

NO. 96365-7

IN THE SUPREME COURT OF WASHINGTON

STATE OF WASHINGTON,		
	Respondent/Cross- Petitioner,	
v.		
PHILLIP S. NUMRICH,		
	Petitioner/Cross- Respondent.	
		PETITIONER'S MOTION TO PERMIT FILING OF PETITIONER'S THIRD SUPPLEMENTAL DESIGNATION OF CLERK'S PAPERS AND ACCOMPANYING CLERK'S PAPERS

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**1. IDENTITY OF MOVANT**

Phillip Numrich is the Petitioner and Cross-Respondent (hereafter "Petitioner").

**2. STATEMENT OF RELIEF SOUGHT**

Petitioner respectfully moves this Court for permission to file Petitioner's Third Supplemental Designation of Clerk's Papers and to accept transmittal of the accompanying clerk's papers.

**3. FACTS RELEVANT TO MOTION**

Petitioner filed his opening brief in this matter on November 22, 2019. The State filed its Brief of Respondent/Cross-Petitioner on February

12, 2020. Petitioner filed his Reply Brief of Petitioner/Cross-Respondent on March 27, 2020. The State filed its Reply Brief of Respondent/Cross-Petitioner on May 11, 2020. Petitioner timely filed his original Designation of Clerk's Papers on August 8, 2019. Both parties have filed supplemental designations of clerk's papers.

On May 11, 2020, the Washington Department of Labor and Industries filed a Motion to file an Amicus Curiae Brief. On May 18, 2020, Petitioner timely filed his Objection to Motion to File Amicus Curiae Brief of Department of Labor and Industries. That same day, Petitioner filed his Third Supplemental Designation of Clerk's Papers. On May 20, 2020, the Court granted the motion to file Amicus Curiae Brief without prejudice to a motion to strike. The Court directed that any substantive response to the amicus brief be filed by June 8, 2020.

On May 26, 2020, the Court notified counsel by letter that because Petitioner's last brief was filed on March 27, 2020, the Supplemental Designation of Clerk's Papers was rejected for filing and a motion to supplement was required.

Contemporaneous with the filing of this Motion, Petitioner timely files his Answer to the Amicus Curiae Brief of the Department of Labor and Industries.

**4. STATEMENT OF GROUNDS FOR RELIEF SOUGHT**

**A. The Third Supplemental Designation of Clerk’s Papers is Timely Because It was Filed Prior to Petitioner’s Last Brief**

RAP 9.6(a) provides that “[a]ny party may supplement the designation of clerk’s papers and exhibits prior to or with the filing of the party’s last brief. Thereafter, a party may supplement the designation only by order of the appellate court.”

RAP 10.1 defines the “Briefs Which May Be Filed” by respective parties. RAP 10.1(e) specifically provides that “[i]f an amicus curiae brief is filed, a brief in answer to the brief of amicus curiae may be filed by a party.” On May 20, 2020, this Court provided a deadline of June 8, 2020 for Petitioner to file an answer to the amicus brief. Petitioner has now filed his Answer, which is a permissible “Brief” under RAP 10.1. The Third Supplemental Designation of Clerk’s Papers was filed on May 18, 2020, before Petitioner’s last brief was filed on June 8, 2020. Therefore, the Third Supplemental Designation is now timely pursuant to RAP 9.6(a).

**B. The Third Supplemental Designation of Clerk’s Papers Designated One Document from the Superior Court File that was Relevant to Petitioner’s Objection to the Motion to File Amicus Curiae Brief and is also Relevant to a Pending Motion to Strike**

The basis for Petitioner’s Objection to the Motion to File Amicus Curiae Brief (“Objection”) was that it was filed by the Washington State

Department of Labor and Industries (L&I), which was the investigating agency that prepared this case for filing by the King County Prosecutor's Office on behalf of the State of Washington. In support, Petitioner cited *State v. MacDonald*, 183 Wn.2d 1, 346 P.3d 748 (2015)(where the case detective was the investigating agent of the prosecutor, the detective could not separately address the court at sentencing to undermine the plea agreement). In *McDonald*, this Court noted that “[p]rosecutors may not do indirectly through their investigating officers what they are prohibited from doing directly.” *MacDonald*, 183 Wn.2d 1 at 15 (quoting *State v. Sanchez*, 146 Wn.2d 339, 359, 46 P.3d 774 (2002)). The agency relationship in *McDonald* turned on the specific facts demonstrating the close working relationship between the detective and prosecutor.

