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IN THE SUPREME COURT OF WASHINGTON

JOHN WORTHINGTON,)	No. 95330-9
)	
)	ANSWER IN OPPOSITION OF
Petitioner,)	MOTION(S) TO SUPPLEMENT
)	RECORD, TAKE JUDICIAL NOTICE
v.)	AND TO DISQUALIFY
)	
WEST NET,)	
)	
)	
Respondent.)	

IDENTITY OF OBJECTING PARTY

The respondent, WESTNET, hereby opposes petitioner Worthington's Motions and asks this Court for the relief designated in Part II of this answer.

STATEMENT OF RELIEF SOUGHT

WestNET respectfully asks the Court to deny the motions for leave to supplement the record, take judicial notice and for disqualification.

FACTS RELEVANT TO MOTION

Worthington seeks to supplement the record with duplicative records which were sought and obtained by himself years after the underlying litigation in this matter was

1 drawn to conclusion. These materials add no new information to the record, and would
2 lend no assistance to the court in fairly resolving any issue on review.

3
4 Additionally, the newly referenced records are not Court documents or certified
5 records, nor do they contain adjudicative facts for which the court would routinely take
6 judicial notice. Instead, Worthington has simply provided copies of pages of records that
7 were provided to him in response to a public records request – the content of which is
8 unsworn, and the scope of which is unexplained.

9
10 Finally, other than a generic explanation that the Administrative Office of the
11 Courts maintains the JIS system, which “operates under the direction of the Chief Justice
12 of the Supreme Court”, Worthington has established no connection between the Chief
13 Justice and this case, and has shown the existence of no bias warranting the
14 disqualification of the Justice from sitting in judgment of this case.

15 16 17 **GROUND(S) FOR RELIEF AND ARGUMENT**

18 19 **A. Records offered do not add new information to the record**

20 Per RAP 9.11, additional evidence on the merits of a case may be taken before the
21 decision of a case on review if:

- 22 1) additional proof of facts is needed to fairly resolve the issues on
23 review;
- 24 2) the additional evidence would probably change the decision
25 being reviewed;
- 26 3) it is equitable to excuse a party’s failure to present the evidence
27 to the trial court;
- 28 4) the remedy available to a party through postjudgment motions in
29 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

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already taken in the trial court.

“All six criteria must be satisfied before an appellate court will accept any additional evidence.” *State v. Ziegler*, 114 Wn.2d 533, 541 789 P.2d 79 (1990).

Worthington seeks to supplement the record by offering a JIS printout that he claims to have obtained on February 16, 2017. He asserts the printout would establish the “new” fact that WestNET functioned as a payee, and that this additional information would change the decision being reviewed.

While JIS printouts may not have previously been offered as exhibits in this case, WestNET as a payee is most certainly not new information. Many, many pleadings offered by Mr. Worthington in support of his case at the trial court reference not only the bank account of WestNET, but forfeiture proceedings that precipitated payment to that account as well as checks that were written to that account. *See, e.g.* CP 733-969; 978-1124; 1125-1131; 1186-1472. Moreover, the fact that Mason County Courts “would be sending checks to WestNET” specifically was made part of the record in the Supplemental Declaration of John Worthington in Support of Plaintiff’s Motion to Reconsider. CP 1473 (attached to which are multiple order and checks, *see* CP 1495-1762).

Neither has Worthington offered explanation for the delay in the provision of these newly discovered materials. While litigation commenced in this case in 2011, Worthington provides no justification to excuse why the offered information was not presented to the trial court.

Because the newly discovered records offer no new information to this case,

1 because there is no justification for the delay in their discovery, and because inclusion of
2 these records as evidence at this this juncture offers nothing substantive that will not
3 assist the court in fairly resolving any issue on review, Worthington's motion in this
4 regard should be denied.
5

6 **B. Records not entitled to Judicial Notice**

7
8 "A judicially noticed fact must be one not subject to reasonable dispute in that it
9 is either (1) generally known within the territorial jurisdiction of the trial court or (2)
10 capable of accurate and ready determination by resort to sources whose accuracy cannot
11 reasonably be questioned." ER 201.
12

13 Worthington here offers numerous records apparently provided to him in response
14 to a public records request. They are not sworn to by a records custodian. The manner
15 which they were created, kept, stored, retrieved, etc., is not described; nor is the
16 information which they purport to reveal described in any manner. By no means can
17 these records be described as "capable of accurate and ready determination by resort to
18 sources whose accuracy cannot be reasonably questioned."
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21 Simple status as having been provided in response to a public records response
22 does not elevate the facts contained in a record or the records themselves entitled to
23 judicial notice. Neither does such disclosure in and of itself provide grounds for a
24 general exception to the Rules on Appeal under RAP 1.2 and 18.8.
25

26 **C. No Grounds for Recusal**

27
28 Worthington argues that because the Administrative Office of the Courts
29 ("AOC") operates under the direction of the Chief Justice, and because AOC maintains

