressly contradicting its actions by denying that the commissions it issued were not required by law. in the first place, especially when plaintiff was injured by the failure of the county to properly appoint it's officers. and judges. and when the plaintiff had standing to question or compel the issue of the commissions that were issued as a result of the suit..... ..

V The Court Erred in improperly delaying and deferring ruling on the plaintiff's claims and in denying standing to assert claims relating to the commissions when plaintiff had demonstrated taxpayer standing and particular injury from improper commissioning and appointment of County officials....

VI The Court erred in refusing a reasonable accommodation and in dismissing the Port of Olympia when the requirements for dismissal under CR 12 and 56 were not present and when the evidence and

reasonable inferences therefrom indicted that the port had an established pattern of PRA violations.

ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

I Did the Court err in failing to compel disclosure of attorney fee invoices as required by the legislature's clarification of RCW 42.56 110 and the published decision of Division II in West v. Thurston County.....

II Did the Court err in failing to recognize that the suit had resulted in disclosure of a class of appointment related records and in disclosure of invoices and communications previously claimed exempt and that as such a penalty was appropriate.....

III Did the Court err in improperly delaying and deferring ruling on the plaintiff's PRA claims concerning communications related to Patterson's representation of the County, the communications related to the Broyles invoices, and the Broyles attorney invoices themselves.and in failing to preserve a record on 3- 31-2010.....

IV Did the Court err in acting ex parte in King County to improperly issue (de facto) the very deputy prosecutor commissions West had brought suit to compel, then expressly contradicting its actions by denying that the commissions it issued were not required by law. in the first place, especially when plaintiff was injured by the failure of the county to properly appoint it's officers. and judges. and when the plaintiff had standing to question or compel the issue of the commissions that were issued as a result of the suit?

V Did the Court err in improperly delaying and deferring ruling on the plaintiff's claims and in denying standing to assert claims relating to the commissions when plaintiff had demonstrated taxpayer standing and particular injury from improper commissioning and appointment of County officials?

VI Did the Court err in refusing a reasonable accommodation and in dismissing the Port of Olympia when the requirements for dismissal under CR 12 and 56 were not present and when the evidence and

reasonable inferences therefrom indicted that the port had an established pattern of PRA violations.

STATEMENT OF THE CASE

This case involves issues related to the dismissal of plaintiff's claims against two separate parties, Thurston County and the Port of Olympia¹. Since the dismissal of the Thurston County claims was on the merits and the Port ruling a preemptive dismissal, the bulk of this brief will concern the failure of the Court to find Thurston County in violation of the Public Records Act and issues in regard to the requirements of RCW 36.32.300 and the Special Deputy Sheriff Commissions issued by the honorable Judge Heller to Mr. Patterson and his law firm on August 4 and 15, 2008 (CP 560-563)

After the PRA was clarified by the legislature to eliminate the categorical exemption of attorney fee invoices and after the clarifications were enacted into law, plaintiff filed this action on November 26, 2007, seeking disclosure of attorney fee invoices, as well as communications related to the Broyles case and to Patterson's representation of the County. (CP at 4-10)

Prior to filing the suit, plaintiff had made multiple requests to the County including the requests of September 3, 2007, and January 22 and 27 of 2008, for the County's invoices in both Broyles, as well as another case where the county

¹ The Court's ruling concerning the dismissal of the Port of Olympia appears as section 6.7 on page 10 of the Order of September 10, 2010, appearing in the record at CP 102. The Order denying reconsideration of the Port's dismissal appears in the record at CP 135-136

was represented by Patterson.(CP at 1120-23, 651-671)

In addition to seeking disclosure of attorney invoices, plaintiff also sought all of the communications related to Patterson's representation.

In order to properly inform himself of the facts concerning the RCW 36.32.300 issues that the court had declined to allow to be raised by amendment in the previous case, plaintiff also requested copies of any commissions or authorization issued to Patterson to represent the County. (CP at 1122)

When the County claimed that such records were privileged and refused to disclose any existing commission other than one that had expired years before , west asserted claims that in the absence of such formal commissions Patterson was not lawfully acting as counsel for or a public records officer of Thurston County. (CP at 2-5)

On June 19, 2008, Lyndsey Downs, a judicial assistant to the honorable Gary Tabor, issued an appointment to Judge Heller as a visiting Judge. (CP at 1741-2) This was done and allowed despite the clear precedent requiring a substantially more formal and cumbersome process. (See CP at 1111-1113, 1100-1108)

The Court held a number of preliminary hearings:

On July 11 2008, the Court also heard argument on the Association of Cities motion for summary judgment. On July 11, 2008 the Court dismissed the

DNR (CP 161-2)

On July 15, 2008 the Court entered an order dismissing the DNR. (CP 163-164).

An Order was signed on September 5, 2008 denying the AWC's motion for summary judgment (CP at 614-618)

On September 3, 2008 at a second hearing, the Court heard argument re the attorney invoices and communications West had requested.

Judge Heller denied West's categorically request for Patterson's attorney fee invoices in cases other than Broyles. Over plaintiff's objections that the decision in West was controlling, The Court ruled that the requested invoices other than Broyles were exempt in their entirety. The Court further The County denied to compel the County to respond to West's request for the communications related to Patterson's representation of the County. (CP at 1085-92)

At the request of the defendants, "deferred" claims relating to the communications related to Patterson's representation of the County and the Broyles case (CP at 1085-92)

The Court refused to rule on the issues of correspondence concerning the representation of the county by Patterson, or the Broyles invoices, and in response to a motion by the County "deferred" these matters to judge Sheldon in Mason County, at the request of defendants who had represented that they would bring

this issue to the court's attention. (CP at 612-613, Transcript of September 3, 2008)

The Court also heard argument on its decision to that rather than rule on the issue of the lack of the commissions,, the Court had acted to issue special deputy commissions to Patterson and his firm on August 4 and 15. (P at 677-8)

Immediately after West had raised issues of false personation of a law enforcement officer in briefing, the Court (or more correctly, de facto King County Visiting Judge Heller) acted to issuing Special Deputy Prosecutor commissions to Patterson and his law firm to represent the county in pending litigation. (CP at 677-8)

Heller issued the commissions in King County despite the fact that he was not a presiding judge in Thurston County as defined in RCW tile 36, and despite the fact that he was adjudicating issues related to the need for such appointments.

.On December 30, 2008 the Court Signed an ORDER on plaintiff's motion to show cause concerning the records relating to the appointment of Patterson to represent the County in Broyles and West. The Court held that the county's production of the expired 2003 authorization for Broyles complied with its responsibilities under the act. Nearly a month later, the Order was filed on January 26, 2009 and appears at CP 675-679.

Although the County had maintained prior to suit that such records were

exempt from disclosure, and they were obviously made and disclosed as a direct result of the suit, as information unarguably necessary to determine the validity of the officer's status as law enforcement officers, the court refused to admit that the records were produced as a result of the suit and thus their disclosure required a finding that plaintiff had prevailed in compelling both their issuance and their disclosure.(CP at 675-9.)

Also on January 26, an Order was entered denying plaintiff's request for reconsideration of the Orders of appointment issued on August 4 and 15. (CP 673-674)

On January 13 of 2010 a hearing was held in King County before Judge Heller. At that time the court dismissed all of plaintiff's non-PRA claims against the county except for the illegal representation claim, which it took under advisement for consideration of standing issues. All of the Non-PRA County issues save the improper commissioning were dismissed and a further hearing was set on that issue. (CP 673, 1086, lines 8-14)

ORDERS were issued on January 26 on plaintiff's motion to show cause and granting an extension of time due to a recent injury sustained by West.

After the January hearing the Court "inadvertently" misplaced the case and declined to issue a ruling on the merits of the commissioning claim for over a year, (CP at 1086))

On February 22, 2010 a status conference was held and an Order setting cases schedule was filed. (CP 673))

On March 31, 2010, Judge Heller held a telephone hearing from King County on defendant Thurston County's motion to dismiss and on plaintiff's motion to amend and his motion for an order vacating the court's previous ruling on invoices as these same invoices had been partly disclosed. Despite the fact that no rule violation had been demonstrated the court improperly admonished West for filing copies of newly disclosed records of the attorney invoices that had been requested, the disclosure of which the court had denied. (CP at 1084)

A memorandum order regarding the Court's March 31 rulings was issued and filed on April 8, 2010. (CP at 1085-1090)

However, the record of the proceeding was not preserved and plaintiff's objections of April 12, 2010 that the proceedings were defective was not sustained.(CP at 1091)

An Order dismissing all "non-deferred" claims against Thurston County issued on April 26, 2010 (CP 1092-7), and plaintiff moved to reconsider on 5-030-2010 (CP 1100-1108)

In researching matters related to the ex parte hearing, plaintiff discovered, and then filed objections to the effect that Judge Heller had not been properly appointed as required by the law and constitution. Plaintiff subsequently filed a

letter from Judge Lewis of Clark County noting the proper procedure for appointing a visiting Judge under the RCW and the State Constitution Article IV, Section 7 required a written appointment by the presiding Judge .and also required the appointed visiting Judge to “Visit” the county to exercise his powers as a visiting judge. (CP 1111-1113)

On May 3, 2010 Judge Heller recused and on May 3 a King County administrator issued an appointment to Judge Hilyer. (CP 146) again, the procedure was not in compliance with the law or Constitutional Article IV, section 7.(CP at 1411)

Judge Hilyer was appointed despite the fact that he had received income from both Thurston County and the AWC, and various Ports, and had failed to report such income on his PDC forms or disclose it to the parties. In addition, Thurston County continues a contractual relationship with Agreement Dynamics, from which Hilyer receives income. (CP at 1660-1740)

On May 19, 2010 Judge Hilyer held a further hearing in King County over the objections of plaintiff West. Plaintiff's motions to reconsider and vacate the previous orders were denied. The Port issues were bifurcated.(CP at 1559)

On April 23, 2010, The Port moved to dismiss under CR 12(b)6. Plaintiff replied at CP 1423 and 1124-65)

Trial of the AWC issues was held June 7-10. Despite plaintiff's

demonstrated adverse medical condition, the trial was not continued. (CP at 1411-1415. Plaintiff conducted the trial with his left arm in braced and bandaged, and under the influence of prescribed narcotic pain medication. (CP 1649-1653)

Plaintiff's worsening condition and his reaction to medication (Ketorolac) caused him to pass out on the afternoon of the 7th and be briefly hospitalized. (See CP at 1411-1415, transcript of June 7, 2010, last page)

On July 14, the court entered an order on accommodation. (CP at 82-88)

On September 10, 2010, a final order on the AWC issues was issued finding them subject to the PRA, (and incidentally dismissing the Port because plaintiff's reply as late) Finally on March 7, 2011 a stipulated settlement and judgment was issued in regard to the AWC (CP 1551-4)

On October 4 the Court issued a judgment and CR 54 findings in re the AWC and a on October 15 final Order denying reconsideration as to all parties.

Timely appeals were filed on October 4, (CP 118) November 8, (CP 137-139) and December 22, 2010 (CP 1536-50),

On June this case was mistakenly dismissed.

On July 1, 2011, the mandate was recalled.

Orders on appeal. To attempt to clarify a complicated matter the following list of orders on appeal is provided:

In regard to the County, West takes exception to and appeals the Special

Deputy Appointments issued on August 5 and 15, the findings and conclusions in the January 26, 2009 Order on Plaintiff's Motion to show cause (CP 675-679) and the January 26 Order denying reconsideration of the orders of appointment (CP 673-674)

West further appeals the findings and conclusions in the April 2, 2010 order on Email communications, (CP 19-20) the April 8, 2010 Memorandum Order, (CP 1085) the April 26, 2010 Order on Defendant's Motion for Summary Judgment, (CP 1092-1097) and the the Order denying plaintiff's motion for show cause of June 4, 2010, (CP 1160-1161),

West takes exception to the orders of June 14, 2010, denying accommodation, and those of September 10 (CP 102) and October 13 (CP denying reconsideration of the dismissal of the Port. West objects specifically to any possible findings of fact, in any and all of the orders (appended hereto in an integral appendix) and to all conclusions of law contained therein.

