Court of Appeal Cause No. 68979 -7- I

# IN THE SUPREME COURT OF THE STATE OF WASHINGTON

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WASHINGTON STATE ATTORNEY GENERAL ET AL, [Respondent]

v.

JOHN WORTHINGTON, [Petitioner or Appellant]

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## AMENDED REPLY TO OPPOSITION TO WAIVER OF FEES

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John Worthington
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425-917-2235

## I. Reply

The defendant's arguments that Worthington's petition has no merit are incorrect, because Worthington allegations of fraud committed during the first timely filed complaint in 2009, should have been accepted as true and decided by the trier of fact. Furthermore, the defendant's reliance on the federal court denials of his motion to proceed in forma pauperis should not be used to decide if Worthington's request for waiver of fees, because that decision was clearly based an error of material fact.

### A. The petition is not frivolous

The trial court and the Court of Appeals both ruled Worthington failed to act on his complaint within the statute of limitations. Worthington argues that he did act within the time frame allowed under RCW 4.16.080 when he filed his complaint in 2009. Worthington alleged in his 2012 complaint, that in the 2009 complaint the defendants committed a fraud. Worthington made allegations of fraud which should have been accepted as true. "When considering a summary judgment motion, we must construe all facts and reasonable inferences in the light most favorable to the nonmoving party". Lybbert v. Grant County, 141 Wn.2d 29, 34, 1 P.3d 1124 (2000).Whether Worthington can prove fraud is a question of fact for the trier of fact to resolve. (See Duke v. Boyd 942 P.2d 351 (1997), quoting Douglas Northwest, Inc. v. Bill O'Brien & Sons Constr., Inc.,64 Wn.App. 661, 678, 828 P.2d 565 (1992) ("Each element of fraud is a material issue to be resolved and must be proven by clear, cogent and convincing evidence"). "Factual issues

may be decided as a matter of law only if reasonable minds could reach but one conclusion". Sherman v. State, 128 Wn.2d 164, 184, 905 P.2d 355 (1995).

The Court of Appeals never decided if a fraud was committed pursuant to RCW4.16.080 (4) (6).[1] Worthington alleges the Appellate court, decision did not properly give effect to the "plain meaning" of RCW 69.50.505 (3) or RCW 4.16.080 sections 4 and 6 and carry out their legislative intent. (See In re Marriage of Schneider, 173 Wash.2d 353, 363, 268 P.3d 215 (2011).

Worthington now prays the Washington State Supreme Court will properly determine that those allegations of fraud in the 2009 complaint should have been accepted as true, and then decided by a trier of fact rather than dismissed in summary judgment.

Worthington respectfully asks the Washington State Supreme Court to use common sense and realize that the statute of limitations ruling had no merit since Worthington filed a complaint in 2009, then alleged fraud took place in that complaint 2009 complaint as the basis for his 2012 complaint.

The defendants wanted it and got it both ways. They were able to argue Res judicata and Collateral Estoppel applied to a complaint already decided on the Merits in 2009, then claimed Worthington failed to file a complaint in time. Then they argue Worthington should have discovered the facts in 2009 without discovery or any police reports of the raid.

The attorneys for the defendants were free to make up any defense they

[1] Judge Cox wrote" Assuming without deciding" Page 6 opinion Worthington v. Washington State Attorney General et al.

wanted ,so they did hoping they would never get caught.

### A. The federal court decisions to deny informa pauperis has no bearing on this case.

In Federal Rule 60 (d) (3) motions, the courts are very reluctant to rule in favor of the filer. That motion is rarely granted no matter how much evidence is shown. However, if the Washington State Supreme Court decides to inquire on that case, which the Petitioner hopes they will do, they will see on obvious error in the ruling of James L. Robart.[2] Judge Robart clearly applied the time limitations of Federal Rule 60 (c) (1), and dismissed the federal Rule 60 (d) (3) motion on that Basis. Clearly Federal Rule 60 (d) (3) is not time barred and is not subject to federal rule 60 (c) (1), yet somehow Worthington's appeal is frivolous.

