

FILED
COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON

BY  DEPUTY

NO. 52987 - 4 - II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

PETER J. MCDANIELS,
Appellant,

v.

DEPARTMENT OF CORRECTIONS
Respondent.

REPLY OF APPELLANT

Peter J. McDaniels
SCCC H2 B39L
191 Constantine Way
Aberdeen, WA 98520

REPLY

I. REPLY

On pg 1 of the respondent's response, at lines 7 to 11, of the introduction, Mr. Carr accuses me of believing that CI and DOC are separate entities; however, that continuing mockery is false. He is trying to lessen the damage done by D. Wortham who chose to use my PRA request as a conduit to punish me with his chanting, "We are now interpreting your request to be for 'a copy of the contract between the Department of Corrections and Correctional Industries ...'" (D. Wortham letter December 12, 2017 at EXHIBIT MERITS X1).

I responded, "D. Wortham, your interpretation is incorrect. I am asking specifically for any contract which the Superintendent's office was referring to in relation to why the SCCG Kitchen is required to use certain products, menus ..." (McDaniels letter 12-18-2017 at EXHIBIT MERITS X2).

In complete mockery, D. Wortham responds again, "I am writing to follow-up with you in regards to PRU-49186. You clarified your request to be for: "a copy of the contract between the Department of Corrections and Correctional Industries ... The file for PRU-49186 is now closed." (D. Wortham letter January 16, 2018 at EXHIBIT MERITS X4).

Second, I will address the accusations of fraud that Mr. Carr inserted into his response. Page 25, ln 1, he states, "Another example, [...] of facts, [...] he asserts is connected to DES contract 06006 [Carr points to where I stated,] I am providing one document abstracted from the umbrella food contract 06006. [...] is a fraud [...]."

I object to the document not being allowed on the record because I did not have access to this document throughout the trial court hearings.

However, the document itself is referenced in an exhibit that, in fact, is on the trial court record. The modified diet menu Mr. Carr speaks of is one page of many, many pages belonging to the "General Menu Guide." All menus I've seen in the DOC are 4-Week menus, and the stricken portion of the menu guide mentioned on the trial court record is specific to modified religious diets, so again, whether it's stricken or not, I still raised the fact of its existence and provided proof in the form of an exhibit of DOC policy that points right to it.

Furthermore, Mr. Carr has taken such a zealous stance on framing this document as a fraud (and then opens the door for its discussion in a footnote) that it can mean only one thing. This single piece of evidence completely undermines Brad Simpson's conclusory stories.

Is this document a fraud? Of course not. It is a key piece of evidence. Sufficient enough though is the policy (Exhibit Merits J2). It shows that documents are prepared by the DOC from the 06006 (or variant names it had prior to 2012) contract.

Mr. Carr goes on to admit complete guilt on behalf of his client DOC by saying "This document, which was created by the DOC [ibid last line] Correctional Industries and is put out monthly, is used by DOC institutions to order food products manufactured by Correctional Industries and other manufacturers [...]."

Well, in rebuttal, I will say that Mr. Carr has done a pretty good job of drawing everyone to the attention of this document which means it must be of great importance.

However, it is not a fraud: it's the real McCoy! We can all agree that the respondent has authenticated this document to officially belong to, and was produced by, the DOC defendant/respondent.

The question of what Mr. Carr's intentions are can be explored, but I

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will focus on the objective facts and leave the slight-of-hand analysis on this up to the Court.

Mr. Carr appears as if he is attempting to convince the Court I am saying that this document is actually a part of the 06006 contract; he points to Mr. Becker as the source of the document from a public records request with No. PDU-41109.

This is true. I did get the document from Mr. Becker. I got a copy of it and efiled it with the federal district court. It was then archived. I petitioned the superintendent for access to the box it was in, but he denied my petition multiple times.

Again, Mr. Carr wants everyone in the room to believe that I pointed to this document to say that it was a page from the 06006 contract, but that is not true, and anyone familiar with the English language knows this; or alternately, a good rule to live by Mr. Carr is, "If you don't know what words mean, then look them up in a dictionary" (respectfully).