West also appeals the appointment of Judge Heller and Hilyer (CP 1741-2, and 24 by clerk Lyndsey Downs and a King County magistrate, respectively)

The standard of review is de novo, error of law for legal issues, substantial evidence for factual matters, and de novo for mixed issues.

ARGUMENT

I The Court erred in failing to compel disclosure of attorney fee invoices as required by the legislature's clarification of RCW 42.56.110 and the published decision of Division II in *West v. Thurston County*.....

Appellant maintains that in light of the clear intent of the legislature in clarifying the law, (RCW 42.56.904) and the Court's ruling in *West v. Thurston County*, 144 Wn. App. 573, 183 P.3d 346 (2008), as well as the . the fact that Patterson was a county officer and agent, the Court erred in failing to recognize that the requested invoices and communications under the control of (and produced by) Thurston County were public records as defined in RCW 42.56..

As this Court recognized in *Broyles*, A county is a municipal corporation authorized by law to exercise powers the state grants to it. RCW 36.01.010. The county is no single person or entity. Rather, it exercises its powers through various commissioners, officers, and agents. RCW 36.01.030, and as such must comply with the laws, (including Title 36), in appointing counsel to act for the county

In *Broyles*, the county was not shielded from the administrative actions of its prosecutor or deputy prosecutors merely because their part of the county function lies in the prosecutor's office, and therefore, it should likewise not be

shielded from disclosure of or responsibility for the actions of Patterson by a legal fiction of a risk pool contract.

The unlawful exercise of law enforcement powers and the defective appointments were unlawful because...a corporation is “an artificial being, invisible, intangible, and existing only in contemplation of law,” which by necessity “must act through its officers, directors, or other agents.” 18 Am. Jur. 2d *Corporations* §§ 1, 2 (2004).

Similarly, a municipal corporation, such as a county, can only act through its agents. *See Houser v. City of Redmond*, 91 Wn.2d 36, 40, 586 P.2d 482 (1978). When a municipal corporation’s agents act within the scope of their employment, their actions are the actions of the municipal corporation itself. *See Houser*, 91 Wn.2d at 40. As a county officer, the prosecuting attorney exercises the county’s delegated power. RCW 36.16.030; *State v. Whitney*, 9 Wash. 377, 379, 37 P. 473 (1894) (prosecuting attorney is county officer).

Therefore, when a county officer, such as a prosecuting attorney or deputy prosecuting attorney, (Or in the instant case, Mr. Patterson) exercises the county’s powers, the officer’s actions are the actions of the county itself. *Broyles v. Thurston County*, 147 Wn. App. 409 (2008)

Counties are political subdivisions of the State and are given the capacity of a body corporate in RCW 36.01.010. Thus, counties, like other corporations,

can act only act through their (properly appointed) officers, agents and employees.

As agents of the County, its lawyer Patterson secured invoices which were used to secure payment of county officers acting under the direction and control of their principal, Thurston County.

It cannot be reasonably asserted that Patterson was not a County agent acting within the scope of his employment when he represented the county in Court-especially when he accepted de facto commissions from the County via Judge Heller. Therefore, his actions, and his records, are those of the County.

A more weighty and compelling basis to conclude that the invoices at issue that Judge Heller refused to require be disclosed were county records appears at Clerk's papers No. 1562-1564 as a bulky and cumbersome exhibit, comprising the many pages of additional records produced by Thurston County in May of 2010. The Communications requested have also partially been disclosed as of this date.

The County implicitly recognized their control over these records and affirmatively acted to effect a de facto waiver of their claim that the records were not in their possession and/or subject to disclosure under the PRA when they exercised control over and disclosed the records. as Division I recognized in *King v. Snohomish County*, 146 Wn.2d 420, (2002)

We have held that a defendant may waive an affirmative defense if either (1) assertion of the defense is inconsistent with defendant's prior behavior or (2) the defendant has been dilatory in asserting the defense. *Lybbert v. Grant County*, 141 Wn.2d 29, at 39, 1 P.3d 1124 (2000). See also *French v. Gabriel*, 116 Wn.2d 584, 806 P.2d 1234 (1991). In *Lybbert* we explained, "the doctrine of waiver is sensible and consistent with . . . our modern day procedural rules, which exist to foster and promote 'the just, speedy, and inexpensive determination of every action.'" *Lybbert*, 141 Wn.2d 29, at 39, (quoting CR 1).

By "voluntarily" disclosing these records in response to a PRA suit, Thurston County should be seen to have waived or at least be equitably or collaterally estopped from denying they had possession control over them through their agent Patterson. See *Kramarevcky v. DSHS*, 122 Wn.2d 738, P.2d 535, (1993)

The Court's ruling to the contrary was not in accord with common sense, the doctrines of waiver and estoppel, or the intent and express letter of the PRA itself, and our Supreme Court, which defines a public record broadly as....

Any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or *retained* by any state or local agency regardless of physical form or characteristics. *O'Neil v. City of Shoreline*, 145 Wn. App. 913, at 922-23, 187 P.3d 822, 832 (2008).

Significantly, in response to just this same controversy, the legislature in 2007 enacted what is now codified in RCW 42.56.904, which stated...

The legislature intends to clarify that the public's interest in open

accountable government includes an accounting of any expenditure of public resources, including through liability insurance, upon private legal counsel or private consultants.

The 2007 clarification and a broad reading of it are in accord with the PRA's strong statement of the public policy of openness in government, for as the Act states...:

The provisions of this chapter shall be liberally construed to promote . . . full access to public records so as to assure continuing public confidence of . . . governmental processes, and so as to assure that the public interest will be fully protected. RCW 42.17.010(11).

As the Act also states...

The people of this state do not yield their sovereignty to the agencies that serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may maintain control over the instruments that they have created. This chapter shall be liberally construed and its exemptions narrowly construed to promote this public policy. RCW 42.56.030.

Washington Courts have repeatedly and universally recognized "the Legislature's intent to ensure full access to public records." *ACLU v. Blaine Sch. Dist.*, 86 Wn. App. 688, 697, 937 P.2d 1 176 (1997); *Progressive Animal Welfare Society ("PAWS") v. University of Washington*, 125 Wn.2d 243, 251, 884 P.2d 592 (1994) (the Act is "a strongly worded mandate for broad disclosure of public records").

The exemption for attorney invoices allowed by Judge Heller and Hillyer

in this case would undermine the mandate for disclosure of public records as expressed by both the legislature and the people, as well as the intent and letter of the State Constitution, and the respect for the rule of the law in the form of clearly established precedent.

As Washington Courts have repeatedly held...

In order to promote "complete disclosure," courts must construe the Act's disclosure provisions liberally. *Dawson v. Daly*, 120 Wn.2d 782, 788, 845 P.2d 995 (1993); see also PAWS, 125 Wn.2d at 251. An agency must make available public records unless the record falls within a specific exemption of the Act or "other statute which exempts or prohibits disclosure of specific information or records." RCW 42.56.070(1).

Such a reading is consistent with a comprehensive understanding of the State Constitution as well as the Supreme Court's recognition in *Fritz v. Gorton*, 83 Wn.2d 275517 P.2d 911 (1974) that the right to receive information is a necessary corollary of the rights protected under the 1st Amendment Viewed in this context, and in the context of Washington Constitutional Article I sections 4 and 5, the Public Records Act serves to provide vitality to the 1st Amendment as well as the corresponding provisions of the Constitution of the State of Washington, which uniquely provide for even greater rights of petition and speech than their federal counterparts. (See, generally, Gunwall, Fritz)

Washington should follow the reasoning of the Ohio Supreme Court, (as well as virtually every other State in the union which has considered the issue),

which has applied their similar sunshine law to require public disclosure of records possessed, received, or created by ostensibly “private” counsel to which a County had retained and delegated the performance of public functions to. State ex rel. Findlay Publishing Company v. Hancock County Board of Commissioners, 80 Ohio St. 3d. 134, 684 N.E.2d 1222 (1997) See also State ex rel Gannet v. Shivs, 78 Ohio St. 3rd 400 678 NE 2d 557, State ex rel Cincinnati Enquirer v. Krings, 93 Ohio St. 3d 654 758 NE 2d 1135

II The Court erred in failing to recognize that the suit had resulted in disclosure of a class of appointment related records previously claimed exempt and in disclosure of invoices and communications and that as such a penalty was appropriate.....

The issue of whether law enforcement officers such as Special Deputy Patterson (and the honorable visiting Judges Heller and Hilyer) are properly appointed is of primary importance to the sound governance of a free society and this has been recognized as early as the Great Charter of 1215, which stated (in Latin)

We will appoint as justices, constables, sheriffs, or other officials, only men that know the law of the realm and are minded to keep it well.

Obviously, it is of crucial importance that the people be able to determine if those exercising County powers are doing so in a lawful manner, and this is

even more important in the case of officers such as Patterson who attempt to deny that they are county agents in order to exercise a greater degree of discretion and autonomy than the law allows a county officer to exercise, and to attempt to veil their actions as county officers behind a specious veil of private status.

In this case it is not disputed, (and the county's response demonstrates) that prior to suit the County refused to disclose records related to the commissioning of Patterson and his law firm as privileged. As a result of the proceedings, the County was compelled to disclose the records that existed as to the commissions and appointments issued to Paterson.

As the PRA has long been interpreted to effect the intent of the legislature and people, a violation of the act occurs when a citizen is compelled to go to court to compel disclosure of records. This precedent should be and until now has been, free from the specious distinctions drawn by judge Heller in the Order on the motion to Show cause.(CP 1085). As the Supreme Court ruled in PAWS...

The stated purpose of the PRA is nothing less than the preservation of the most central tenets of representative government, namely, the sovereignty of the people and the accountability to the people of public officials and institutions. RCW 42.17.251. Without tools such as the PRA government of the people, by the people, for the people, risks becoming government of the people, by the bureaucrats, for the special interests. In the famous words of James Madison, "A popular Government, without popular information, or the means of acquiring it, is but a Prologue to a Farce or a Tragedy; or, perhaps both." Letter to W.T. Barry, Aug. 4, 1822, 9 The Writings of James

Madison 103 (Gaillard Hunt ed., 1910). PAWS v. UW, 125 Wn.2d 243, (1994)

Without the disclosure of the records related to Patterson's exercise of powers on behalf of the County, and his expenditures of public funds, private counsel representing public agencies would be a law unto themselves, able to evade and disregard the law at their whim, and the public who they are supposed to serve, would not be able to even discover what they were doing. It is a fortunate circumstance that the intent of the PRA is expressly opposed to such unaccountable exercise of power.

To effectuate this intent, the PRA provides for attorney fees and penalties to any person who prevails against an agency in any action in the Courts seeking the right to inspect or copy any public record.(RCW 42.56.550)

The PRA's penalty provision is intended to “discourage improper denial of access to public records and [encourage] adherence to the goals and procedures dictated by the statute.” *Hearst Corp. v. Hoppe*, 90 Wash.2d 123, 140, 580 P.2d 246 (1978). The legislature updated the initiative penalties to a \$5-\$100 per day penalty range, intending for innocent, good faith mistakes to fall at the low end and egregious, intentional misconduct to top the scale. Indeed, the purposes of the PRA are best served by “increasing the penalty based on an agency's culpability.” *Yousoufian v. Office of Ron Sims*, 152 Wash.2d 421, 435, 98 P.3d

463 (2004).