### B. The Washington State Bar Association has reversed a bar complaint on issues of fraud

While the Washington State Supreme Court is foraging outside the record perhaps they should consider that ,the Washington State Bar Association has now sue sponte , decided the claims by Poulsbo and Port Orchard Attorney Robert Christie that his client John Halsted was not at Worthington's residence in the 2009 raid, are possible cause for RPC violations. The bar has seen the claims by Robert Christie that his client was not there, and also has seen Halstead's police report detailing how he took videos of Worthington's residence.

There is more. Now the City of Puyallup has released letters written by the employees of Puyallup and Bonney Lake, admitting to being part of the raid on

[2] The defendants erroneously signed a brief claiming they received a ruling from Judge Robert Bryan

Worthington. What these letters show, in conjunction with the federal FOIA documents of the U.S. Attorney's office, is that the attorneys for the defendants did not like the first defense because it exposed the DEA hoax, so they had to cook up another fraudulent defense utilizing the phony DEA raid. All the while knowing WEST NET conducted the raid, seizure and forfeiture after reading the WEST NET General Report of the raid in March 1 2010.

The letters from the Puyallup and Bonney Lake TNET members proves the allegations of fraud. They admit they just assisted on a WEST NET raid and were not conducting their own raid, as WEST NET detective Roy Alloway told the Kitsap County Superior court. The State of Washington also lied to the Thurston County Superior Court in a previous PRA request case regarding the incident in 2009[3], when they claimed it was a federal raid and the DEA had all the documents of that federal raid. These letters refute that argument altogether and support Worthington's allegations of fraud.

First, the Attorney's plan was to use a "Bivens six" approach, where several members of TNET would request federal representation. However, the U.S. Attorney's office would not approve individual capacity representation.[4] This meant that Worthington's 2009 complaint would have survived to discovery and more than likely proceeded to trial. So the attorneys decided to scrap the Bivens six angle and then proceed with individual capacity representation of Fred Bjornberg[5] , and have him take responsibility for the raid, seizure and forfeiture, in

[3] Worthington v. Washington State Patrol **No. 38697- 6 -11** (2009)
[4] U.S. Ninth Circuit Court of Appeals case No. 13-35801

order to get a dismissal before discovery and avoid a trial.

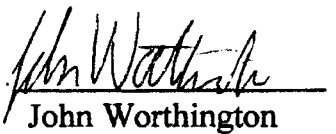
The letters released by the City of Puyallup do not support that defense, and further unravels the fraud on the courts.

The fact is the law enforcement agencies involved violated Worthington's civil rights and Washington State laws. They faked a federal raid, seizure and forfeiture and hoped Worthington would never find out the truth. The fact is the attorneys all know Worthington has found out the truth, and they know his Petition for Review is not frivolous. They are just hoping they can make Worthington out to be some greedy and harassing pot head that does not deserve justice.

## II. CONCLUSION

Based on the forgoing, Worthington respectfully requests an order granting Waiver of fees on this Petition for Review, which is seeking justice that is long overdue.

Respectfully submitted this 3rd day of December, 2013.

**BY** 

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[5] Without the approval of the U.S. Torts claims division. See Opening Brief U.S. Ninth Circuit Court of Appeals case No. 13-35801

**Certificate of Service**

I certify that on the date and time indicated below, I caused to be served via email, a true and complete copy of the AMENDED REPLY TO OPPOSITION TO WAIVER OF FEES, to the attorneys of record in this case.

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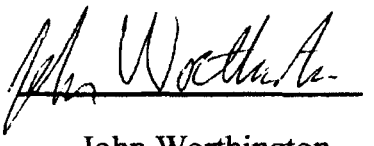
I declare under penalty of perjury under the laws of the United States that the foregoing is True and correct.

**Executed** on this 3rd day of December, 2013

**BY:** 

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## OFFICE RECEPTIONIST, CLERK

**From:** john worthington <worthingtonjw2u@hotmail.com>
**Sent:** Tuesday, December 03, 2013 7:32 AM
**To:** OFFICE RECEPTIONIST, CLERK
**Subject:** AMENDED REPLY TO OPPOSITION TO MOTION FOR WAIVER OF FEES
**Attachments:** PETITIONER'S AMENDED REPLY TO OPPOSITION TO MOTION FOR WAIVER OF FEES.pdf

Please file this amended reply with the court.
Thank you

John Worthington