I said, as Mr. Carr quotes, "I am providing one document abstracted from the umbrella food contract 06006." This is a true statement, and again it completely undermines the DOC's defense. Again, I assert with great confidence that the DOC uses the 06006 umbrella food contract as a proprietary function of business as a state agency; it is a public record that the DOC is required to provide to a requestor, under the PRA, whether it is asked for by its exact name or not.

Let's go to the dictionary first:

[A]bstract, according to the Webster's Third International Dictionary means - 1 ... ABSTRACTED ...a: considered apart from any application to a particular object or specific instance : separated from embodiment ...

I said, "I am providing one document abstracted from the umbrella food contract 06006." This is a fact, and the document is genuine. The document contains foods, Meal Mart Kosher meals for instance, that are not manufactured by Correctional Industries (CI).

Because the Court struck the 4-Week Modified Diet guide page, I will only refer to the living document that is referenced in policy 240.100 "General Menu Guide" which (under information and belief) contains the stricken page.

OK, but what if the foods on the general menu guide mentioned in DOC policy 240.100 are actually made by CI? Are they foods that the DOC grows and raises? No, of course not. They quit doing that decades ago. Where does CI get the ingredients for the foods they make? What about all the premade foods, Meal Mart Kosher meals for instance, where do they get those from? They are all contained in the 06006 contract.

1. Where do they get the ingredients to make the foods?

2. How do they know which vendors they can purchase from? Do they call up DES on the phone? No, of course not, the DOC uses the contract to obtain that information in order to make these decisions on purchasing foods.

The respondent goes on to say, "There is not one shred of evidence connecting this document to DES contract 06006 ..." (pg 26, respondent's response, lines 4-5).

Before moving forward on this, I will now assert that even if the document I motioned to be included in the record is stricken, the respondents have now placed the language from the document in their response brief -- admitting that such a document exists and that the information contained within the paragraph (pg 25, respondent's response, starting at line 5) is in reference to a document the respondent DOC uses.

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Mr. Carr very eloquently has provided the Court all the objective evidence it needs to conclude that the DOC does in fact use the umbrella food contract 06006 to create these "General Menu Guides" mentioned in the policy.

I said, "(Under Information And Belief)" (ibid line 11) which is hardly the language of a fraud, and I maintain that belief because, again, at index #23 on the trial court record shows us that DOC policy points directly to, "Purchases will be made in compliance with RCW 43.19 and the purchasing and accounting requirements of the State of Washington Department of Enterprise Services, Purchasing and Contracts."

This tells the intelligent reader that the DOC is required to use something. Otherwise, how is it possible to reconcile the policy that states, "[W]ill be made in compliance with [...] and [...] requirements of the [...] Purchasing and Contracts."

Are we to believe that the DOC somehow uses some extra sensory perception to know how to be in compliance with "Purchasing and Contracts [06006]" without having to actually use a copy of it, whether on an intranet, the Internet, paper format, or otherwise to be able to follow this policy.

The very next section down says, "There is a central statewide menu planning process (at No. 2), [and then it says] The Department Food Services Administrator will prepare and send the General Menu Guide. (at No. 3 DOC Policy 240.100, page 4 of 10, EXHIBIT MERITS J2, index #23 of the Thurston County record/docket)"

There is one and only one (living) menu, and the document that the respondent's attorney claims is a fraud is one page of possibly hundreds of pages that the institutions use to order foods from.

The big question I have at this point is why would the DOC or CI make

an ordering guide if, as Brad Simpson has outlandishly claimed, the DOC kitchen staff merely go online and probe the Internet for vendors that have some unique identifier on each and every product telling the kitchen staff that they are allowed to purchase the item under the contract?

And he asserts that, therefore, they don't actually use the contract because each and every one of possibly hundreds or thousands of vendors have tasked their web development teams to maintain thousands of food product links, so the DOC and other agencies can probe the Internet in search for particular vendors that provide said food product links to buy their products at low, low bulk rates only to procure low, low profit margins.

Where's the proof Brad Simpson?

You're right, Brad Simpson's testimony is conclusory, and without merit when (Mr. Carr) says, "These purchases are done online by accessing a particular vendor's website." (pg 9, respondent's response, para 10. line 3-4).

What particular vendors? How does the respondent know which particular vendor's websites to shop at? The answer is obvious: 06006 contract.

