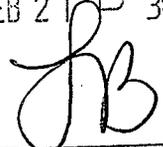


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IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent/Petitioner,

NO. 79371-9

v.

MOTION TO STRIKE PORTIONS OF
BRIEF OF AMICI WASHINGTON
ASSOCIATION OF CRIMINAL
DEFENSE LAWYERS AND NATIONAL
ASSOCIATION OF CRIMINAL
DEFENSE LAWYERS

MICHAEL ALLEN BOYD, Petitioner,
LEE GILES, Respondent, and
MAUREEN WEAR, Respondent

(Oral argument set for March 13, 2007)

I. IDENTITY OF MOVING PARTY:

The Respondent/Petitioner, State of Washington, by Kathleen Proctor,
Pierce County Deputy Prosecuting Attorney, respectfully files this motion to
strike portions of the brief of Amici Washington Association of Criminal
Defense Lawyers (WACDL), and National Association of Criminal Defense Lawyers
(NACDL) (hereinafter "Amici Brief").

1
2 II. STATEMENT OF RELIEF SOUGHT:

3 The State respectfully requests that this Court strike and disregard the following
4 portions of the Amici Brief:

5 1. The references to Appendix A, the affidavit of Marcus Lawson on pages 13
6 and 16, and any argument contained in the brief based upon Appendix A.

7 2. Appendix A.

8 3. The references to Appendix B on pages 16 and 17, and
9 any argument contained in the brief based upon Appendix B.

10 4. Appendix B.

11 5. The references to Appendices C-F on page 16 and any argument contained
12 in the brief based upon Appendices C-F.

13 6. Appendices C-F.
14

15 III. GROUND FOR RELIEF AND ARGUMENT:

16 WACDL and NACDL filed an amicus brief pursuant to this Court's invitation.
17 Their brief is subject to all of the provisions of Title 10 RAP. RAP 10.7 authorizes a party
18 to move to strike a brief that fails to comply with the requirements of Title 10 RAP. The
19 State files the instant motion pursuant to that rule.

20 RAP 10.3(a)(7) does not allow an appendix to a brief to include materials not
21 contained in the record on review without permission from the appellate court.

22 Appendices A through F of the Amici Brief were not contained in the record on review.

23 They must, therefore, be stricken from the record along with all references to those
24 documents, and all argument based upon the contents of those documents. See, e.g.,
25

1 State v. Stevenson, 16 Wn. App. 341, 345, 555 P.2d 1004 (1976), review denied, 88 Wn.2d
2 1008 (1977) (matters referred to in a brief but not included in the record cannot be
3 considered on appeal).

4 Appendix A must also be struck from the record because it purports to be an
5 affidavit of Marcus K. Lawson, but there is no signature of this man swearing under
6 penalty of perjury that the matters contained in the affidavit are true. In Washington, both
7 sworn affidavits and unsworn declarations require a signature of the attesting party. See
8 generally, § 9A.72.085; Harris v. Ski Park Farms, 120 Wn.2d 727, 735, 844 P.2d 1006
9 (1993), cert. denied, 510 U.S. 1047, 114 S. Ct. 697, 126 L.Ed.2d 664 (1994); (court gives
10 no credence to unsigned declaration); Our Lady of Lourdes Hosp. v. Franklin County, 120
11 Wn.2d 439, 452, 842 P.2d 956 (1993) (“Unsigned affidavits should not be considered in
12 ruling on summary judgment motions.”). An unsigned document such as Appendix A has
13 no evidentiary value in a court of law.

14
15 IV. CONCLUSION:

16 For the reasons stated herein, the State requests that this Court strike the designated
17 portions of the Amici Brief.

18 DATED: February 27, 2007.

19 GERALD A. HORNE
20 Pierce County
21 Prosecuting Attorney


22 KATHLEEN PROCTOR
23 Deputy Prosecuting Attorney
24 WSB # 14811

FILED AS ATTACHMENT
TO E-MAIL

to all parties

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Certificate of Service:

The undersigned certifies that on this day she delivered by U.S. mail and/or ABC-LMI delivery to the attorney of record for the appellant and appellant c/o his or her attorney true and correct copies of the document to which this certificate is attached. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington, on the date below.

2.27.02 *Therese Kab*
Date Signature

FILED AS ATTACHMENT
TO E-MAIL

Rec. 2-27-07

-----Original Message-----

From: Therese Nicholson-Kahn [mailto:TNICHOL@co.pierce.wa.us]
Sent: Tuesday, February 27, 2007 3:16 PM
To: OFFICE RECEPTIONIST, CLERK
Subject: MICHAEL BOYD, CASE NO. 79371-9

Attached please find the State's Motion to Strike Portions of Brief of Amici Washington Association of Criminal Defense Lawyers and National Association of Criminal Defense Lawyers in the above referenced matter. This pleading is submitted by:

Kathleen Proctor
WSBA # 14811
E-mail: kprocto@co.pierce.wa.us
ph: 253/798-6590

Please call me at 253/798-7426 if you have any questions regarding this matter. Thank you.

Therese Kahn