Supreme Court No. 101464-3

THE STATE OF WASHINGTON

SUPREME COURT

ERIC HOOD

Appellant

v.

CENTRALIA COLLEGE,

Respondent.

SECOND MOTION FOR ADDITIONAL EVIDENCE ON REVIEW

Eric Hood, Pro Se
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I. INTRODUCTION

Petitioner Eric Hood, pro se, moves to provide evidence that he was awarded attorney fees in a civil case in King County Superior Court because it is material to this Court's consideration of Division II's opinion denying Hood's request for attorney fees.

II. ISSUE

Will Hood's additional evidence inform this Court's consideration of an "issue of substantial public interest" (RAP 13.4(b)) relevant to Division II's denial of Hood's attorney fees?

III. EVIDENCE RELIED UPON

The *Declaration Of Eric Hood In Support Of Second Motion For Additional Evidence On Review*, attached.

IV. FACTS

On January 9, 2023, the King County Superior Court awarded Hood "ATTORNEY'S FEES." Exhibit A (caps in original). The court found that:

> Plaintiff represented himself and has documented the time he spent attempting to enforce the contract and in seeking default. The Plaintiff seeks an hourly rate of his professional work, which is significantly less than a lawyer would have charged. Further, from the record in this case and the documentation submitted, much of the hours spent were seeking to collect the debt from the Defendant in lieu of pursuing a judgment. The Court finds under the circumstances of this case that these are reasonable fees.

Id.

V. ARGUMENT

A. The plain language of RCW 42.56.550(4) entitles Hood to attorney fees

This Court previously held that:

> Our primary duty in interpreting any statute is to discern and implement the intent of the legislature. Our starting point must always be the statute's plain language and ordinary meaning. When the plain language is unambiguous—that is, when the statutory language admits of only one meaning—the legislative intent is apparent, and we will not construe the statute otherwise. Just as we cannot add words or clauses to an unambiguous statute

> when the legislature has chosen not to include that language, we may not delete language from an unambiguous statute: Statutes must be interpreted and construed so that all the language used is given effect, with no portion rendered meaningless or superfluous. The plain meaning of a statute may be discerned from all that the Legislature has said in the statute and related statutes which disclose legislative intent about the provision in question (noting that application of the statutory definitions to the terms of art in a statute is essential to discerning the plain meaning of the statute). Where we are called upon to interpret an ambiguous statute or conflicting provisions, we may arrive at the legislature's intent by applying recognized principles of statutory construction. A kind of stopgap principle is that, in construing a statute, a reading that results in absurd results must be avoided because it will not be presumed that the legislature intended absurd results.

State v. J.P., 149 Wash.2d 444, 450, 69 P.3d 318 (2003) (quotation marks, brackets and citations omitted).

RCW 42.56.550(4) states:

> Any person who prevails against an agency in any action in the courts seeking the right to inspect or copy any public record or the right to receive a response to a public record request within a reasonable amount of time shall be awarded all costs, including reasonable attorney fees, incurred in connection with such legal action.

42.56.550(4).

Division II stated, "pro se litigants are not entitled to attorney fees under RCW 42.56.550(4)." *Opinion*, p. 30.

In previously ruling that attorney fees are not due to "any person" (*id*.), Division II held that

> the plain language of RCW 42.56.550(4) […] awards "reasonable *attorney* fees," not fees in lieu of attorney fees to non-attorneys who represent themselves in PRA actions. Second […] a non-lawyer defendant litigating a PRA action pro se incurs no attorney fees and is not entitled to receive an attorney fee award himself under RCW 42.56.550(4).

West v. Thurston Cnty., 275 P.3d 1200, 1217-18 (Wash. Ct. App. 2012) (emphasis in original). Without basis or reasoning, Division II's circular opinion merely weighted the word "attorney" over "person." As shown, the weight it assigned is contrary to both grammar (and hence the plain meaning of "attorney fees") and to legislative intent.