So, that is the question: even if what Mr. Simpson is asserting through his attorney is even partially true, how do these kitchen staff members know what vendors they can purchase from? Don't they have to use some sort of reference that either they utilize themselves or someone (like Bryan King or Brad Simpson) compile for them?

Where does that data come from? How do they locate all of these (mystery) foods? How come they never mentioned this process in Mr. Simpson's declaration? I raised the argument in my papers. Surely a copy of a web page from one of these vendors showing the special

state agency link would have been beneficial.

However, again, I, as a long time professional in the software development industry, cannot even fathom that each and every one of the vendors in the 06006 contract update their websites on such a regular basis to accommodate the state.

That would cost tens of millions annually or more. So, even if a few or even half of the vendors do update their web sites to accommodate the state, there are surely going to be many that don't; and even if it were just ten, and Bryan King or Brad Simpson had to use the contract to find information for a proprietary function, then the document falls under the PRA.

Here we must make the distinction that the document was made for the DOC, so this process cannot be viewed the same as, for example, Brad Simpson uses the Internet to check some nutritionals on the USDA website. This is wholly different because the document, 06006 contract, was designed specifically for the DOC; and whether other agencies use it too is irrelevant.

The problem is that the respondent has provided no material proof to back up any of Brad Simpson's claims. There wasn't anything on the record during the lower court proceedings, and they have not attempted to introduce anything today. I am asserting that the vast majority of the vendors and foods are pulled from the contract either by one, a few, or dozens of DOC employees.

According to Mr. Goldes at DES, he says, "The umbrella food contract is revised frequently..." This exacerbates the dilemma that the respondent claims that they don't actually use the contract because the vendors provide them with identifiers on their web pages telling the DOC employees what products they are allowed to buy, and again -- how do they even know what web site to go to? The contract? (Exhibit Merits M, index #23)

Thin air?

No, not thin air -- of course not because that information comes from the 06006 Food Umbrella Contract, and whether Brad Simpson is the bottleneck that distributes the data out to the kitchens or the kitchens all readily order from the 06006 contract themselves, it doesn't matter because the question is not if they all look at the document in order to make food purchases for inmates as a proprietary function of state government, it is whether one single employee working for the defendant/respondent uses the 06006 contract for any reason whatsoever to procure foods for inmates! -- which means that the 06006 food contract has a bona fide nexus with the respondent's decision making processes.

THE LEGAL QUESTION

That's the question, and no other issue can be addressed until that matter is resolved. Does the 06006 contract have a nexus with the respondent DOC's decision making processes?

1. DOC: What vendors are we allowed to purchase from in order to feed these inmates?

Answer: The answer to that question (a decision making process) is the 06006 contract. Someone in DOC must use the contract to compile documents, such as the "General Menu Guide" dictated in policy; or Kitchen staff are authorized to use the contract themselves, and I believe the respondent admitted to that early-on in this case before realizing the magnitude of the discovery question I asked.

See EXHIBIT MERITS T index #23, it says, "Please provide a list of the several food personnel [...] that use the Umbrella Food Contract No. 06006. [...]"

RESPONSE: The following employees are authorized to purchase food

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items under DES contract 06006 on behalf of DOC." Purchase is a verb that means to use, and the twisting of the language "under" does not negate "purchase" when someone in DOC must use the contract to compile a means for all of the personnel to use the "General Menu Guide" the policy dictates the use of.

2. DOC: What foods are we allowed to purchase in order to make our menus and feed inmates? What document dictates that for us?

Answer: The answer to that question (a decision making process) is that the 06006 Food contract dictates what foods we can and cannot buy in order to make or change the menus and ultimately feed the inmates we have a proprietary duty to feed. The word dictate is ambiguous, but it is a very, very well known word. And again, if the DOC's public records unit doesn't know what the word dictate means with its several nuances, then they surely have access to a dictionary.

Or, they could have asked me if they didn't understand, and that is exactly what their policy tells them to do if they don't understand a requestor's PRA request, they are required to ask the requestor for more information: they failed to follow their own policy.

