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COURT OF APPEALS  
DIVISION I  
OF THE STATE OF WASHINGTON

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RONNIE L. HICKS  
Plaintiff/Appellant,  
v.  
DEPARTMENT OF CORRECTIONS,  
Defendant/Respondent.

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REPLY BRIEF OF APPELLANT

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## I. ARGUMENT

### **A. The Issue Of In Camera Review Is Not Moot**

Black's Law dictionary defines the word:

"**MOOT**, adj., 2. Having no practical significance, hypothetical or academic < The question on appeal became moot once the parties settled their case.>"

In this case, the practical significance of reviewing Appellant's original SOTP TERMINATION FORM in camera is that it would show Appellant has not been provided the form he signed on June 20, 2007 - as described in his October 18, 2007 report to Superintendent Quinn (CP 115, ¶2) - but multiple documents with his forged signature. (See Brief of Appellant, Issue #3, at pages 10-12)

In addition, there has been no settlement regarding this issue or case.

Furthermore, in camera review is the central issue and essential to resolving this case. Especially considering Assistant Attorney General Sara Olsen's admission that Appellant had not been provided the document he requested (CP 56 at ¶4) and Assistant Attorney General Doug Carr's January 12, 2010 admission to Appellant, via telephone, that Mr. Hicks' signature had been "transferred (or forged) to a different form" and the original form had not been provided to Appellant. Mr. Carr made it clear in no uncertain terms that the agency would not disclose Appellant's original SOTP TERMINATION FORM.

Moreover, the agency and their counsel's unwillingness and inability to produce the original record at issue substantiates Appellant's claims of forgery and denial of disclosure. (CP 79, Fn.1)

Appellant submits that Respondent's claim that the issue of in camera review is moot has no merit.

**B. Appellant's SOTP TERMINATION FORM Did Exist At The Time Of His August 21, 2007 Request**

Appellant signed his SOTP TERMINATION FORM on "6-20-07." (CP 100 at ¶2) The Respondent admits information was added to Appellant's "SOTP TERMINATION" form on "7-13-07." (See Brief of Respondent at page 1, Footnote 1, lines 7-9)

Furthermore, agency personnel were able to identify a document on August 29, 2007, as it existed on 6-20-07 and 7-13-07. (CP 102)

Appellant submits the foregoing facts show the record at issue did exist at the time of Appellant's original request on August 21, 2007.

**C. Appellant Did Sufficiently Identify the Altered Form**

On November 11, 2007 Appellant wrote Ms. Aylward and specifically requested the form she described in her October 29, 2007 letter because it did not match the form he was provided nor the one he actually signed. (CP 134, ¶3.9 and CP 138, ¶10)

Appellant's November 11, 2007 request was proper because Ms. Neiland was acting as a Public Disclosure Coordinator (PDC) when she responded to it. (Footnote 1)

1. Ms. Neiland responded on November 16, 2007, within 5 working days, denying Appellant's request, in accordance with RCW 42.56.520 and 42.56.520(3). (CP 72) Furthermore, Ms. Neiland's statements of "...you have a copy of the only termination form" (CP 72, ¶2, line 3) shows she was aware of Appellant's initial Public Disclosure request, and "No other... termination forms are in the possession of any SOTP staff" (CP 72, ¶1, lines 4-5) shows she was aware Appellant was seeking a different form than what he was provided. Ms. Neiland officially responded to Appellant's November 11, 2007 request in the capacity of a Public Disclosure Coordinator, treating and processing said request as proper.

In addition, Parmelee v. Clarke, 148 Wn App 748, 201 P3d 1022 (2008) does not apply to this case, as the Respondent claims, because Appellant was not provided "actual and timely notice" his November 11, 2007 request must be submitted to the Public Disclosure Coordinator, pursuant to RCW 42.56.040(2). (Footnote 2)

Furthermore, the Respondent made no objection in the trial court regarding Appellant's November 11, 2007 request.

Appellant submits the evidence shows he did sufficiently identify the altered form in his November 11, 2007 request and DOC personnel accepted and processed that request as proper.

**D. The Trial Court Did Incorrectly Deny Appellant's Request For Costs And Statutory Penalty Award**

In this case, the trial court relied on an incorrect date to deny Appellant's request for costs and penalties. The trial court then granted Appellant's request to correct the erroneous date, but did not do it. (Brief of Appellant, Issue #1, pages 7-8)

Once the erroneous date is corrected the fact remains Appellant was denied access to a properly requested record for 321 days. (Brief of Appellant, Issue #2, pages 9-10)

Appellant submits the foregoing facts show the trial court incorrectly denied Appellant's request for costs and statutory penalty award.

2. In Parmelee, an inmate submitted a Public Disclosure request to his counselor and the Grievance Coordinator. The Grievance Coordinator responded instructing the inmate to submit his request to the local Public Disclosure Coordinator, pursuant to DOC Policy 280.510. The court ruled that the letter from the Grievance Coordinator, instructing the inmate to submit his request to the local Public Disclosure Coordinator, constituted "actual and timely notice" of how to submit his request. Id at 757 In this case, Appellant had no "actual and timely notice" that his November 11, 2007 request must be submitted to the local PDC. Although Appellant knew who the PDC was, he did not know and had no notice that his request must be submitted to the PDC. Moreover, the court noted DOC occasionally accepts and properly processes requests submitted to DOC staff other than a PDC.

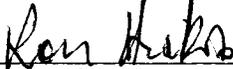
## II. CONCLUSION

For the foregoing reasons Appellant respectfully requests he be granted the relief requested in Part IV of the Brief of Appellant. Additionally, Appellant amends section IV, C of Brief of Appellant to read:

C. Order DOC to pay Appellant the required statutory penalty award from August 21, 2007, the date of DOC's initial response claiming the requested record did not exist, through present day, stopping when Appellant receives the document he requested or Respondent admits to the court that the original record at issue has been destroyed. (Footnote 3)

Dated this 7th day of February, 2010.

Submitted by:)



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I certify that on the date above I served a copy of this brief by U.S. mail prepaid on:

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3. This amendment is important and requested because AAG Doug Carr attempted to argue on January 12, 2010, via telephone, that the agency destroyed the original record at issue on June 21, 2007, the day after Appellant signed it! It appears to Appellant that agency personnel and their assigned counsel will say almost anything, true or not, to deflect responsibility and limit the agency's liability in this case. The proposed time period for the statutory penalty award is a way to hold the agency accountable for their egregious misconduct in this case.