In Mr. Numrich's case, the King County Prosecutor's Office directed L&I to investigate potential criminal charges. CP 69. Following additional investigation, L&I Officer Mark Joseph drafted a detailed Certification for Determination of Probable Cause, which constituted the sole basis for the State's charges against Mr. Numrich. CP 5-9. In order to demonstrate the close working relationship between L&I and the prosecutor during the superior court proceedings, Petitioner designated Sub. 14 from the superior court file. Sub. 14 is a motion that the prosecutor filed in 2018 addressing issues related to Mr. Numrich's conditions of release. Attached

to the motion are declarations from L&I employees, including Officer Mark Joseph, Erich Smith, and Ryan Olsen. Petitioner designated this part of the superior court file to provide factual support for his objection regarding L&I's motion.

Petitioner's objection to the amicus brief is that the Washington State Department of Labor and Industries is one and the same with "the State" that is prosecuting Mr. Numrich. L&I investigated and prepared the case at the prosecutor's request. Petitioner's argument is that L&I is simply a proxy for the State. The interrelationship between the prosecutor and the investigating agency was relevant to Petitioner's objection, which is why Petitioner designated this single supplemental document.

Therefore, even if the supplemental designation was not timely, Petitioner respectfully requests the Court accept it for filing as it is relevant to Petitioner's Objection and Motion to Strike the Amicus Curiae Brief. *See* RAP 9.10 (on motion of a party, the appellate court can direct the transmission of additional clerk's papers).

## **5. CONCLUSION**

Petitioner respectfully requests that this Court permit the filing of Petitioner's Third Supplemental Designation of Clerk's Papers and the associated clerk's papers, which were designated on the narrow issue of

Petitioner's Objection to the Motion to File Amicus Curiae Brief, and  
remain relevant to the pending Motion to Strike Amicus Curiae Brief.

RESPECTFULLY SUBMITTED this 8<sup>th</sup> day of June, 2020.

/s/Cooper Offenbecher  
COOPER OFFENBECHER, WSBA #40690  
Attorney for Petitioner/Cross-Respondent

/s/Todd Maybrown  
TODD MAYBROWN, WSBA #18557  
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## PROOF OF SERVICE

Sarah Conger swears the following is true under penalty of perjury under the laws of the State of Washington:

On the 8<sup>th</sup> day of June, 2020, I filed the above Motion to Permit Filing of Petitioner's Third Supplemental Designation of Clerk's Papers and Accompanying Clerk's Papers via the Appellate Court E-File Portal through which counsel listed below will be served:

### Respondent's Counsel

Patrick Hinds, Senior DPA  
Eileen Alexander, DPA  
King County Prosecutor's Office  
King County Courthouse  
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### Amicus Curiae Counsel

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WA State Attorney General's Office  
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Seattle, WA 98104

DATED at Seattle, Washington this 8<sup>th</sup> day of June, 2020.

*/s/ Sarah Conger*  
Sarah Conger, Legal Assistant

**ALLEN, HANSEN, MAYBROWN, OFFENBECHER**

**June 08, 2020 - 3:36 PM**

**Transmittal Information**

**Filed with Court:** Supreme Court  
**Appellate Court Case Number:** 96365-7  
**Appellate Court Case Title:** State of Washington v. Phillip Scott Numrich

**The following documents have been uploaded:**

- 963657\_Motion\_20200608153404SC674362\_8214.pdf

This File Contains:

Motion 1 - Supplement Clerks Papers

*The Original File Name was PETITIONERS MOTION TO PERMIT FILING OF PETITIONERS THIRD SUPPLEMENTAL DESIGNATION OF CLERKS PAPERS AND ACCOMPANYING CLERKS PAPERS.pdf*

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