In the DOC training manual for PRA requests, one of the multiple choice questions is:

1. If you don't understand what records you are being asked to search for, you should:

- a. Try your best
- b. Ignore the request
- c. Ask for clarification
- d. Hand over everything

The answer to the multiple choice question is: c. Ask for clarification; consequently, this further refutes the respondent's

contention that I am required to ask for documents by their exact names.

The DOC policy also has a powerpoint style presentation in it, and it has a guy holding his fist up saying, "Within 5 Business Days ... You will need to respond using one of the following options:

REQUEST CLARIFICATION

- request payment
- request a time extension
- deny the request

In my case they just denied the request after giving me a bogus transmutation of what I asked for and then after I corrected them in both of the primary requests, but then they just mocked me by telling me CI and DOC don't have a contract with each other after I had just got done telling them that I was not asking for a contract between CI and DOC!

And the word abstract means to mandate, but it also functions as a word of art that means to simply inform by way of communication.

Example: Superintendent Gilbert dictated to Ms. Johnson what she wanted her to put in her response to Mr. McDaniels' kiosk inquiry.

Because Ms. Gilbert was possibly no longer available due to an investigation she was under; and although she may have still worked for the DOC, she was involved in that investigation and could not dictate to Ms. Johnson again in response to Mr. McDaniels' second kiosk regarding the exact name of the contract.

So, Ms. Johnson said, "I am unsure of this..." or similar language which is hardly the language of a superintendent that speaks with confidence in my objective experiences. I am asserting that "I am unsure ..." is the language of Michelle Johnson and not the executive

REPLY

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personnel member, Superintendent Gilbert.

If the language of the kiosk was abstracted from a dictation from Gilbert's words, then the fact that it took several weeks to respond tells us that Ms. Gilbert (as a second theory) either contacted, or was contacted by, headquarters who informed her that she was not allowed to provide the information concerning government documents through the kiosk; and she was directed to instruct me to go through the public records office at headquarters.

This is a strong and meaningful theory because when I contacted the SCCC kitchen manager, Mr. DeHaven, to ask about the specific details concerning the contract his office continued to use as an excuse for not providing proper meals to Mr. Becker and I, he responded by telling me that he double checked, and he was not allowed to give me the information. I provided the kiosk messages to this Court, but they were stricken; however, I raised the fact of their existence in my amended complaint (index #16).

On page four (4) of that trial record, I said, "I went to great lengths to get the proper name, author, and number of the one and only "umbrella food" contract No. 06006 by SCCC employees and DOC Olympia, but I was told 'you would have to submit public disclosure.'"

The above is the language of Mr. DeHaven from the stricken kiosk messages. Then I said, "To date, Defendant has refused to disclose the responsive records ...".

When evaluating the proceedings of this case so far, it appears as if the respondent is relying on Brad Simpson as their food services expert. This raises a genuine issue of interest:

Why didn't the DOC's public records office contact Mr. Brad Simpson concerning a food related contract if he is such a top dog in that department?

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OK, so let's take a look at who Bryan King is. He says, "I am the Assistant Food Service Administrator [...] (DOC). CI is involved in the State Food Program Contract, supplying various foods to the DOC."

Wow, that sure sounds like someone who is confident in his speech. Bryan King is not currently being sued by me in federal court; however, Brad Simpson is, and Brad Simpson refers to Bryan King simply as "employee," yet Assistant Food Service Administrator is hardly just an employee.

Ah, and down the page a bit on Exhibit Merits C2 (index #23), it says, "[T]he Statewide Events Menu." I wonder where the foods and vendors for those sections of the "General Menu Guide" come from? It's a mystery. Who makes the menu? Where do they get the authorized vendors of these religious foods?

Do they probe the Internet for a particular vendor? The word probing and particular are sorta opposites wouldn't you say. "Particular" requires objective proof, and Simpson provides no such proof. Again, why wasn't Bryan King contacted?

Lastly on Bryan King, down the page a bit (ibid at line 14) he says, "After returning to my office, I emailed Ms. Perdue [...] a more detailed description of menu items offered as well as vendor information."

Hmmm -- "a more detailed description." That must mean that there is a less detailed description too. Perhaps the 06006 food Umbrella Contract (under information and belief) food manager, Pam Perdue, was using was vague, so Mr. King provided her with one that was abstracted from the original to make it easier for her. That was very nice of Administrator King.