In this case, one group of records released in response to the suit were the commissions and communications relating to the commissions that that the County issued to Patterson and which Judge Heller so un-judiciously executed as a “Presiding judge in Thurston County”, and the other two groups were the invoices that the court declared were not public and the related communications that the Court refused to consider opting instead for an improper deferral.

As the Supreme Court noted in *Spokane Research & Def. Fund v. City of Spokane*, 155 Wn.2d 89, at 103 (2005)...

The harm occurs when the record is improperly withheld. The requester should recover his costs, and the agency should be penalized, if the requester has to resort to litigation (the reason for the later disclosure is irrelevant). This rule promotes the PDA's broad mandate of openness.

In this case, the defendants can not dispute in their pleading that the plaintiff's suit and appeals were reasonably necessary .to compel disclosure of the records they produced as a result of this suit. (See CP 750-108--Invoices and CP 1670-1740--Broyles communications)

These records and other communications disclosed after this case went on appeal compel a finding that the county disclosed records as a result of this litigation.

In any case, as the King County Coalition on Government Spying case

and the Court in *Miller v. Dept of State*, 779 F.2d 1378, 1389 (8th Cir. 1985), a causative effect is enough to prevail even in the absence of a formal suit or judgment.

III The Court Erred in improperly delaying and deferring ruling on the plaintiff's PRA claims concerning communications related to Patterson's representation of the County, the communications related to the Broyles invoices, and the Broyles attorney invoices themselves

As can readily be observed from the lengthy, convoluted and tortuous proceedings in this case in the nearly three years it has been in the Trial Court, the trial Court erred in failing to promptly and efficiently determine the issues without unreasonable delay, and did everything it could to prevent the plaintiff from prevailing in any manner.

Article 1, Section 20 of the State Constitution provides that in all cases justice shall be administered openly and without unreasonable delay. Article 4 section 20 and RCW 2.08.240 provide that in the case of matters submitted to superior Court judges, this is 90 days.

While no one expects a Court to rush adjudication of important issues, a delay of over two years in determination of what should have been a straightforward set of issues is not in the public interest, represents a tremendous waste of judicial and public resources and has the side effect of providing ammunition to those opponents of the public's right to know testify in the

legislature for the PRA to be severely restricted in scope due to its impacts on local government.

Judge Heller and Hillyer erred in failing to render justice on plaintiff's claims openly and without unreasonable delay when the commissioning claims were obstructed by the biased issue of commissions and when the PRA claims were either improperly denied in violation of established law, or "deferred" and ignored entirely. All of this, and the unrecorded hearing, violated due process.¹

Significantly, even when the court had issued commissions requested by plaintiff in his complaint, and even when the plaintiff filed some of the very invoices and communications that Judge Heller had denied disclosure of, Heller, (and subsequently Hilyer) refused to recognize that plaintiff had "prevailed".

This violation of impartiality by Judges who had either issued commissions to the defendants (Heller) or who were receiving money under existing contracts with the County and failing to report it (Hilyer) implicates basic due process and 14th Amendments rights protected under the Supreme Court's precedent in *Caperton v. AT Massey Coal Co.* 129 S. Ct. 2252, (2009)

Due to the duplicitous conduct of counsel and the refusal of Judge Heller to rule for over a year, plaintiff, and the court were denied material evidence relevant to the issue of Thurston County control over the invoice records necessary for a fair determination of the issues. (See CP 1669-1740)

1. Appellant asserts that delays, deferrals, proceedings without jurisdiction and in absentia in King County, the lack of impartiality, and the failure of the Court to preserve a record of the March 31 hearing all contributed to a denial of due process (See *Hagar v. Reclamation Dist.*, 111 U.S. 701, at 708 (1884) and abridged the Article 1, section 10 right to the administration of justice openly and without unreasonable delay.

IV The Court Erred in acting ex parte in King County to improperly issue (de facto) the very deputy prosecutor commissions West had brought suit to compel, then expressly contradicting its actions by denying that the commissions it issued were not required by law. in the first place, especially when plaintiff was injured by the failure of the county to properly appoint it's officers and judges. and when the plaintiff had standing to question or compel the issue of the commissions that were issued as a result of the suit..

The Division II ruling in West case notes that plaintiff attempted to raise the same RCW 36.32.200 commissioning issue. However, due to the failure of the County to promptly disclose information concerning the status of the commissions, plaintiff was prejudiced in bringing his claims and could not have them adjudicated in West I.

Significantly, even after frustrating the first attempt to question the validity of Patterson's commission, defendant County in this case concealed from plaintiff various records related to the authority of counsel to represent Thurston County.(see County PRA reply and the declaration of Tammi Devlin, and the August 5 and 15 commissions) This continuing concealment with the intent of obscuring the status of counsel also shows continuing bad faith and justifies a finding that all counsel invoices are county records. This is reinforced by the express terms of AGLO 1975 No. 65..

The Court also erred in denying West standing when he had already

compelled the issue, albeit defectively of commissions to Patterson, and when plaintiff demonstrated that he had been and continued to be adversely and particularly impacted by improper county commissioning and appointments in 4 separate respects.

Plaintiff demonstrated in the specific provisions of his complaint, which was undisputed- that he had made the requisite request for action to the attorney general. Thus, he met the express notice requirements of *Reiter v. Wallgren*, 28 Wn.2d 872, 184 P.2d 571 (1947) and *Walker v. Munro*, 124 Wn.2d 402, 414, 879 P.2d 920 (1994) by having requested action by the attorney general, and specifically plead it in his complaint.

In addition, plaintiff demonstrated that he was and had been adversely impacted by (1) Patterson's commission, and the actions of Patterson acting under the commission, as well as the improper commissioning of (2) Thurston County Deputy Sheriff's (See *West v. Criminal Justice Commission*, and the article about the costs to the taxpayers of Sheriff Kimbal's actions) (3) a Staff Attorneys improperly appointed by the Commissioners who dismissed one of his cases. In addition, West could, and did demonstrate that (4) he was prejudiced by the improper commissioning of Judges Heller and Hilyer, neither of whom were properly appointed by law to act as Visiting Judges, and neither of whom acted as such in adjudicating the County or Port issues..

West maintains that judicial assistant Lyndsey Downs' "appointment" of Judge Heller was manifestly in violation of the requirements of State Law, Article IV, section 7² of the Constitution of the State of Washington, and the stare decisis effect of State Ex Rel Carpenter, in that it is clearly established in the State of Washington that...

Upon...an election to call in a visiting judge, an order should be made transferring jurisdiction of the cause to such judge, and notice given the parties; and the statute is not satisfied by merely procuring the consent of a visiting judge to hear a certain motion upon a certain day, with verbal notice thereof. "Of course, the presiding judge of a county cannot arbitrarily name some other judge of another court to try a case and order him to come at any stated time to take charge of the case...When the visiting judge has been obtained, an order should be made transferring the case to such judge, and notice given to the parties to the cause, or their attorneys, of the designation and transfer to the visiting judge to take charge of the case. State ex Rel Carpenter v. Superior Court, 131 Wash. 448, 230, 230 Pac. 154, (1924)

RCW 2.08.150 further provides...

Whenever a like request shall be addressed by the judge, or by a majority of the judges (if there be more than one) of the superior court of any county to the superior judge of any other county, he is hereby empowered, if he deem it consistent with the state of judicial business in the county or counties whereof he is a superior judge (and in such case it shall be his duty to comply with such request), to hold a session of the superior court of the county the

²SECTION 7 The judge of any superior court may hold a superior court **in any county** at the request of the judge of the superior court thereof,

judge or judges whereof shall have made such request, at the seat of judicial business of such county, in such quarters as shall be provided for such session by the board of county commissioners, and during such period as shall have been specified in the request, or such shorter period as he may deem necessary by the state of judicial business in the county or counties whereof he is a superior judge.

Similarly RCW 36.32.200 as it existed, provided as follows:

It shall be unlawful for a county legislative authority to employ or contract with any attorney or counsel to perform any duty which any prosecuting attorney is authorized or required by law to perform, unless the contract of employment of such attorney or counsel has been first reduced to writing and approved by the presiding superior court judge of the county in writing endorsed thereon. This section shall not prohibit the appointment of deputy prosecuting attorneys in the manner provided by law.

The failure of respondent Patterson to do comply with this law, and his continuing failure to comply with the law as it stands now is by no means a merit less concern.

In failing to follow the clear terms of state law, and Article IV section 7 of the Constitution of the State of Washington, the County subjected West to a policy, custom and usage of unlawful appointments of county officers under color of law and an interlocking set of prior restraints and abridgments in violation of USCA 1, 4, 10, 14, and Article I, sections 4 and 5 of the Constitution of the State of Washington.

As shown by Thurston County's own records and the exhibits at CP 1741-2 the “appointment” in this case issued from a judicial assistant, Lyndsey Downs, not Judge Tabor. In addition, no office de jure existed for a Thurston County Judge exercising the office from King County in absentia, and Judge Heller and Hillyer (in ruling on the County and Port) never occupied the office of Thurston County Judge in Thurston County as required by Statute and the state constitution.

Such a constitutionally and lawfully defective appointment requires application of the clearly established precedent in *Nguyen v. United States* 540 U.S. 935, 284 F.3d 1086, (2003) and *Glidden Co. v. Zdanok* 370 U.S. 530, (1962)

The Government’s three grounds for leaving the judgments below undisturbed are not persuasive. First, this Court’s precedents concerning alleged irregularities in the assignment of judges do not compel application here of the *de facto* officer doctrine, which confers validity upon acts performed by a person acting under the color of official title even though it is later discovered that the legality of that person’s appointment to office is deficient, *Ryder v. United States*, 515 U.S. 177, 180. Typically, the Court has found a judge’s actions to be valid *de facto* when there is a “merely technical” defect of statutory authority, *McDowell v. United States*, 159 U.S. 596, 601—602, but not when, as here, there has been a violation of a statutory provision that embodies weighty congressional policy concerning the proper organization of the federal courts, see, *e.g.*, *American Constr. Co. v. Jacksonville, T. & K. W. R. Co.*, 148 U.S. 372, 387.

It should be noted that the appointing officer in the *Nguyen* case was none other than the chief justice of the 9th Circuit Court of Appeals. While plaintiff is

aware of the sanctity of those engaged in public service and has due respect for all public officers, including the clerks and lowly assistants who file legal documents and operate xerox machines, Judge Settle's attempt to vest a mere judicial assistant such as Lyndsey Downs with powers of appointment greater than those of the Chief justice of the 9th Circuit Court of Appeals is so ridiculous as to constitute a manifest abuse of discretion.

The Court also erred in refusing to recognize binding law and clearly established constitutional rights to a duly appointed "Visiting" judge where defect is not merely technical, and misstate the limitations of RCW 4.04.010³ as they limit the application of common law doctrines such as the de facto officer doctrine in the State of Washington, especially in regard to magistrates such as Heller who was appointed as a Thurston County Judge and failed to exercise the office of Thurston County Judge in Thurston County as required by law.

The Court also erred in refusing to recognize that Plaintiff made his challenge to the actions of Heller prior to a final order, certainly a timely action.

Further...

When the statute claimed to restrict authority is not merely technical, but embodies a strong policy concerning the proper administration of judicial business, this Court has treated the alleged defect as

³The common law, so far as it is not inconsistent with the Constitution and laws of the United States, or of the state of Washington nor incompatible with the institutions and condition of society in this state, shall be the rule of decision in all the courts of this state.

"jurisdictional" and agreed to consider it on direct review even though not raised at the earliest practicable opportunity. *E.g.*, *American Construction Co. v. Jacksonville, T. & K.W. R. Co.*, 148 U.S. 372, 387-388. *Glidden Co. v. Zdanok* 370 U.S. 530

Significantly, the *Glidden* Court limited the application of the de facto officer doctrine when a timely challenge had been made, prior to a final Order in the case...