If, as Division II argues, the legislature intended that fees in a PRA action are reserved exclusively for an attorney or attorneys, then the statute would instead read "attorney's fees" or "attorneys' fees." *See* for example,

> *Any person who prevails* against a public agency in any action in the courts for a violation of this chapter *shall be awarded all costs, including reasonable attorneys' fees, incurred in connection with such legal action.*

RCW 42.30.120(4) (emphasis added).

The added emphasis shows the two statutes are nearly identical in structure. The possessive apostrophe in "attorney's fees" (*id*.) clearly means fees that belong exclusively to an attorney. By contrast, the possessive apostrophe is deliberately omitted in RCW 42.56.550(4). Thus the "attorney" in "attorney fees" is intended adjectivally, i.e., to modify the word "fees." *Id*.

As used by Division II, the phrase "'in lieu of' means `in the place of' or `instead of.'" *Conroy v. Keith Cty. Bd. of Equalization*, 846 N.W.2d 634, 641 (Neb. 2014) (quoting Webster's Third New International Dictionary of the English Language, Unabridged 1306 (1993)). The plain meaning of "in lieu of" is mutually exclusionary. *First Alex Bancshares, Inc. v. United States*, 830 F. Supp. 581, 585 (W.D. Okla. 1993).

In short, Division II reads into the statute something that is not there, namely, that "attorney fees" means "attorney's fees."

In the language of the statute, the word "attorney" is a general *qualifier* of the word "fees" and thus refers to the *kind* of fees associated with work that an attorney performs, not the work of only a person who passed the bar. RCW 42.56.550(4). Thus,

statutory language signifies that people who work comparably to an attorney are entitled to fees for their "professional work." *Hood Decl*., Exhibit A.

This interpretation accords with the deliberate inclusion of the term "any person" of which attorneys are but a tiny percentage. 42.56.550(4). It also accords with the not uncommon situation where persons who do work that requires the kind of knowledge possessed by attorneys, e.g., judges, are not always required to be attorneys. See, e.g., *State v. Davis*, 2016 MT 102, 383 Mont. 281, 371 P.3d 979, (permitting trials before a non-lawyer judge.)[1]

The concept that attorney fees should be awarded to "any person" is also consistent with the PRA's construction, i.e., "The people insist on remaining informed so that they may maintain control over the instruments that they have created." RCW

[1] "While Montana's rules are not the norm in America, they're also not unheard of. Twenty-eight states require all judges presiding over misdemeanor cases to be lawyers, including large states like California and Florida. In 14 of the remaining 22 states, a defendant who receives a jail sentence from a non-lawyer judge has the right to seek a new trial before a lawyer-judge."
https://www.theatlantic.com/politics/archive/2017/02/when-your-judge-isnt-a-lawyer/515568/

42.56.030. There is no implication in this construction that an attorney is required to "maintain control" or that attempts to "maintain control" should be borne at a requester's expense by requiring a requester to hire an attorney. Rather, the opposite is implied. See section 2, *infra*.

In summary, the plain language "reasonable attorney fees" within the context of the PRA and in light of legislative intent favors weighting "any person" over "attorney." RCW 42.56.550(4). Thus, "any person who prevails," who has done the professional work of an attorney, "shall be awarded all costs, including reasonable attorney fees, incurred in connection with such legal action." *Id.*

B. Entitling a pro se requester to attorney fees is of substantial public interest because it would deter frivolous agency litigation

When determining whether an issue meets the substantial interest standard, courts have examined its level of impact. See e.g. *State v. Watson,* 155 Wn.2d 574, 577, 122 P.3d 903, 904 (2005).

> We consider the following criteria in determining whether or not a sufficient public interest is involved:
> (1) the public or private nature of the question presented;
> (2) the desirability of an authoritative determination which will provide future guidance to public officers; and
> (3) the likelihood that the question will recur.