I imagine the Court has heard enough at this point, but I do need to make some rebuttals.

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On page 2 of the respondent's response, the defendant dictates the kiosk exchange for us, and then Mr. Carr decides to continue mocking me with his saying, "DOC has never had a contract with CI ..."
(Response Brief, pg 3, line 4).

Nowhere in my correspondence with the DOC's PRU, nor the kiosk exchange, nor my briefing to the lower court do I saying anything that could be construed to believe that there is a contract between DOC and itself.

And just to show how diligent I was in my attempts to provide the correct information to the PRU unit, and in response to the last kiosk message I received from Superintendent Gilbert's office, I wrote a letter to DOC Headquarters on October, 07 2017. In that letter, I said, "I asked the Supt's office here for the contract #'s and contract managers name and mailing information for contracts related to where SCCC Kitchen is required to purchase our foods from. They told me to contact you. Please provide me with that contract info. Thank you" (EXHIBIT MERITS P).

I received zero response from headquarters.

On page 3 of the respondent's response to this Court, Mr. Carr claims, "McDaniels appeals arguing [...] DOC had an obligation to obtain this contract ..." (Response Brief, pg 3, line 13).

There was no reason for the DOC to "obtain" this contract because they already have the contract on a statewide intranet, and that information was provided:

<https://fortress.wa.gov/ga/apps/contractsearch/ContractSummary.aspx?c=06006> [...] Contract Summary - Access Washington [...] Food products are now under contract #06006 (EXHIBIT MERITS Y2).

And, the Department of Corrections signed another contract giving

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them permission to use the 06006 contract. "Master Contract USAGE Agreement" (EXHIBIT MERITS V1). DES does not use the 06006 contract to feed 16,000 inmates -- the respondent does.

I want to reflect on the electronic address above. The Secretary of State's employee who got that information for me did not get that off of the Internet. This is an https which means that it is an internal address. I am not saying that the 06006 contract can't be located through the general World Wide Web; I am saying that the document is specifically located in one of the locations that the DOC public records officers are required to look for contracts when a requestor makes such a request. I do not have access to the Internet or their Access Washington (and otherwise) intranets: and they know this for certain.

After a long drawn out dictation from Mr. Carr on behalf of Brad Simpson, Mr. Carr states a complete contradiction. He says, "To the extent this general statement suggests that CI was providing food items to Department institutions under DES contract No. 06006 it is not accurate."

This contradicts multiple instances where the respondent claims they only purchase foods to provide to inmates "under" the 06006 contract.

The respondent's attorney is just throwing every possible thing he can on paper to see if any of it will stick; however, he provides no objective proof (emphasis).

On page 15, at paragraphs 19 and 20 of the respondent's response, defendant/respondent makes a long, long statement about all of the different things PRS Ms. Williams did to try and locate the contract in my original request before the Gilbert kiosk one; however, the respondent is pointing to numerous activities that are not on the record, nor are all of these "workflow" requests in the (complete) staff correspondence I received in discovery. Mr. Carr is writing fantasy here. Ms. Williams did not follow DOC policy, and her

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lackadaisical efforts amount to bad faith. My request was clear, and if it wasn't clear to Ms. Williams, then she is required by DOC policy to communicate that to me -- but she did not.

The respondent's attorney continues these fabrications over the next pages: 15, 16, 17, and 18; yet he provides no documentation for most of these bald assertions.

Most offensive is the respondent's attempt to convince us that Mr. Wortham's mockery of me stemmed from his reading of the kiosk message; however, D. Wortham did not have access to the kiosk message. There is not one single piece of evidence on the record nor in the discovery pages I received from the respondent that indicates Mr. Wortham had any possible way of knowing what the kiosk said when he mocked me by claiming I was looking for a contract between DOC and CI. And even if we were to pretend that it was true, then why did he continue to mock me after I told him his interpretation was incorrect? WHY? WHY? WHY?

On page 27 of the respondent's response, Mr. Carr brings the West v. Thurston County case to the table; however, that case is wholly different, and the documents were as dissimilar as you can get.