"the cases in which we had relied on that (de facto officer) doctrine did not involve "basic constitutional protections designed in part for the benefit of litigants." *Id.*, at 536 (plurality) The *de facto* officer doctrine--which confers validity upon acts performed under the color of official title even though it is later discovered that the legality of the actor's appointment or election to office is deficient--cannot be invoked to authorize the actions of the judges in question.... One who makes a timely challenge to the constitutionality of the appointment of an officer who adjudicates his case is entitled to a decision on the merits of the question and whatever relief may be appropriate if a violation indeed occurred. *Ryder v. United States* (94-431), 515 U.S. 177 (1995). citing *Cf. Glidden Co. v. Zdanok*, 370 U.S. 530, 536.

"Once jurisdiction is challenged, the court cannot proceed when it clearly appears that the court lacks jurisdiction, the court has no authority to reach merits...." *Melo v. US*, 505 F2d 1026. "There is no discretion to ignore that lack of jurisdiction." *Joyce v. US*, 474 F2d 215. "The burden shifts to the court to prove jurisdiction." *Rosemond v. Lambert*, 469 F2d 416. "Court must prove on the record, all jurisdiction facts related to the jurisdiction asserted." *Lantana v. Hopper*, 102 F2d 188; *Chicago v. New York*, 37 F Supp 150. "A universal principle as old as the law is that a proceedings of a court without jurisdiction are a nullity and its judgment therein without effect either on person or property."

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A universal principle as old as the law is that the proceedings of a court without jurisdiction are a nullity and its judgment therein without effect either on person or property."

Norwood v. Renfield, 34 C 329; *Ex parte Giambonini*, 49 P. 732. "Jurisdiction is fundamental and a judgment rendered by a court that does not have jurisdiction to hear is void *ab initio*." *In Re Application of Wyatt*, 300 P. 132; *Re Cavitt*, 118 P2d 846. "Thus, where a judicial tribunal has no jurisdiction of the subject matter on which it assumes to act, its proceedings are absolutely void in the fullest sense of the term." *Dillon v. Dillon*, 187 P 27. "A court has no jurisdiction to determine its own jurisdiction, for a basic issue in any case before a tribunal is its power to act, and a court must have the authority to decide that question in the first instance." *Rescue Army v. Municipal Court of Los Angeles*, 171 P2d 8; 331 US 549, 91 L. ed. 1666, 67 S.Ct. 1409.

"A departure by a court from those recognized and established requirements of law, however close apparent adherence to mere form in method of procedure, which has the effect of depriving one of a constitutional right, is an excess of jurisdiction." *Wuest v. Wuest*, 127 P2d 934, 937. "Where a court failed to observe safeguards, it amounts to denial of due process of law, court is deprived of juris." *Merritt v. Hunter*, C.A. Kansas 170 F2d 739.

This is exactly what has occurred in this case by and through the actions of the defendants, pursuant to County policies under color of law, where plaintiff's right to a prompt and fair adjudication of public records issues has been thwarted in a comedy of administrative and legal error of constitutional dimension.

The Court erred and ruled at variance with the weight of evidence and precedent when it concluded that West was not entitled to a decision on the merits of his unlawful appointment issues by a court with jurisdiction acting in Thurston County that had been properly appointed itself.

The improper effect of the Court's own appointment not only caused a

the legitimacy of plaintiff's claims.

The Supreme Court of South Dakota, in a classic “Spotted Cow” or “Speckled Seed⁴” ruling, rejected the exercise of jurisdiction out of district by an improperly appointed magistrate, denying the application of the de facto doctrine under virtually identical circumstances where an out of district Judge, acting on a defective appointment, unlawfully attempted to exercise jurisdiction unlawfully in violation of the laws of the State. The Supreme Court of South Dakota ruled...

The State asserts that if we find Judge Anderson's execution of the search warrant to be improper, we should apply the common law de facto officer doctrine to justify his actions. The common-law is in force in South Dakota, except where it conflicts with the Constitution or statutes of this state. SDCL 1-1-23, -24. As any application of this doctrine would conflict with the Constitution and statutes of this state as we have previously discussed, the doctrine is inapplicable.

This case is on all fours with the present circumstances, in that RCW 4.04.010 contains identical limitations upon the Common law doctrine of de facto officers in the state of Washington. Thus, it is clear that the de facto doctrine does not justify, and cannot legitimize, the State's actions in this case.

Attached as an exhibit to this Brief is a brief filed by the Blair Law Group in *Woolery v. Spokane County, Thurston County Cause No. 10-2-02065-6*. This

⁴ The South Dakota Case involved a search warrant issued by an out of district judge with a defective appointment for marijuana in room 22 of the Rainbow Hotel.

brief demonstrates that West's concern for the prompt administration of justice under Article 1 Section 10 and Article IV Section 20 of the State Constitution is far from a frivolous matter, and one that finds independent protection in the terms of both State law and the Washington State Constitution, even in the reasoned opinion of a member of the Bar.

Also attached as an exhibit is the letter of the honorable Paula Casey ratifying the determination of Judge Lewis, as the presiding judge of the Thurston County Court. This affirmative action equitably and collaterally estops Thurston County from denying that appellant West's claims as to improper appointment and exercise of office by Heller were unfounded.

The elements of estoppel are an admission, statement, or act inconsistent with a claim afterward asserted; second, action by another in reasonable reliance on that act, statement, or admission; and third, injury to the party who relied if the court allows the first party to contradict or repudiate the prior act, statement, or admission. *Robinson v. City of Seattle*, 119 Wn.2d 34, 82, 830 P.2d 318 (1992). See also *Kramarevsky v. Dep't of Soc. & Health Servs.*, 122 Wn.2d 738, 744, 863 P.2d 535 (1993)

In this case, clear cogent and convincing evidence exists of the actions of Thurston County in properly appointing Judge Lewis and requiring him to exercise his office in Thurston County. West reasonably relied upon this

admission. A manifest injustice would result if West is allowed to be damaged merely in retaliation for his have in been correct in a manner that embarrassed the County.

Similarly, Judge Heller's belated and extra-jurisdictional attempt to commission Patterson and His firm as special deputy prosecutors also estopps Thurston County from denying that such commissions were necessary or that plaintiff had standing, since his suit compelled their issue. The act of accepting commissions from Judge Heller also estopps Patterson from denying that the commission he accepted was a lawful and necessary act, or that West had standing to quesion the commissions he compelled the issue of..

Even in the absence of formal estoppel, the Courts of Washington have recognized the assertion of such inconsistent positions as Thurston county and Patterson have in this case erodes respect for the judicial process and the courts. *Ashmore v. Estate of Duff*, 165 Wn.2d 948, (2009).

V The Court Erred in improperly delaying and deferring ruling on the plaintiff's claims and in denying standing to assert claims relating to the commissions when plaintiff had demonstrated particular injury from improper commissioning and appointment of various law enforcement officials by Thurston County.....

The scorched earth tactics employed by Patterson in this case make the

case that plaintiff is adversely and particularly impacted by Patterson's defective appointment by the county, and the county's continuing use of Patterson as their Attorney.

The Court's specious distinction that Patterson was an employee of the risk Pool ignores the ruling of this Court in Broyles that a county must act through agents. Clearly Patterson was counsel for the County and any contract or interpretation that allows the laws about commissioning to be thwarted would be void.

In addition, since west requested action from the Attorney general, he has Taxpayer standing , for which no particularized harm is necessary.

The essence of taxpayer standing is that one's status as taxpayer is sufficient to challenge illegal government dispositions. Requiring a litigant to allege a particularized injury is no longer standing based on taxpayer status. Any taxpayer suit challenging an alleged illegal act must meet two requirements: "the complaint must allege both a taxpayer's cause of action and facts supporting taxpayer status." *Dick Enterprises., Inc. v. King County*, 83 Wn. App. 566, 572-73, 922 P.2d 184 (1996).

In *Barnett v. Lincoln*, 162 Wash. 613, 299 P. 392 (1931), a taxpayer brought suit alleging that a **Port** executed a contract without requiring a bond from the other party as required by law. This court recognized taxpayer standing

because "the risk of loss resulting from noncompliance or breach of the contract would fall upon the taxpaying public. The assumption of this risk constitutes a general damage." Id. at 622. The court noted when a municipal corporation violates the law "it is a fair presumption that every taxpayer will be injured in some degree by such illegal act" even if no pecuniary harm can be shown. Id. at 623. See also *State v. Morgan*, 131 Wash. 145, 148, 229 P. 309 (1924) (illegal expenditure of state funds constitutes sufficient harm to supply taxpayer standing because he loses "the benefit which he would otherwise have received"); *State ex rel. Gebhardt v. Superior Court*, 15 Wn.2d 673, 680, 131 P.2d 943 (1942) ("[A] taxpayer may seek relief in equity against a public wrong which results in imposing an additional burden on the taxpayers.").

The 7 million dollar bill resulting from Patterson's appointment and the over a quarter of a million dollars in scorched earth tactics employed to hide the sum from the public and retaliate against West demonstrate beyond any doubt that for the PRA and the concept of democracy to mean anything, the people should be able both to know of and do something about corruption and misconduct in their government.

VI The Court erred in refusing a reasonable accommodation and in dismissing the Port of Olympia when the requirements for dismissal under CR 12 and 56 were not present and when the evidence and reasonable inferences therefrom indicted that the port had an established pattern of PRA violations.

The Court erred in dismissing the plaintiff's claims against the port on page 10, section 6.7 of the order of September 10, 2010 and in failing to reconsider the ruling in its order of . The record in this case demonstrates that plaintiff was given a short notice to prepare for a trial on a very complicated matter, and that despite obvious and disabling health issues, no continuance was allowed. (see Order of accommodation of June 4, and the transcript of June 7.

Despite the clear nature of plaintiff's claims, the Port failed to contest the basic facts alleged, and have completely failed to follow the best evidence rule or otherwise meet the burden of proof as to the terms of their responses to west's public records requests about the East bay development project, which they, also suspiciously refused to produce for the Court.

Instead, the port appears to have argued that no possible set of facts could result in a finding that they violated the PRA-an impossible conclusion, especially in light of the pattern of evasion and concealment demonstrated by the plaintiff in his response.

It is clearly established that the granting of a CR 12(b)6 motion is limited to unusual circumstances where the complaint itself demonstrates an insuperable bar to relief, and no such circumstances exist in the instant case.

As a practical matter, a complaint is likely to be dismissed under

CR 12(b)(6) "only in the unusual case in which plaintiff includes allegations that show on the face of the complaint that there is some insuperable bar to relief." 5 C. Wright & A. Miller, FEDERAL PRACTICE 1357, at 604 (1969). For the foregoing reasons, CR 12(b)(6) motions should be granted "'sparingly and with care.'" ORWICK, at 254 (quoting 27 Federal Procedure PLEADINGS AND MOTIONS 62:465 (1984)).

Plaintiff asserts that due to the circumstances of this case, where the Court dismissed West's PRA claims against the Port based upon a mistaken ruling on a CR 12(b) (6) motion, this case presents, almost exclusively, questions of law for which the accepted standard of review is *de novo*. See 7 Wash. State Bar Ass'n, Real Property Deskbook §111.4(9), at 111-25.

To the extent any factual issues are disputed, the established legal test for such factual review is the substantial evidence standard of review. See *Redmond v. Growth Management Hearings Bd.*, 136 Wn.2d 38, 46, 959 P.2d 1091 (1998).

For the court to refuse to consider West's reply and motion to reconsider, especially when it had denied a reasonable accommodation, was also an abuse of discretion.