In re Det. of Swanson, 115 Wn.2d 21, 24-25, 793 P.2d 962, 804 P.2d 1 (1990)

Since the majority of "private" citizens must potentially litigate obtain public records, then the issue of awarding attorney fees to non-attorneys is of substantial "public interest." *Id*. (1). The Court's determination of this issue will certainly inform "public officers" in every agency of their potential liability should non-attorneys be permitted attorney fees in their efforts to obtain records. *Id*. (2). Finally, the sheer number of non-attorneys who must or potentially must litigate to obtain public records makes it likely that some of them will challenge Division II's holdings. *Id*., (3).

If agency attorneys knew that frivolously responding to a non-attorney might increase an agency's culpability, then they might think twice before propounding irrelevant discovery. *See*

e.g., *Hood v. Columbia Cnty.*, 21 Wash. App. 2d 245, 255 (Wash. Ct. App. 2022) (it is not requester's but "the *agency's* motivation that is relevant because "agency culpability [is] the focus in determining daily penalties ...." *Neigh. Alliance* , 172 Wash.2d at 717, 261 P.3d 119." (Emphasis in original). *And see* Division II's *Opinion*, p. 28, (Centralia College's discovery "had no bearing on whether the College reasonably interpreted Hood's PRA request and conducted an adequate search for responsive documents.")

Similarly, agency attorneys who feared CR 11 sanctions might carefully investigate the facts before signing pleadings. *See* Hood's *Motion for Additional Evidence on Review* dated 11/16/2022, p. 3-5 (attorney signed an Answer that denied withholding two weeks *after* producing responsive records.)

This Court recognized that "the legislature expressly provided a speedy and expedient procedure for resolving disputes." *Neighborhood Alliance v. County of Spokane*, 172 Wash. 2d 702, 729 (Wash. 2011). And see *Kilduff v. San Juan*

County, 453 P. 3d 719 (Wash. 2019) ("Our cases emphasize the importance of speedy review of PRA claims. […] It does not follow that the PRA would permit agencies to draw out what is meant to be an expeditious process.")

Similarly, it does not follow that the legislature intended requesters be compelled to hire an attorney or pass the bar in order to obtain public records. Instead, the Attorney General's Office (AGO) advises that:

> The act provides a speedy remedy for a requestor to obtain a court hearing on whether the agency has violated [RCW 42.56.550].... The purpose of the quick judicial procedure is to allow requestors to expeditiously find out if they are entitled to obtain public records. To speed up the court process, a public records case may be decided merely on the "motion" of a requestor and "solely on affidavits."

WAC 44-14-08004(1) (footnote omitted).

This model rule refers to a "speedy remedy" resolved by "motion" (*singular*) of a "requester." *Id*. Compare that language and its obvious intent to the docket in this case showing *dozens* of pleadings filed in three courts by the College's AGO attorneys.

Protracted litigation by agency attorneys in response to a pro se non-attorney's lawsuit is routine. The overall effect, if not intent of such protracted litigation is to discourage or intimidate a requester, delay or obstruct a requester's access to records, which is certainly not in the public's interest.

Finally, since courts have the discretion to award no penalties, an award of attorney fees might be the *only* deterrent to a non-compliant agency. See e.g., *Hikel v. City of Lynnwood*, 389 P. 3d 677 - Wash: Court of Appeals, 1st Div. 2016 (Hikel, though "not entitled to a penalty […] is, however, entitled to attorney fees." And see *Progressive Animal Welfare Society v. University of Washington*, 125 Wn. 2d 243, 250 (Wash. 1994). ("The trial court awarded attorney fees to PAWS as the prevailing party, but declined to award a penalty.") While *PAWS* was remanded to determine attorney fees, appeals are generally not successful and few requesters would risk spending money to pay an attorney on appeal when attorney fees were already denied.

In summary, permitting non-attorney pro se litigants to recover attorney fees promotes legislative intent, accords with plain legislative language, would deter frivolous defensive actions and thus would expedite access to public records, which is of "substantial public interest." RAP 13.4

C. To obtain public records from resistant agencies, professional knowledge is increasingly necessary

In awarding a pro se *attorney* his fees, Division I stated,

> Lawyers who represent themselves must take time from their practices to prepare and appear as would any other lawyer. Furthermore, overall costs may be saved because lawyers who represent themselves are more likely to be familiar with the facts of their cases.