1 the JIS system, and because JIS printouts show that Mason County Superior Court
2 ordered monetary fines, fees restitution and collections be made to WestNET, therefore
3 the Chief Justice has an economic interest in this case and must be disqualified.
4

5 Initially, even following Worthington's very lengthy pathway which connects the
6 Chief Justice to the JIS system, the concluding logic does not stand. The Justice still has
7 no economic interest in any individual case – regardless of a Superior Court financial
8 order, or a recording of that order into JIS.
9

10 Secondly, the convoluted pathway that Worthington sets forth to connect the
11 Chief Justice to any singular Superior Court case via JIS does not establish a connection
12 warranting recusal via an appearance of unfairness. Were such the case, the Chief Justice
13 would be similarly connected to virtually every case where legal financial obligations
14 were ordered as a part of a case disposition, thus requiring the recusal of the Chief Justice
15 from every criminal conviction that was ever to reach the Supreme Court.
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18 Indeed, the appearance of fairness doctrine provides that “judges should
19 disqualify themselves in a proceeding in which their impartiality might reasonably be
20 questioned.” *Sherman v. State*, 128 Wash.2d 164, 188, 905 P.2d 355 (1995) (citing
21 former Code of Judicial Conduct (CJC) Canon 3(C)). However, in determining whether
22 recusal is warranted, the test for determining whether a judge's impartiality might
23 reasonably be questioned is an *objective* test that assumes that “ ‘a reasonable person
24 knows and understands all the relevant facts.’ ” *Id.* at 206, 905 P.2d 355 (quoting *In re*
25 *Drexel Burnham Lambert Inc.*, 861 F.2d 1307, 1313 (2d Cir.1988), *cert. denied*, 490 U.S.
26 1102, 109 S.Ct. 2458, 104 L.Ed.2d 1012 (1989)). Nothing in the present case would lead
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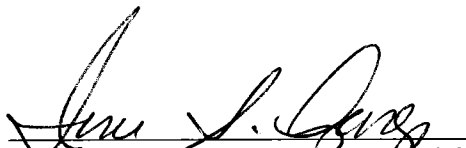
a reasonable person to conclude that the Chief Justice's impartiality might reasonably be questioned simply because of the appointed role as head figure of the AOC.

CONCLUSION

Based upon the foregoing, the respondent, WestNET, respectfully asks that petitioner Worthington's motions for leave to supplement the record, for judicial notice and for disqualification of the Chief Justice be denied.

DATED this 13th day of March, 2018.

TINA R. ROBINSON
PROSECUTING ATTORNEY



IONE S. GEORGE, WSBA No. 18236
Chief Deputy Prosecuting Attorney
Attorney for Respondent WestNet

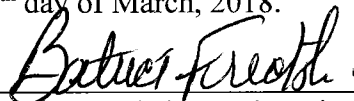
CERTIFICATE OF SERVICE

I, Batrice Fredsti, declare, under penalty of perjury under the laws of the State of Washington, that I am now and at all times herein mentioned, a resident of the state of Washington, over the age of eighteen years, not a party to or interested in the above-entitled action, and competent to be a witness herein.

On the date given below I caused to be served the above document in the manner noted upon the following:

John Worthington 4500 SE 2nd Place Renton, WA 98059 <u>Worthingtonjw2u@hotmail.com</u>	<input type="checkbox"/> Via U.S. Mail <input checked="" type="checkbox"/> Via Email: <input type="checkbox"/> Via Hand Delivery
Pam Loginsky Washington Association of Prosecuting Attorneys 206 10th Ave. SE Olympia, WA 98501 <u>pamloginsky@waprosecutors.org</u>	<input type="checkbox"/> Via U.S. Mail <input checked="" type="checkbox"/> Via Email: <input type="checkbox"/> Via Hand Delivery
Peter B. Gonick Deputy Solicitor General 1125 Washington Street SE P.O. Box 40100 Olympia, WA 98504-0100 <u>PeterG@ATG.WA.GOV</u>	<input type="checkbox"/> Via U.S. Mail <input checked="" type="checkbox"/> Via Email: <input type="checkbox"/> Via Hand Delivery
Joseph Thomas 14625 SE 176 th St, Apt. N101 Renton, WA 98058-8994 <u>joe@joethoas.org</u>	<input type="checkbox"/> Via U.S. Mail <input checked="" type="checkbox"/> Via Email: <input type="checkbox"/> Via Hand Delivery

SIGNED in Port Orchard, Washington this 13th day of March, 2018.



Batrice Fredsti, Legal Assistant
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KITSAP COUNTY PROSECUTING ATTORNEY'S OFFICE - CIVIL DIVISION

March 13, 2018 - 2:05 PM

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Appellate Court Case Title: John Worthington v. WestNet
Superior Court Case Number: 11-2-02698-3

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