A court abuses its discretion when an "order is manifestly unreasonable or based on untenable grounds." Wash. State Physicians Ins. Exch. & Ass'n v. Fisons Corp., 122 Wn.2d 299, 339, 858 P.2d 1054 (1993). A discretionary decision "is based 'on untenable grounds' or made 'for untenable reasons' if it rests on facts unsupported in the record or was reached by applying the wrong legal standard." State v. Rohrich, 149 Wn.2d 647, 654, 71 P.3d 638 (2003) (emphasis added) (quoting State v. Rundquist, 79 Wn.App 786, 793, 905 P.2d 922 (1995)). Indeed, a court "would necessarily abuse its discretion if it based its ruling on an erroneous view of the

law." *State v. Quismundo*, 164 Wn.2d 499, 504, 192 P.3d 342 (2008)
quoting *Fisons*, 122 Wn.2d at 339

With all due respect to the Honorable Judge Hilyer, plaintiff maintains that the Court ruled contrary to the weight of evidence and committed an error of law as well as abused its discretion by issuing an order dismissing the Port that was based on an erroneous view of the law, made 'for untenable reasons' and based on untenable grounds, resting on facts unsupported in the record and reached by applying the wrong legal standard.

As such the ruling of the Honorable Judge Hillyer in dismissing the Port was both contrary to law and fact, and an abuse of discretion in that it was manifestly unreasonable and contrary to undisputed facts apparent in the court record. As the foregoing demonstrates, the Court manifestly abused its discretion in disregarding the clear and indisputable evidence in the record and the newly disclosed environmental records had not been produced and Floyd Snyder ESA had not been disclosed to West, and that this concealment was made for the purpose of obstructing environmental review of the reasonably foreseeable impacts of the Weyerhaeuser lease. See *Coggle v. Snow*, 56 Wn. App. 499, 507, 784 P.2d. 554 (1990).

This error of the Court was especially egregious since the Port was equitably estopped by the statements of their own counsel which induced West to

believe Lake's various sworn declarations and certifications to the effect that the Weyerhaeuser Lease did not contain a page referencing the Floyd Snider report and that the report had not been disclosed to West

In the light of retrospect, it is apparent that the true motive of the Port in concealing so many records and dissembling about their concealment was to confuse and hide, behind a litigious smokescreen, the damning evidence of the Floyd Snider ESA, a policy that allowed the Port to deny the existence of toxic waste, clean water act violations, and the fact that their own study by EDR and Floyd Snyder demonstrated that the East Bay Site was located on a federal wetland requiring a federal 404 permit.

As the materially uncontested evidence in the Court file (in the form of the Declaration of West re the withholding of Page 49 of the Weyerhaeuser Lease and the Floyd Snider Environmental Site Assessment incorporated into this lease were concealed in this case by the filing of a false instrument by the Port of Olympia, in the form of a deliberately altered lease which omits page 49, and which fails to have appended to it the Floyd Snider ESA incorporated into the lease by the missing page 49.

The Port's zeal to put the cart before the horse and obtain a ruling dismissing plaintiff's claims before any evidence of the records improperly concealed or even the actual contracts have been made available to the Court was

improper and contrary to the clear precedent of the Supreme Court in *Pier 67 v. King County*, 89 Wn. 2d 379, 573 P.2d 2, (1977)

We have previously held on several occasions that where relevant evidence which would properly be a part of a case is within the control of a party whose interests it would naturally be to produce it and he fails to do so, without satisfactory explanation, the only inference which the finder of fact may draw is that such evidence would be unfavorable to him. In so holding, we have noted, "[t]his rule is uniformly applied by the courts and is an integral part of our jurisprudence." *British Columbia Breweries v. King County*, 17 Wn.2d 437, 455, 135 P.2d 870 (1943) (quoting with approval 20 Am. Jur. 183, at 188). See *Bengston v. Shain*, 42 Wn.2d 404, 255 P.2d 892 (1953); *Kreiger v. Mclauflin*, 50 Wn.2d 461, 313 P.2d 361 (1957).

Under the basic rules of evidence, defendants cannot conclusively establish the terms of any response without producing it, and their failure to produce such relevant evidence as the actual records response complained of or the improperly concealed records of the actions of their environmental consultants must give rise to a presumption that the actual response would not support their arguments. Such contradictory and unsupported claims raise the presumption that the actual evidence if produced would be unfavorable to the defendants and their refusal to supply the contracts or any single piece of evidence other than their own self serving declarations robs the Court of the evidence necessary for a fair and informed disposition of this case.

The Port's motion failed to meet the requirements for CR 12(b)6 dismissal

or for dismissal under CR 56, which requires that all inferences be construed against the moving party. See *Village of Willowbrook v. Olech*, 528 U.S. 1073, 120 S. Ct. 1073, 145 L. Ed. 2d 1060 (2000); *Sheuer v. Rhodes*, 416 U.S. 232, 236 (1974) The plaintiff was prejudiced by a severe health issue and an extremely complicated trial that prevented him from responding as fast and as properly as he would have if he had not been required to prepare for a complex trial and deal with a debilitating injury and the effects of medication.

Under these circumstances, plaintiff should be afforded a reasonable opportunity to assert his claims against the port.

CONCLUSION:

In enacting the Public Records Act, now codified as Chapter 42.56 RCW, both the people and the legislature of this State have declared and affirmed a policy of open government. (*See* RCW 42.56.030). However, without zealous enforcement the law is just so many words on paper.

The history of this case demonstrates that without zealous enforcement the people will not know what their government is doing and they will be powerless to stop even facially defective actions such as invalid law enforcement appointments at every level of the criminal justice system..

It is not possible to credibly dispute that since Counsel have been appointed special deputy prosecutors and are in any event the public records

officers for the county who answered the request, that their records are county records. Since Mr. Patterson was appointed (defectively) a special deputy prosecutor and an integral portion of Thurston County, Patterson is under the direction and control of the County, and so are his invoices, and communications, under the clearly established doctrine of Agent and Principal See Weightman v. Washington, 1Black (U.S.) 39, See Title Agency I, Encyclopedia of English and American Law, 417, et sequ., Chilcot v. Washington State colonization Board 45Wash. 148, 88 Pac. 113.

If on the other hand, Patterson is not an agent or officer of the county, as he argues, then there is no attorney-client privilege to begin with, since he is not the County's counsel.(See Kammerer v. Western Gear Co. 96 Wn.2d 416, 635 P.2d 708.) Defendants simply cannot, consistent with equitable estoppel, or common sense, have their private special deputy attorney and deny it too.

This Court should vacate the Court's orders dismissing Thurston County and the Port, and remand this matter for further proceedings before a duly constituted Court in Thurston County with instructions to grant the relief sought in the complaint against Thurston County and to conduct further proceedings in regard to the Port of Olympia. Respectfully submitted 7-25-2011.


ARTHUR WEST

FILED
COURT OF APPEALS
DIVISION II

11 JUL 25 PM 1:39

STATE OF WASHINGTON
BY _____

DEPUTY

CERTIFICATE OF SERVICE

I certify under penalty of law that this document was either personally delivered or mailed and transmitted to counsel for Thurston County and the Port at their address of record on July 25, 2011.

Done July 25 2011.


s/ Arthur West
ARTHUR WEST

MC PUBLIC #3
APPENDIX OF
EXHIBITS
1 OF 10

SPECIAL ATTORNEY APPOINTMENT

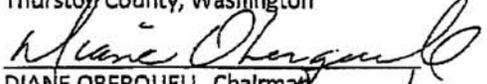
STATE OF WASHINGTON)
) :SS
COUNTY OF THURSTON)

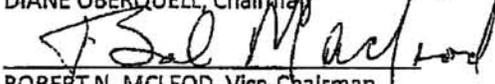
RECEIVED
AUG 04 2008
JUDGE BRUCE E. HELLER
DEPARTMENT 52

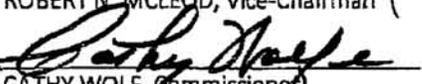
KNOW ALL MEN BY THESE PRESENTS:

That we, as the duly elected Board of County Commissioners for Thurston County, have appointed Michael A. Patterson and Patterson, Buchanan, Fobes, Leitch, Kalzer & Waechter, P.S., to serve as special attorney pursuant to RCW 36.32.120(6), for the purposes of advising and representing Thurston County in the matter of *Arthur West v. Thurston County, et al.*, Thurston County Superior Court Cause No. 07-2-02399-0.

BOARD OF COUNTY COMMISSIONERS
Thurston County, Washington


DIANE OBERQUELL, Chairman


ROBERT N. MCLEOD, Vice-Chairman


CATHY WOLF, Commissioner

Pursuant to RCW 36.32.200, the Board of Commissioners' appointment of Michael A. Patterson is hereby APPROVED.

WITNESS MY HAND this 5th day of August, 2008.


Judge
Bruce E Heller

ORIGINAL

MC PUBLIC #4

E. There is no issue of fact that the "special attorney appointments" at issue (which are not required) comply with all RCW 36.32.200 requirements, thus, mooting plaintiff's claim.

RCW 36.32.200 does not apply here. Notwithstanding, plaintiff makes no argument as to any deficiencies with the "special attorney appointments"⁶ at issue. He only argues that because the County obtained "special attorney appointments" that it is somehow estopped from arguing that RCW 36.32.200 does not apply. As has been repeatedly explained to plaintiff, both in briefing and in open court, the "special attorney appointments" at issue were obtained in an abundance of caution only, and to remove any semblance of doubt as to private defense counsel's ability to represent the County in this and other cases brought by plaintiff West. The County never conceded that "special attorney appointments" were necessary in order for private defense counsel to represent the County. Nonetheless, the County obtained the "special attorney appointments" in hopes that plaintiff would dismiss his "illegal representation" claims, such to avoid further expense of litigating this issue.

Quite the opposite, however, even though the County unnecessarily secured "special attorney appointments," and even though private counsel is lawfully retained and paid by the Risk Pool to defend the County, plaintiff argues that his claim is not moot, and that he is entitled to relief. Notably, the declaratory relief plaintiff seeks is an order "to prevent any further representation of Thurston County by counsel who have not been duly and lawfully appointed." Complaint at ¶ 5.2. This private defense counsel is lawfully authorized to represent the County in two different ways: (1) through lawful retention by the Risk Pool pursuant to contract authorized by RCW 48.62.011, and RCW 36.32.120(6); and (2) as a secondary precautionary measure, pursuant to "special attorney appointments" under RCW 36.32.200. Either way, plaintiff's claim fails, and is, at most, moot. There is no relief to be granted. In addition, plaintiff has not identified any other private counsel or causes of action to

⁶ Plaintiff's briefing confusingly interchanges "special attorneys," which are governed by RCW 36.32.200, and "special deputy prosecutors," which are governed by an entirely different statute, RCW 36.27.040. "Special deputy" commissions are not at issue here.

DEFENDANT THURSTON COUNTY'S REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT DISMISSAL OF ALL NON-PRA CLAIMS - 6 19848

PATTERSON BUCHANAN FOBES LEITCH & KALZER, INC., P.S.

2112 Third Avenue, Suite 500 Seattle, WA 98121 Tel. 206.462.6700 Fax 206.462.6701

MC PUBLIC #1
MC PUBLIC #2

30

SUPERIOR COURT OF
THE STATE OF WASHINGTON FOR CLARK COUNTY
DEPARTMENT NO. 9
PO BOX 5000
VANCOUVER, WA 98666-5000



TELEPHONE (360) 397-2226
FAX (360) 397-8078
TDD (360) 397-6172

ROBERT A. LEWIS
JUDGE

April 9, 2010

The Honorable Paula Casey
Presiding Judge
Thurston County Superior Court
2000 Lakeridge Drive SW, Bldg. 2
Olympia, WA 98502

Marti Maxwell
Superior Court Administrator
Thurston County Superior Court
2000 Lakeridge Drive SW, Bldg. 2
Olympia, WA 98502

FILED
SUPERIOR COURT
THURSTON COUNTY, WASH.
10 APR 20 PM 3:18
REILY J. GOULD, CLERK
BY _____ DEPUTY

Re: Arthur West v. Washington State Department of Ecology, et al.
Thurston County Superior Court Cause No. 10-2-00254-2

Dear Judge Casey and Ms. Maxwell:

I recently agreed to hear the above-referenced case as a visiting judge of the Thurston County Superior Court. It was my understanding that all eight judges of your court had recused themselves in this matter, at a meeting on March 18, 2010. Since agreeing to accept the appointment, I have received and reviewed the clerk's file.