Leen v. Demopolis, 62 Wn. App. 473, 487 (Wash. Ct. App. 1991). The same is true for a non-attorney pro se requester.

Moreover, the preparation and research regarding the PRA is becoming ever more burdensome. Agencies confronted by "[c]hanging and complex public records laws […] rely on the help of expensive, yet *necessary*, legal counsel." *See* 2016 SAO

publication "The Effect of Public Records Requests on State and Local Governments"[2] p. 4-5 (emphasis added).

Changing and complex records laws affect requesters at least as much as agencies but *agencies* rarely, if ever, litigate pro se. Rather, pro se requesters contend with attorneys funded by agencies who "spent more than $10 million in the most recent year alone" (i.e., in 2015). *Id*. In order to have even a remote chance of prevailing against this veritable fortress, requesters, who may lack knowledge of other aspects of the law, must have a professional knowledge of the PRA. In short, the complexity of litigation and agency contentiousness requires that requesters perform like an attorney. They are thus entitled to attorney fees.

In summary, requesters who seek to obtain records confront sophisticated attorneys funded by deep pocketed agencies. Said attorneys, as exemplified by this case, protract and complexify litigation, thereby making "speedy judicial review" an illusion and delaying or obstructing access to public records.

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[2] https://portal.sao.wa.gov/ReportSearch/Home/ViewReportFile?arn=1017396&isFinding=false&sp=false

To make records more accessible, since 1973 the legislature recognized *without modification* that "any person" is entitled to attorney fees, whether or not they employ an attorney. Initiative Measure No. 276, approved November 7, 1972. Formerly RCW 42.17.340. Thus, person Hood is entitled to attorney fees for his work obtaining public records.

D. Rules on Appeal permit Hood's evidence

Additional evidence may be taken by an appellate court if the following criteria are met:

> The appellate court may direct that additional evidence be taken before the decision of a case on review if: (1) additional proof of facts is needed to fairly resolve the issues on review, (2) the additional evidence would probably change the decision being reviewed, (3) it is equitable to excuse a party's failure to present the evidence to the trial court, (4) the remedy available to a party through post judgment motions in the trial court is inadequate or unnecessarily expensive, (5) the appellate court remedy of granting a new trial is inadequate or unnecessarily expensive, and (6) it would be inequitable to decide the case solely on the evidence already taken in the trial court.

RAP 9.11(a)

Hood's above arguments show that criteria (1) – (2) apply to the facts of this case. Hood was obviously unable to present

this new evidence to the trial court, thus (3) and (6) apply. Because an award of attorney fees in the trial court or appellate court would require additional motions practice in those venues, Hood *and* College would incur "unnecessary expense" thus (4)-(5) apply.

In addition, this Court may waive RAP 9.11(a) when, as here, "new evidence" fosters an "unusual situation." *Washington Federation of State Employees, Council 28 v. State*, 99 Wash.2d 878, 884-886 665 P.2d 1337 (1983).

Circumstances here are analogous to *Washington Federation*. First, Hood submitted "new evidence" (*id*.) that was created as a direct result of a decision made by an "authority." *Id*. Moreover the evidence shows that his argument to award attorney fees to non-attorney pro se litigants is not merely "hypothetical." *Id.* That is, since attorney fees were permitted to a non-attorney pro se litigant in a civil case in a lower court, then they should, for the similar reasons articulated by that lower court, be permitted here.

Rules may also be waived to "serve the ends of justice, pursuant to RAP 1.2 and 18.8." *Sears v. Grange Insurance*, 111 Wn. 2d 636, 640 (Wash. 1988). RAP 1.2 permits Courts to interpret rules "to promote justice." Under RAP 18.8, a party may move to "waive or alter the provisions of any of these rules."

VI. CONCLUSION

Hood's award of attorney fees in a superior court (Exhibit A) is (i) relevant to this Court's consideration of Division II's opinion denying Hood's attorney fees and (ii) of substantial public interest to the public, thus Hood's *Motion* should be granted.

