

WASHINGTON STATE SUPREME COURT

John Worthington,

Petitioner,

vs.

Washington State Legislature et al,

Respondents,

No. 101,567-4

**REPLY TO RESPONSE TO
MOTION ON THE MERITS**

1. Identify of Moving Party

John Worthington respectfully asks for the relief designated in Part 2.

2. Statement of Relief Sought

Worthington respectfully request this court grant immediate reversal on the merits pursuant to RAP 18.14. (e) (2).

3. Facts Relevant to Motion

On December 24, 2022, Worthington filed a Petition for Review alleging amongst other things that 11 members of the Washington State Legislature were not asked for records. In the

January 26, 2023, response to the Petition for Review, the Legislature conceded that 11 members of the Washington State Legislature were never asked for responsive public record.

Worthington checked the General Orders of the Washington State supreme Court and did not find any references to the Motions on the Merits or RAP 18.14.

4. Grounds for Relief and Argument

RAP 18.14 reads in relevant part:

(b) Time. A party may submit a motion on the merits to affirm any time after the opening brief has been filed. A party may submit a motion on the merits to reverse any time after the respondent's brief has been filed.

The respondents filed their brief on January 26, 2023. The RAP's disjunctive section for motions on the merits does not indicate whether the respondent's brief needs to be a response to an opening brief or whether a petition for review is not considered an opening brief.

The respondents filed a brief, so Worthington submitted a motion on the merits to reverse. The respondents

are trying to apply the first section of the RAP which applies to motion on the merits to affirm to the disjunctive section which applies to the motion on the merits to reverse.

The court would be adding the words “respondents response to petition” to the RAP rule when the plain language says “respondent’s brief.” In that case the court would not be giving plain effect to the language of RAP 18.14 (b). See *State v. Otton* , 185 Wash.2d 673, 681, 374 P.3d 1108 (2016).

“We interpret court rules the same way we interpret statutes giving effect to the plain language.” *State v. Otton* , 185 Wash.2d 673, 681, 374 P.3d 1108 (2016).

In addition, the court could waive the RAP rule to facilitate a ruling on the merits or to promote justice, because Rule 18.8 and rule 1.2 allows a waiver of the court rules to promote the ends of Justice and facilitate a ruling on the merits.

The Rules of Appellate were designed to allow flexibility so as to avoid harsh results. See *Weeks v. Chief of Wash. State*

Patrol, 96 Wn.2d 893, 895-96, 639 P.2d 732 (1982).¹ It has been "apparent that the trend of the law in this state is to interpret rules and statutes to reach the substance of matters so that it prevails over form." *First Fed. Sav. Loan Ass'n v. Ekanger*, 22 Wn. App. 938, 944, 593 P.2d 170 (1979).

The Petition for Review alleged that 11 members of the Washington State Legislature were never asked for any records². The Legislature tries to claim they asked everyone for records but admit they did not ask members who no longer worked for the legislature. "but excluded members and aides who no longer worked for the Legislature. CP 520-22, 537-8, 544-48." Page 4 Res. Answer to Motion on Merits.

It is well settled law that affidavits were required from members of the Washington State Legislature to comply with

¹ [1] When our state adopted the federal rules of civil procedure, it in essence determined that substance should prevail over form and that actions should be determined on the merits, not by technical rules that prevent such determinations. This approach is outlined in *Curtis Lumber Co. v. Sortor*, 83 Wn.2d 764, 766-67, 522 P.2d 822 (1974)

² CP 478, CP 481. Worthington argued 7 but listed 11 members. The list was limited to Legislative aides, but some legislators were not asked for records.

the PRA.³

Here, the legislature was asked for affidavits.⁴

Specifically, the legislature was asked to “complete the search of personal device declaration form.” CP 520.

No personal device declarations were ever provided. This is a straight up violation of the case law doctrine in *Nissen v. Pierce Cnty.* 183 Wash. 2d 863 (Wash. 2015). In addition, the public records officer notified the legislature of the model rules in WAC 44-14-04003. Cp 547.

It should be clear to this court that the Legislature thumbed its nose at *Nissen*, the model rules outlined in WAC 44-14-04003 and the PRA.

Worthington seeks reversal pursuant to RAP 18.14 (e) (2) which reads.

(2) Motion To Reverse. A motion on the merits to reverse will be granted in whole or in part if the appeal or any part thereof is determined to be clearly

³ *Nissen v. Pierce Cnty.* 183 Wash. 2d 863 (Wash. 2015)

⁴ CP 520

with merit. In making these determinations, the judge or commissioner will consider all relevant factors including whether the issues on review (a) are clearly controlled by settled law, (b) are factual and clearly not supported by the evidence, or (c) are matters of judicial discretion and the decision was clearly an abuse of discretion.

Worthington respectfully argues it is well settled that public servants must respond to records requests even after they no longer work for government. It is also well settled in *Nissen* that affidavits must be provided in response to the PRA request.

Worthington has presented factual evidence that members of the legislature were not asked for public records and has shown the trial court's ruling was not supported by factual evidence. Worthington has also shown the legislature failed to "complete the search of personal device declaration forms," after they were requested.

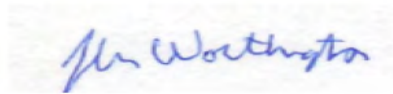
In closing, this court has discretion because it serves the

interests of justice to Worthington and the PRA to reverse and remand this case.

Worthington respectfully requests the court to reverse on the merits and remand with orders to apply penalties for failing to request records from legislative aides who no longer worked for the legislature and for failing to follow the PRA case law doctrine in *Nissen* by completing the “search of personal device declaration form” by April 16, 2020, after they were requested. CP 547.

Respectfully Submitted this 17th day of February 2023.

By:



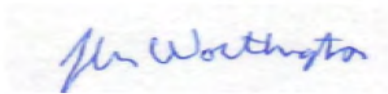
JOHN WORTHINGTON
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CERTIFICATE OF SERVICE

The undersigned hereby certifies this brief complies with RAP 18.17 (c) (18) with 1031 words, and, that on this 17TH day of February 2023, he served this Motion on the Merits via the e filing Portal for the Washington State Appellate Courts:

Executed this 17th day of February, 2023.

By:



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JOHN WORTHINGTON - FILING PRO SE

February 17, 2023 - 12:31 AM

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: 101,567-4
Appellate Court Case Title: John Worthington v. Washington State Legislature, et al.
Superior Court Case Number: 20-2-02488-8

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