On March 8, 2010, the plaintiff filed a motion for return of writ of certiorari and for summary judgment. This motion was originally scheduled to be heard before the Honorable Judge Carol Murphy on April 9, 2010. After the recusal of Judge Murphy, and the remaining Thurston County judges, I was advised that the parties would agree to have the matter heard on April 23, 2010, at 9:00 a.m. I was further advised that all parties would agree to have motions of this type heard in Vancouver, Washington, as part of my regular civil motion docket.

Since accepting the appointment, my judicial assistant has received a number of emails from various parties, including the plaintiff. A copy of these emails is enclosed for your reference. A copy of the emails will also be filed with your Court Clerk. Based upon these emails, several issues need to be addressed before this matter can proceed:

1. I assume that I am acting on behalf of a majority of the judges of the Thurston County Superior Court in handling this matter, pursuant to Article IV, Section 7 of the Washington State Constitution, and RCW 2.08.150. Unfortunately, no written request that I act in that capacity has been received, or filed with your Court Administrator. Pursuant to the statute, I would ask that a majority of the judges formally request in

The Honorable Paula Casey
Marti Maxwell
March 9, 2010
Page Two

writing that I hold a session of the Thurston County Superior Court, related to this case only, for the period of time necessary to resolve these proceedings. The written request should be filed in the court file, and a copy provided to all parties.

2. The plaintiff objects to the consideration of motions outside of Thurston County. As I read the statute, I am required to conduct hearings on this matter in Thurston County, unless all parties agree to a different location. After I have heard a motion or trial, my ruling can be made in any county in the state, including Clark County. RCW 2.08.200.

3. As I previously mentioned, I am required to attend court in Clark County on April 23, and would not be able to hear the pending motion on that date unless a visiting judge were to cover my civil motion docket here. If coverage through a judge trade is not available, then I am available to come to Thurston County to hear the motion on the following dates and times: (a) Friday, April 30, 2010, at 3:00 p.m.; (b) Friday, May 21, 2010, at 2:00 p.m.; and (c) Monday, June 21, 2010, (all day).

4. RCW 2.08.150 indicates that I am to conduct hearings at the seat of judicial business, in such quarters as shall be provided by the Board of County Commissioners. I assume that your entire courthouse is provided by the Board of County Commissioners, and that one of your judges would be kind enough to loan me their courtroom for hearings that are ultimately scheduled. Availability of a courtroom may bear on the date to be scheduled, from the choices noted above.

I would ask that you confer with your judges, and my judicial assistant, Andrea DeShiell, concerning the items noted above. Once we can agree to a date and time which is mutually acceptable to our courts, then my judicial assistant will be responsible for advising the parties of the rescheduled hearing date, time and location. A copy of this letter is being forwarded to all parties or their counsel, and a copy, with enclosures, will be filed with your clerk. Until the appropriate arrangements are made, all previously scheduled hearings in this case are stricken.

Thank you for your assistance with these matters.


Judge Robert Lewis

RAL/ad

cc w/ encl.: Thurston County Superior Court Clerk

cc: Arthur West
Ronald Lavigne, AAG
Marc Worthy, AAG
David T. Wendel, AAG
Carolyn A. Lake
Kimberly Hughes
Honorable Barbara Johnson

2
MC PUBLIC #3
Superior Court of the State of Washington
For Thurston County

Paula Casey, Judge
Department No. 1
Richard A. Strophy, Judge
Department No. 2
Wm. Thomas McPhee, Judge
Department No. 3
Richard D. Hicks, Judge
Department No. 4
Christine A. Pomeroy, Judge
Department No. 5
Gary R. Tabor, Judge
Department No. 6
Chris Wickham, Judge
Department No. 7
Anne Hirsch, Judge
Department No. 8



BUILDING NO. 2, COURTHOUSE
2000 LAKERIDGE DRIVE S.W. • OLYMPIA, WA 98502
TELEPHONE (360) 786-5560 • FAX (360) 754-4060

FILED
SUPERIOR COURT
THURSTON COUNTY, WASH.

08 JUN 19 PM 4:48

BETTY J. GOULD, CLERK

BY _____
DEPUTY

Christine Schaller
Court Commissioner
709-3201
Gdu Thomas
Court Commissioner
709-3201

Marti Maxwell
Superior Court Administrator
Gary Carlyle
Assistant Superior
Court Administrator
Ellen Goodman
Drug Court Program
Administrator
357-2482

June 19, 2008

Mr. Arthur West, Pro Se
120 State Avenue NE #1397
Olympia, WA 98501
Telephone number unknown

Mr. Michael Patterson
Patterson Buchanan et al
Appearing for Thurston County
601 Union Street, Suite 4200
Seattle, WA 98101
206.652.3509

Carolyn A. Lake
Appearing for the Port of Olympia
1001 Pacific Avenue, Suite 400
Tacoma, WA 98402
253.779.4000

Terence A. Pruit, AAG
Appearing for WA Dept. of Natural Resources
PO Box 40100
Olympia, WA 98504
360.586.0642

Sheila Gall
Attorney for Association of Washington Cities
1076 Franklin Street SE
Olympia, WA 98501
360.753.4137

P. Stephen DiJulio
Ramsey Ramerman

07-2-02399-0



All Litigants
June 19, 2008
Page 2 of 2

Appearing for the Association of Washington Cities
Foster Pepper PLLC
1111 Third Avenue, Suite 3400
Seattle, WA 98101-3299
206.447.9700

Re: *Arthur West v Association of Washington Cities et al*
Thurston County Cause No. 07-2-02399-0

Dear Litigants:

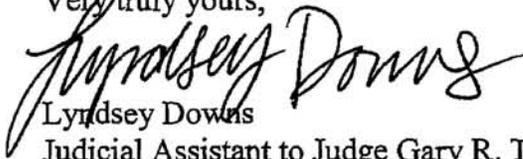
Please be advised that the above-entitled case has been reassigned to Judge Bruce Heller, King County Superior Court.

All pretrial hearings will be heard before Judge Heller in King County. The trial, if heard, will be held at King County Superior Court in Seattle, Washington, unless all parties agree to other arrangements. Please contact Charlie Butler, Judge Heller's Bailiff, to schedule all pending motions. Confirm all pretrial hearings with in accordance with Thurston and King County Local Court Rules. All original pleadings, notes for motions, and assignment dockets will need to be filed with the Thurston County Superior Court Clerk's Office and courtesy copies are to be sent directly to Judge Heller at King County Superior Courthouse, 516 Third Ave Rm C203, Seattle, WA 98104. For more information regarding Judge Heller's preferences please see:

<http://www.kingcounty.gov/courts/SuperiorCourt/judges/heller.aspx>

When scheduling any motions/hearings, please notify the Thurston County Superior Court Clerk's Office at 360.786.5430 at least five (5) working days in advance to allow the court file to be delivered to Judge Heller in a timely manner.

Very truly yours,


Lyndsey Dowds
Judicial Assistant to Judge Gary R. Tabor

cc: Thurston County Court File
Judge Bruce Heller
Charlie Butler

Superior Court of the State of Washington
For Thurston County

SEAL OF THE STATE OF WASHINGTON
SUPERIOR COURT
THURSTON COUNTY, WASH.



MAY 17 PM 4:44
J. GOULD, CLERK

DEPUTY

2000 Lakeridge Drive SW • Building No. Two • Olympia WA 98502
Telephone (360) 786-5560 • Fax (360) 754-4060

Paula Casey, Judge
Department No. 1
Thomas McPhee, Judge
Department No. 2
Richard D. Hicks, Judge
Department No. 3
Christine A. Pomeroy, Judge
Department No. 4

Gary R. Tabor, Judge
Department No. 5
Chris Wickham, Judge
Department No. 6
Anne Hirsch, Judge
Department No. 7
Carol Murphy, Judge
Department No. 8

May 17, 2010

Case # 07-2-02399-0

Arthur West
120 State Street NE #1497
Olympia, WA 98501

Terence A. Pruitt
Assistant Attorney General
P.O. Box 40100
Olympia, WA 98504-0100

P. Stephen DiJulio
Foster Pepper PLLC
1111 Third Avenue, Suite 3400
Seattle, WA 98101-3299

Sheila M. Gall
General Counsel
1076 Franklin Street SE
Olympia, WA 98501-1346

Michael A. Patterson
Mark Allen Anderson
Patterson Buchanan Forbes Leitch & Kalzer
2112 Third Avenue, Suite 500
Seattle, WA 98121-2326

Carolyn A. Lake
Goodstein Law Group
501 'G' Street
Tacoma, WA 98405

Dear Mr. West and Counsel:

This case was declared a visiting judge matter on or about June 19, 2008 when the entire Thurston County Superior Court bench recused. Following standard procedure the Presiding Judge delegated responsibility to ask our nearby jurisdictions to take this matter and King County Superior Court Judge Bruce Heller agreed to take this matter. On April 28, 2010 Judge Heller recused from further proceedings. With the recusal of Judge Heller an Order of Reassignment was issued by the Judge Mary E. Roberts, Chief Regional Justice Center Judge of King County Superior Court, assigning this matter to the Judge Bruce Hilyer as the visiting judge.

As Presiding Judge for the Thurston County Superior Court I concur in the re-assignment of Judge Hilyer. Thurston County Superior Court greatly appreciates the efforts of the judges and staff of the King County Superior Court in this matter.

Very truly yours,

Paula Casey
Paula Casey, Presiding Judge

7

September 3, 2007

TO: THURSTON COUNTY PUBLIC RECORDS OFFICER

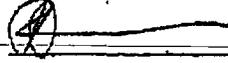
RE: REQUEST FOR DISCLOSURE OF PUBLIC RECORDS

FROM: ARTHUR WEST
 120 State Ave. N. E. #1497
 Olympia, WA. 98502

COPY RECEIVED
 THURSTON COUNTY PROSECUTING ATTORNEY
 SEP 04 2007
 BY _____
 TIME _____

Please consider this to be a formal request for inspection of records under RCW 42.56, the Washington State Public Records Act, for the following records from 2000 to the present:

1. All attorney invoices, and all correspondence concerning the Audrey Broyles case, to include the invoices and billing statements of any attorney or firm representing Thurston county through any insurance or risk pool.
2. All attorney fee invoices for the defense of the County in West v. Thurston County cause No. 07-2-00108-9, and Court of Appeals No. 36252-0-II.
3. Any authority for Counsel other than the Thurston County Prosecutor to represent the County in these cases. Thank you for your consideration.