The respondent uses another case, Cortland v. Lewis County. And yes, I did get a DVD from DES with 06006 contract files on it, but that was long, long, long after the close of PRU-49186 after I backed Wortham into a corner. The big---big difference in the Cortland case is where the Court said, "Accordingly, we hold that the County did not have a duty to produce records and satisfied its obligations under the PRA when it denied Cortland's request and directed him to submit his request to the entity that succeeded the board and to which his specific request pertained." (Top of page 9 of that case the respondent provided as an attachment in their response: No. 52066-4-II).

The respondent argues that PRU-52132 is not properly before the

REPLY

Court; however, this should be rejected because it is evidence that once D. Wortham realized that he was not going to be able to hold me off any longer, he re-opened my PRA request after it had been closed and gave it a new number: 52132. I am arguing that the issuing of a new number was improper. I was going to raise the issue in the second of the two bifurcated hearings because it is strictly a question of bad faith. In fact the briefing for that second hearing was going to be of monumental size.

This brings up my last argument which is that there are no rules accessible to me on how to properly proceed in a bifurcated hearing. The judges order (provided to the Court as a response to my second motion to include new evidence) is clearly indicating that all of the issues are not going to be addressed. The judge crossed that language out and replaced it with language that narrowed the scope of the first hearing. How am I supposed to know that the lower court would then decide (and claim it had the right to do so) that they were going to forego the merits of the case and jump straight to the question of bad faith which the Court refers to as Silent Withholding while Silent Withholding is synonymous with bad faith.

CONCLUSION

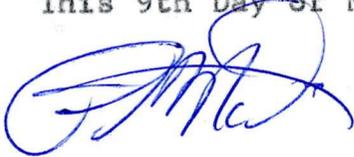
I made every effort possible to communicate the exact documents I was looking for. The respondent never contacted Gilbert, Johnson, Simpson, King, SCCC kitchen manager DeHaven, nor anyone else in food services except the dietician, and it appears as if he merely told them first that he would provide them with responsive documents, but then changed his mind and simply pointed to the policy 240.100 (indirectly) telling them that the information they need is in the policy, and as I have demonstrated, a DOC employee reading the policy concerning compliance with Purchasing and Contracts would know something about that, but they didn't get Carney's subliminal message. Not my fault.

REPLY

I DECLARE UNDER THE PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THE ABOVE IS THE TRUTH AND MADE IN GOOD FAITH.

Verification of the appellant above is executed on:

This 9th Day of March, 2020



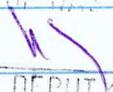
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Peter J. McDaniels
Appellant,

v.

Dep't of Corrections,
Respondent.

Declaration of Service

I, Peter J. McDaniels, pro se, caused to be sent:
MOTION FOR EXCESS PAGES & REPLY BRIEF to the
Respondent's Response Brief to my Opening Brief to:
Douglas W. Carr WSBA # 17378, Assist. Atty Gen., Corr.
Div., PO BOX 40116, Olympia, WA 98504-0116.

Through the campus legal mail system.

I DECLARE UNDER THE PENALTY OF PERJURY UNDER
THE LAWS OF THE STATE OF WASHINGTON THE ABOVE IS TRUE
DATED THIS MARCH 10TH 2020


Peter J. McDaniels

SOCC H2 B39L, 191 Constanline Way
DEL. OF SERVICE Aberdeen, WA 98520

No. 52987 - 4 - II

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MOTION FOR EXCESS PAGES

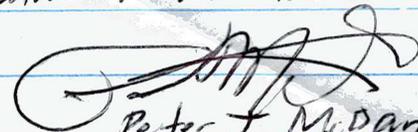
(same day noting)

I, Peter J. McDaniels, prose MOTION this Court to allow me to file an 18 page (actually 16 plus the front and signature verification) Reply to the defendant/respondent's Response brief.

I can't find the rules on this, and because I spent so much space/time refuting Mr. Carr's accusation of fraud, I think the paper got a bit longer than anticipated. Please accept the entire Reply.

I DECLARE UNDER THE PENALTY OF PERJURY UNDER THE LAWS OF WASHINGTON STATE THE ABOVE IS TRUE

Dated 3-09-2020



Peter J. McDaniels, SOCC H2 B39L, 191 Constantine Way
MOT. FOR EXCESS PAGES Aberdeen, WA 98520