Dated this 25th day of 2023, by

s/Eric Hood

WORD COUNT: 2787, not including attached declaration (91 words) and exhibit.

CERTIFICATE OF SERVICE

I certify under the penalty of perjury under the laws of the State of Washington that on the below date in Langley, WA, I emailed the foregoing documents to counsel for Centralia College

By: s/ Eric Hood Date: January 25, 2023

Supreme Court No. 101464-3

THE SUPREME COURT
OF THE STATE OF WASHINGTON

ERIC HOOD

Appellant

v.

CENTRALIA COLLEGE,

Respondent.

DECLARATION OF ERIC HOOD IN SUPPORT OF SECOND MOTION FOR ADDITIONAL EVIDENCE ON REVIEW

Eric Hood, Pro Se
PO Box 1547
Langley, WA 98260
360.632.9134

COMES NOW Eric Hood, and hereby declares as follows: I am the pro se plaintiff in this action. I am over the age of eighteen and competent to testify. I brought this action against Centralia College. I make this declaration based on personal knowledge.

1. Exhibit A is a true and correct copy of a Judgment I received in a case I litigated without the assistance of an attorney.

I declare under the penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated this 25th day of January, 2023, in Langley, WA by

s/Eric Hood
Eric Hood

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

ERIC HOOD, **Plaintiff,** **vs.** **RICHARD GARCIA,** **Defendant.**	**NO. 22-2-00149-6** **JUDGMENT**

I. JUDGMENT SUMMARY

Pursuant to RCW 4.64.030, the following information is furnished concerning this judgment:

JUDGMENT CREDITOR:	ERIC HOOD
JUDGMENT DEBTOR:	RICHARD GARCIA
JUDGMENT:	$3,300
ATTORNEY'S FEES:	$12,697.76
PLAINTIFF'S COSTS:	$954.92
TOTAL JUDGMENT:	$16,952.68

Eric Hood
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ericfence@yahoo.com

INTEREST ON JUDGMENT: The total judgment shall accrue interest at the rate of 12% per annum from the date of this judgment.

II. FINDINGS ON ATTORNEY FEES

This matter came before the court for entry of a judgment against defendant Richard Garcia. The Court held a reasonableness hearing on December 7 and 20, 2023, and heard argument from the parties and considered all materials on file in this case.

The Court makes the following findings:

The contract provides the Defendant is responsible for attorney fees in case of default.

The contract caps interest at $300. Therefore the total amount owing per the contract is $3,300.

Plaintiff represented himself and has documented the time he spent attempting to enforce the contract and in seeking default. The Plaintiff seeks an hourly rate of his professional work, which is significantly less than a lawyer would have charged. Further, from the record in this case and the documentation submitted, much of the hours spent were seeking to collect the debt from the Defendant in lieu of pursuing a judgment. The Court finds under the circumstances of this case that these are reasonable fees. Plaintiff also documented his court costs and costs of this litigation at $954.92. The Court finds these sufficiently proven. Defendant produced no evidence during this case or during these hearings.

III. JUDGMENT

Having considered the court record in this matter and being otherwise fully informed, now therefore, hereby orders, judges, and decrees that Plaintiff Eric Hood is awarded judgment against Defendant Richard Garcia in the amount of $16,952.68. The total judgment

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is $16,952.68 and shall bear interest at a rate of 12% per annum from the date of entry until the same is paid in full.

Dated this _____ day of _____2023.

_____

Judge Adrienne McCoy

Presented by:

s/Eric Hood,
Eric Hood, plaintiff

\

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King County Superior Court
Judicial Electronic Signature Page

Case Number:	22-2-00149-6
Case Title:	HOOD vs GARCIA
Document Title:	OTHER RE JUDGMENT
Signed By:	Adrienne McCoy
Date:	January 09, 2023

Judge: Adrienne McCoy

This document is signed in accordance with the provisions in GR 30.

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ERIC HOOD

January 25, 2023 - 1:10 PM

Transmittal Information

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