 ARTHUR WEST

scanned

Thurston County Commissioners
RECEIVED

FEB 27 2007

TO: THURSTON COUNTY PUBLIC RECORDS OFFICER

RE: PUBLIC RECORDS REQUEST

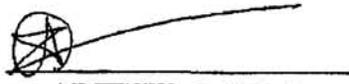
FROM: ARTHUR S. WEST, 120 STATE AVE. N.E. #1497, Oly, WA. 98501

<input checked="" type="checkbox"/> DISTRICT 1	<input type="checkbox"/> CAO
<input type="checkbox"/> DISTRICT 2	<input type="checkbox"/> ACAD
<input type="checkbox"/> DISTRICT 3	<input type="checkbox"/> CLERK
<input type="checkbox"/> _____	<input type="checkbox"/> _____

Please consider this to be a formal request for inspection and/or copying of records (over the last 3 years) pursuant to RCW 42.56, the Washington State Public Records (Disclosure) Act. I seek to inspect and/or copy the following:

1. Any records or correspondence appointing Mr. Patterson or Lee Smart etc. as the lawful Public Records Disclosure Official for Thurston County.
2. All records of any public funds paid to or received by or on behalf of Thurston County (i.e. by Lee Smart, etc.) from the Washington Counties Risk Pool, the Washington Association of Counties, or the Washington Association of County Officials.
3. All records of any correspondence concerning the Audrey Broyles case.
3. All records or correspondence of any form related to representation of Thurston County by outside counsel, including any contracts for insurance coverage or legal representation, and any billings whatsoever resulting from such coverage.
4. All records of any reports of any merger or coordination of administrative functions between Thurston County and the association of Counties or County officials.
5. All records of any public records requests received by Thurston County and any responses thereto.

Thank you for your consideration. Please realize that Washington law provides significant penalties for withholding or obstructing access to public records. Done Feb. 27, 2007.



 ARTHUR S. WEST

CITY OF LYNNWOOD
SPECIAL WORK SESSION ~ SATURDAY, JANUARY 30, 2010
CITY COUNCIL RETREAT MINUTES
COURTYARD BY MARRIOTT, LYNNWOOD, WA

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ATTENDANCE

Facilitator: Rhonda Hilyer, President, Agreement Dynamics, Inc.
Mike Mandella, Senior Associate, Agreement Dynamics, Inc.

Council Members: Ted Hikel, President
Stephanie Wright, Vice President
Loren Simmonds
Jim Smith
Mark Smith
Kerri Lonergan
Kimberly Cole

Other: Beth Morris – Council Assistant
Laurie Hugdahl – Transcriber

The meeting was called to order at 8:30am and the following items were discussed:

- Participation Guidelines, and Agenda Review
- Mini Success Signals Workshop
- AWC Information on Council/Administration Expectations and Obligations
- Council Members Give 5-7 Minute Summaries and Key Priorities/Goals
- Discussion of Council Priorities and Goals for 2010 and Beyond
- Priorities, Goals and Other Agenda Items the Council Would Like for the Retreat with Administration
- Council Members' Comments on the Day's Accomplishments and Next Steps

Adjournment:

The meeting was adjourned at 4:39 p.m.

Don Gough, Mayor

John Moir, Finance Director

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* Wife of Bruce Hilyer as reported on April 15, 2010 PDC filing
* Defendant in West v. AWC
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FILED
SUPERIOR COURT
The HON. BRUCE E. HELLER

FILED
COUNTY OF THURSTON

DEC 30 2008

SUPERIOR COURT CLERK
BY JANIE SMOTER
DEPUTY

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BETTY J. GOULD, CLERK
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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF THURSTON

ARTHUR S. WEST,

Plaintiff,

v.

WASHINGTON ASSOCIATION OF
CITIES; THURSTON COUNTY;
WASHINGTON STATE DNR;
WASHINGTON STATE PORT OF
OLYMPIA; HANDS ON CHILDRENS
MUSEUM LOTT; JOHN DOE
ENVIRONMENTAL CONSULTANTS,

Defendants.

No. 07-2-02399-0

ORDER ON PLAINTIFF'S MOTION
TO SHOW CAUSE

THIS MATTER came before the undersigned Judge on Plaintiff's Motion to Show Cause. The Court has considered the oral argument of counsel, the files and records herein, and reviewed the following:

- 1. Plaintiff's Motion for Order to Show Cause and exhibits attached thereto filed on June 4, 2008;

ORDER ON PLAINTIFF'S MOTION
TO SHOW CAUSE

Judge Bruce E. Heller
King County Superior Court
516 Third Avenue - C-203
Seattle, WA 98104
(206) 296-9085

ORIGINAL

- 1 2. Defendant Thurston County’s Response to Plaintiff’s Motion to Show Cause and the
- 2 exhibits attached thereto filed on July 18, 2008;
- 3 3. Declaration of Brian P. Waters and the exhibits attached thereto filed on July 18,
- 4 2008;
- 5 4. Plaintiff’s Brief in Reply and the exhibits attached thereto filed on August 4, 2008;
- 6 5. Defendant Thurston County’s Supplemental Response to Plaintiff’s Motion to Show
- 7 Cause filed on August 7, 2008; and
- 8 6. Supplemental Declaration of Brian P. Waters and the exhibits attached thereto filed
- 9 on August 7, 2008.

DISCUSSION

11 Plaintiff contends that the representation of Thurston County by Michael Patterson,
 12 Brian Waters and any other member of Mr. Patterson’s law firm may violate RCW
 13 36.32.200 which provides:

14 It shall be unlawful for a county legislative authority to employ or contract
 15 with any attorney or counsel to perform any duty which any prosecuting
 16 attorney is authorized or required by law to perform, unless the contract of
 17 employment of such attorney or counsel has been first reduced to writing and
 approved by the presiding superior court judge of the county in writing
 endorsed thereon. This section shall not prohibit the appointment of deputy
 prosecuting attorneys in the manner provided by law.

18 On September 4 2007, plaintiff requested “[a]ny authority for Counsel other than the
 19 Thurston County Prosecutor to represent the County” in both *Broyles v. Thurston County*
 20 and *West v. Thurston County*. Pl. Reply Br. Ex. 1.

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ORDER ON PLAINTIFF’S MOTION
TO SHOW CAUSE

Judge Bruce E. Heller
 King County Superior Court
 516 Third Avenue – C-203
 Seattle, WA 98104
 (206) 296-9085

1 **A. Authorization regarding *Broyles v. Thurston County***

2 In response to plaintiff's September 2007 PRA request, Thurston County referred
3 him to a March 13, 2007 letter it had sent him in response to another PRA request of March
4 7, 2007. Waters Decl., Ex. 27. That letter enclosed a "Special Attorney Appointment for
5 Michael A. Patterson and Lee, Smart, Cook, Martin & Patterson, P.S., Inc. dated January
6 24, 2003" authorizing Mr. Patterson and his firm to represent the County in *Broyles v.*
7 *Thurston County*. *Id.* The County asserts that this document comprises all of the SAAs or
8 RCW 36.32.200 contracts it has regarding *Broyles*. Resp., 11:2-5. Plaintiff has not
9 requested any other documents, nor has he indicated any deficiencies in the disclosure made
10 by the County regarding the *Broyles* case. The County has complied with the PRA
11 regarding disclosure of records authorizing Patterson and his firm to represent Thurston
12 County in *Broyles v. Thurston County*.

13 **B. Authorization regarding *West v. Thurston County***

14 Regarding *West v. Thurston County*, the County asserts that it did not have a Special
15 Attorney Appointment ("SAA") or any such document at the time of the request, and
16 therefore did not withhold any documents. Resp. 19:1-7. The PRA request was made by
17 plaintiff on September 4, 2007. In January 2008, the Thurston County Board of
18 Commissioners executed a SAA for Mr. Patterson and his firm regarding *West v. Thurston*
19 *County*. That SAA was not finalized until August 15, 2008 when this Court signed it,¹ at
20 which point it was disclosed to plaintiff. There are two issues that determine whether
21

22 ¹ On August 5, 2008, the County prepared a separate SSA relating to legal representation in the *West v.*
Thurston County action before this Court. In this action, plaintiff has only challenged the County's disclosures

1 Thurston County improperly withheld this record from plaintiff: (1) Whether the SAA was
 2 a public record under the PRA prior to its final authorization by a judge, and (2) whether a
 3 prior PRA request for public records obligates Thurston County to disclose documents it
 4 creates after that request.²

5 1. Is the SAA a "public record" under the PRA which Thurston County is required
 6 to disclose prior to its final authorization by a judge?

7 The PRA defines a "public record" as including "any writing containing information
 8 relating to the conduct of government or the performance of any governmental or
 9 proprietary function prepared, owned, used, or retained by any state or local agency
 10 regardless of physical form or characteristics." RCW 42.56.010(2). Courts liberally
 11 construe the disclosure provisions of the PRA and narrowly construe its exemptions. RCW
 12 42.56.030; *Progressive Animal Welfare Soc'y v. Univ. of Wash. (PAWS)*, 125 Wn.2d 243,
 13 251, 884 P.2d 592 (1994).

14 The language of RCW 42.56.010(2) encompasses a SAA prior to its final
 15 authorization by a judge. While a SAA is not formally completed until authorized by a
 16 judge, it contains information that relates to the conduct of government and has been
 17 prepared by an agency. The SAA was signed by the Chairman, Vice-Chairman and
 18 Commissioner of the Thurston County Board of Commissioner's and memorialized that
 19 Board's decision to appoint an attorney to a specific matter. That decision is "conduct of

20

21 regarding the *West v. Thurston County* action before the Mason County Superior Court. Any SAAs regarding
 the action before this Court are not at issue in this Motion.

22 ² Thurston County disputes that it needs a SAA in order to have Patterson or a member of his firm represent
 them. Whether or not a SAA is required is immaterial as a SAA is a public record under the PRA regardless
 of whether or not it was required.

ORDER ON PLAINTIFF'S MOTION
 TO SHOW CAUSE

- 4 -

Judge Bruce E. Heller
 King County Superior Court
 516 Third Avenue - C-203
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1 the government.” Under the PRA, the public has a right to see any documentation relating
2 to the conduct of government that is prepared by an agency. The SAA met that definition
3 before final authorization by this Court.

4 2. *Does plaintiff's September 2007 PRA request obligate Thurston County to*
5 *disclose documents that are created after the request is submitted?*

6 Requiring government agencies to disclose documents created after PRA requests
7 are filed would place too heavy a burden on those agencies. Plaintiff is asking this Court to
8 hold Thurston County liable for failing to disclose a document pursuant to his PRA request,
9 even though that document was created four months after the request was filed.

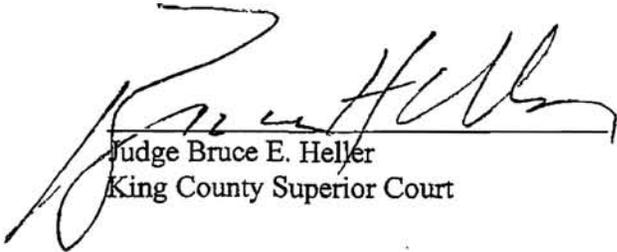
10 Government agencies receive many PRA requests. Requiring those agencies to
11 check every new public record against all previously filed PRA requests would place a
12 nearly impossible burden upon those agencies. An agency can only respond to a PRA
13 request by disclosing the documents that exist at the time of the request. Thurston County
14 was not obligated to disclose the SAA created in January 2008 in response to plaintiff's
15 September 2007 PRA request.

16 Accordingly, plaintiff's Motion to Show Cause is DENIED.

17 IT IS SO ORDERED.

18 DATED this 30th day of December, 2008.

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Judge Bruce E. Heller
King County Superior Court

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KING COUNTY, WASHINGTON

'10 APR -8 P2:45

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BETTY J. GOULD CLERK

SUPERIOR COURT CLERK
BY JULIE WARFIELD
DEPUTY

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF THURSTON

ARTHUR S. WEST,

Plaintiff,

v.

WASHINGTON ASSOCIATION OF
CITIES; THURSTON COUNTY;
WASHINGTON STATE DNR;
WASHINGTON STATE PORT OF
OLYMPIA; HANDS ON CHILDRENS
MUSEUM LOTT; JOHN DOE
ENVIRONMENTAL CONSULTANTS,

Defendants.

Thurston County Cause
No. 07-2-02399-0

**MEMORANDUM REGARDING
COURT'S MARCH 31, 2010 RULINGS**

I. INTRODUCTION

On March 31, 2010, the Court issued its oral ruling regarding plaintiff's illegal representation claim against defendant Thurston County. In addition, the Court explained the reasons for the delay in its ruling. The Court also addressed plaintiff's Motion to Vacate or for CR 54 Findings and a number of miscellaneous issues. After the hearing, in which counsel and

MEMORANDUM REGARDING
COURT'S MARCH 31, 2010 RULINGS

- 1 -

Judge Bruce E. Heller
King County Superior Court
401 Fourth Ave North, 2D
Kent, WA 98032
(206) 296-9085

1 Mr. West participated by telephone, the Court was advised that the proceedings had not been
2 recorded. The Court therefore reduces to writing its best recollection of its oral rulings and
3 comments made on March 31, 2010.

4 Within seven (7) days of the date of this memorandum, any party may submit proposed
5 corrections as to any part of this memorandum they believe is inconsistent with the Court's
6 March 31 rulings and comments.

7 **II. PROCEDURAL BACKGROUND**

8 The purpose of this hearing is for the Court to provide its ruling on the County's Motion
9 to Dismiss All Non-PRA claims. The issues were argued in January 2009. At that time, the
10 Court dismissed all non-PRA claims except for the illegal representation claim, which the
11 Court took under advisement. As the Court informed the parties at a status conference last
12 month, only after reviewing the parties' status conference submissions did it realize to its
13 chagrin that it had never issued a ruling on the illegal representation claim. This was
14 inadvertent. The Court did not "decline to rule," as Mr. West has suggested.

15 What occurred was this: When Mr. West filed his supplementary brief, which was
16 entitled "Standing Brief and Motion to Amend" in late January 2009, the Court's staff assumed
17 that the brief and the County's response pertained to motions that had not yet been heard. This
18 was true of the motion to amend, but not the standing issue. Thus, when Mr. West contacted
19 the Court in May of 2009 regarding these matters, he was told that he needed to note them for a
20 hearing date. There was no further contact with the parties until December 2009. On
21 December 11, Mr. West sent an e mail to my staff and said, "I've lost track, but I thought there
22 was a ruling outstanding in regard to Thurston County." It was not until the Court reviewed the

1 County's February 11, 2010 letter regarding the status conference that it became apparent that
2 the illegal representation issue had slipped through the cracks. The Court owes the parties an
3 apology for this unfortunate delay.

4 III. MOTION TO AMEND

5 If Mr. West still wishes to amend his complaint, he needs to file a separate motion that
6 complies with the applicable Civil and Thurston County local court rules. The Court will not
7 consider the motion to amend together with the issue it took under advisement, namely, Mr.
8 West's standing to bring an illegal representation claim against Thurston County.

9 IV. ILLEGAL REPRESENTATION CLAIM

10 A. Collateral Estoppel

11 The Court is not persuaded by Mr. West's collateral estoppel argument. For collateral
12 estoppel to apply, the issue decided in the earlier proceeding must be identical to the issue
13 presented in the later proceeding. In addition, the parties must be the same.

14 The first case that is the basis for Mr. West's collateral estoppel argument involved the
15 Evergreen State College and the Washington State Criminal Justice Training Commission, and
16 alleged violations of RCW 43.101.200. This case involves Thurston County and RCW
17 36.32.200. We therefore have different legal issues and different parties. The second matter
18 involved a zoning matter in which the County was a party. But the issue there was different
19 from the issue in this case. Therefore, collateral estoppel does not apply.

20 B. Standing

21 In *West v. Thurston County*, 144 Wn. App. 573 (2008), Division II of the Court of
22 Appeals held that Mr. West did not have standing to assert a breach of contract claim against

1 Mr. Patterson and the Lee Smart law firm. The court reasoned that Mr. West was not the
2 intended beneficiary of the contract. Here, the issue is whether Mr. West has standing to assert
3 a statutory violation by the County. *West v. Thurston County* is therefore not on point.

4 In *Kightlinger v. PUD No. 1*, 119 Wn.App. 501 (2003), Division II held that a taxpayer
5 need not allege any direct, special, or pecuniary interest to have standing to challenge an
6 allegedly illegal act, in that case the PUD's appliance repair business. The court characterized
7 the dispute as being of "substantial public importance." It is not clear from the opinion whether
8 "substantial public importance" is a requirement for standing, and if so, how courts are to
9 determine whether that threshold is met. In any event, the Court does not agree with the
10 County that the issue of whether private counsel was lawfully retained to represent the interests
11 the County is not an issue of substantial public importance. True, the issue may not have
12 statewide implications, as did the PUD appliance repair business in *Kightlinger*. Yet to the
13 citizens of Thurston County, the expenditure of their money by the County, either directly or
14 indirectly, to retain private counsel is arguably of substantial public importance.

15 Mr. West, however, has not satisfied the requirement set forth in *Kightlinger* that he
16 establish (1) that he asked the Attorney General to institute an action and (2) that the Attorney
17 General refused. Mr. West alleges in paragraph 4.3 of his complaint that "he filed a request for
18 investigation and/or action with the County Prosecutor and the Attorney General regarding
19 [unconstitutional] expenditures of funds." However, as is made clear by CR 56(e), a party
20 opposing summary judgment cannot rely on mere allegations, but he must set forth specific
21 facts showing that he has met the requirements for standing. Mr. West has not even alleged, let
22 alone established through admissible evidence, that the Attorney General declined his request.

MEMORANDUM REGARDING
COURT'S MARCH 31, 2010 RULINGS

- 4 -

9

Judge Bruce E. Heller
King County Superior Court
401 Fourth Ave North, 2D
Kent, WA 98032
(206) 296-9085

1 Mr. West therefore lacks standing to bring his illegal representation claim.

2 **C. Merits of the Claim**

3 The Court will also address the merits of the claim, given the likelihood of an appeal on
4 the standing issue. Even if Mr. West had standing, the Court would have dismissed his illegal
5 representation claim. The Court concludes that RCW 36.32.200 does not restrict the County's
6 ability to retain private insurance counsel through the Risk Pool. As the state Auditor's Office
7 concluded in September 3, 2008, RCW 36.32.200 applies to the County's authority to directly
8 employ or contract with special attorneys. Here, the County did not directly hire Mr. Patterson.
9 Instead, the County had a contract with the Risk Pool which retained Mr. Patterson. This is not
10 a mere technical distinction. The contract with the Risk Pool is within the scope of RCW
11 36.32.120(6). That statute states that the county has the duty to "defend all actions for and
12 against the county."

13 The result might be different if Mr. West had shown that the prosecutor's office
14 routinely defended the County in civil actions. If under those circumstances, the County had
15 hired Mr. Patterson as special counsel without demonstrating some disability preventing the
16 prosecutor's office from handling the matter, perhaps RCW 36.32.200 would be implicated.
17 Those, however, are not the facts presented to this Court.

18 The County's motion to dismiss the illegal representation claim is therefore granted.

19 **V. MOTION TO VACATE OR FOR CR 54 FINDINGS**

20 At the conclusion of the proceedings, the Court indicated that it would not consider Mr.
21 West's Motion to Vacate or for CR 54 Findings because he had failed to file a certificate of
22 service and had failed to properly note his motion. The Court denied the County's request for

1 sanctions. However, the Court warned Mr. West that if it were demonstrated in the future that
2 he had failed to follow the rules of service, e.g., by sending his motion to opposing counsel by
3 e-mail without opposing counsel's consent, the Court would consider sanctions. Mr. West told
4 the Court that he had served the County properly. The Court responded that he had not filed a
5 certificate of service.

6 **VI. MISCELLANEOUS MATTERS**

7 Counsel for Thurston County asked for clarification as to whether any PRA claims
8 remained pending against the County. The Court indicated it would review its previous Orders.

9 Counsel for Thurston County stated that it had provided the Court with a proposed Order that
10 addressed all of the pending claims against it.

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DATED this 2 day of April, 2010.



Judge Bruce E. Heller
King County Superior Court

ll



Arthur West,

Plaintiff(s),

vs.

Association of Washington Cities, et al.,

Defendant(s).

COURT OF APPEALS NO. 40865-1-II

SUPERIOR COURT NO. 07-2-02399-0

PAGES 1557-1743

CLERK'S PAPERS INDEX

DESCRIPTION	PAGES PER DOCUMENT	PAGE NUMBER
2 nd Designation of Clerk's Papers Filed July 21, 2011	2	1557-1558
Copy of Email Filed January 14, 2010	2	1654-1655
Declaration of A. West Filed September 27, 2010	72	1669-1740
Order Denying Plaintiffs' Motion to Show Cause and Motion to Lodge Public Records In Camera Review Filed June 4, 2010	2	1647-1648

DESCRIPTION	PAGES PER DOCUMENT	PAGE NUMBER
Plaintiff's Declaration re Trial Status and Lack of Jurisdiction Filed May 19, 2010	3	1559-1561
Plaintiff's Declaration re: Newly Discovered Evidence of the Local Government Status of WSAC, WACO, and the AWC Filed June 25, 2010	4	1656-1569
Plaintiff's Designation of Exhibits Filed May 25, 2010	83	1562-1644
Plaintiff's Exhibits and Declaration Filed July 9, 2010	9	1660-1668
Plaintiffs' Declaration re Lack of Location for June 7, Trial Filed June 1, 2010	2	1645-1646
Statement of Plaintiff re Medical Condition Filed June 9, 2010	5	1649-1653
Letter from JA Downs Filed June 19, 2008		1742-3

EXPEDITE (if filing within 5 court days of hearing)

Hearing is set:
 Date: _____
 Time: _____
 Judge/Calendar: _____

**SUPERIOR COURT OF WASHINGTON
 FOR THURSTON COUNTY**

Arthur West
 Plaintiff/Petitioner,
 vs.
Thurston County + Port
(formerly AWC) Defendant/Respondent.

NO. 07-2-02399-0

**DESIGNATION OF CLERK'S
 PAPERS AND EXHIBITS**
 (DSGCKP)
 Clerk's Action Required

TO THE CLERK OF THE COURT:

Please prepare for transmittal to the Appellate Court the documents and exhibits listed below:

Document/Exhibit No.	Date Filed	Title of Document
233	6-14-2010	Copy Email (red)
199	6-04-2010	Copy Order
228	6-09-2010	Statement
176	6-01-2010	Declaration (File)
165	5-25-2010	Designation
262	9-10-2010	Order
124	3-26-2010	Motion
120	2-22-2010	Order
123	3-5-2010	Declaration
145	5-3-2010	Exhibits

[Attach Additional Sheets if Necessary]

Dated: _____

Signature: [Signature]
 Print Name: Arthur West
 Address: 120 State Ave NE #1447
Oly WA 98501
 Phone: _____

1741-42 or 43

FILED
SUPERIOR COURT
THURSTON COUNTY, WA

2011 JUL 21 PM 4: 12

BETTY J. GOULD, CLERK

PLEASE PRINT CLEARLY

SUPERIOR COURT OF WASHINGTON
FOR THURSTON COUNTY

Arthur West

Plaintiff/Petitioner,

vs.

Thurston County Port

Defendant/Respondent.

(formerly AWC)

07-2-02399-0

NO.

3rd Designation
of Clerk's Paper

~~MOTION~~

COMES NOW the undersigned and moves this court as follows:

Sub No.

Date

title

No 50

6-19-2008

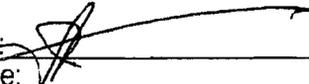
Letter

from JA
Downs

[Attach additional sheets of paper, if needed]

This Motion is based upon the records and files herein and the Declaration filed herewith.

Dated: _____

Signature: 

Print Name: _____

Address: _____

City, State: _____

Telephone No.: _____

