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COURT OF APPEALS DIV I
STATE OF WASHINGTON

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NO. 72337-5

**COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON**

ARTHUR WEST,

Appellant,

v.

WASHINGTON STATE ASSOCIATION OF DISTRICT AND
MUNICIPAL COURT JUDGES, a state agency, and the STATE OF
WASHINGTON,

Respondents.

BRIEF OF RESPONDENT, STATE OF WASHINGTON

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I. INTRODUCTION

The question posed on this appeal is whether an association, composed entirely of judges who automatically become members by operation of law by virtue of holding judicial office, constitutes an agency of the judicial branch of government. The self-evident answer is that it does. The superior court agreed, and this Court should affirm.

This case stems from Arthur West's effort to obtain records from the District and Municipal Court Judges' Association (DMCJA). Mr. West named the State of Washington as a defendant, along with the separately-represented DMCJA. The Complaint states no factual or legal allegations against the State, and requests no relief from the State. CP 1-10. The State therefore adopts the arguments of the DMCJA and briefly addresses two arguments relating to the nature of judicial branch agencies.¹

II. COUNTERSTATEMENT OF THE ISSUES

The State limits this short brief to addressing the following two issues:

1. Is an association composed entirely of judges, who automatically become members by virtue of holding judicial office, an agency of the judicial branch?

¹ Even if Mr. West had not mysteriously joined the State as a defendant, the State often provides input to the appellate courts addressing general state interests in a case. *See, e.g., Parker v. Wyman*, 176 Wn.2d 212, 213, 289 P.3d 628 (2012) (reflecting State amicus participation).

2. As an agency of the judicial branch, is the DMCJA subject to the Public Records Act?

III. ARGUMENT

A. The DMCJA is One of Several Agencies of the Judicial Branch

The division of our government into three separate, but coordinate, branches “has been presumed throughout our state’s history to give rise to a vital separation of powers doctrine.” *Carrick v. Locke*, 125 Wn.2d 129, 135, 882 P.2d 173 (1994). The judicial branch includes a number of judicial agencies, in addition to the courts themselves. *See, e.g.*, RCW 2.56.010 (creating the Administrative Office of the Courts); RCW 2.53.020 (creating the Office of Civil Legal Aid); RCW 2.70.005 (creating the Office of Public Defense); RCW 2.72.020 (creating the Office of Public Guardianship). State law also creates two associations composed entirely of judges. The Superior Court Judges’ Association is composed of all of the judges of the superior court. RCW 2.16.010. The DMCJA is composed of “all duly elected or appointed and qualified judges of courts of limited jurisdiction, including but not limited to district judges and municipal court judges.” RCW 3.70.010.²

² Mr. West devotes much of his argument to the question of whether the DMCJA is a public agency or a private association. Appellant’s Opening Br. at 12-16 (discussing, *inter alia*, *Telford v. Thurston County Bd. of Comm’rs*, 95 Wn. App. 149, 974 P.2d 886, (1999)). But this case does not turn upon the distinction between public and private entities, but rather upon the judicial character of the DMCJA.

Mr. West errs in contending that the DMCJA cannot be a judicial branch agency because it was created by statute. Appellant's Opening Br. at 17-18. State agencies are generally created by statute, no matter which branch they fall within. *See, generally*, RCW Title 43 (creating numerous executive branch agencies); *see also* RCW 44.28.010 and RCW 44.44.010 (creating joint legislative audit and review committee and the office of the state actuary, respectively, within the legislative branch). The legislature does not intrude on the prerogatives of other branches by creating agencies through which they carry out their functions. *See Carrick*, 125 Wn.2d at 135 (the branches are not "hermetically sealed" but "remain partially intertwined"). Indeed, the courts on which members of the DMCJA sit are themselves statutorily created. Const. art. IV, § 1; RCW 3.30.030 (creating district courts); RCW 3.50.010 (authorizing municipal courts). They are, nonetheless, quintessentially part of the judicial branch. *Spokane County v. State*, 136 Wn.2d 663, 670, 966 P.2d 314 (1998).

Nor does the assignment of quasi-legislative or quasi-executive functions to a judicial branch agency necessarily violate the separation of powers. *In re Discipline of Petersen*, 180 Wn.2d 768, 782-83, 329 P.3d 853 (2014) (assignment of rulemaking and prosecutorial authority to board created by court rule did not violate separation of powers). Mr. West's

argument that the DMCJA cannot fall within the judicial branch because it is not itself a court lacks merit. *Id.*

The composition of each of the judicial branch agencies makes clear their inclusion in the judicial branch, rather than the executive or legislative branches. State law explicitly describes some agencies as “independent agenc[ies] of the judicial branch.” RCW 2.53.020 (Office of Civil Legal Aid); RCW 2.70.005 (Office of Public Defense). The head of the Administrative Office of the Courts is “appointed by and hold[s] office at the pleasure of the supreme court.” RCW 2.56.010. The Office of Public Guardianship is part of the Administrative Office of the Courts. RCW 2.72.020. Finally, the two judicial associations are composed entirely of the trial court judges themselves. RCW 2.16.010 (Superior Court Judges Association); RCW 3.70.010 (DMCJA).

Mr. West’s claim that the judicial character of these agencies somehow offends separation of powers is misplaced. Separation of powers protects not an abstract organizational chart, but the independence and integrity of each branch from invasion of its prerogatives by another. *Brown v. Owen*, 165 Wn.2d 706, 718, 206 P.3d 310 (2009). Including judicial agencies within the judicial branch recognizes that independence and integrity.

B. As An Agency of the Judicial Branch, The DMCJA is not Subject to the Public Records Act

The State joins the arguments of the DMCJA as to the merits of Mr. West's appeal. A few additional words suffice to address the potential implications of this case for state agencies of the judicial branch.

The Public Records Act (PRA) does not apply to the judicial branch. *Nast v. Micheals*, 107 Wn.2d 300, 300, 306-07, 730 P.2d 54 (1986). The Washington Supreme Court has declined to alter this conclusion, explaining that “the fundamental basis for *Nast*—that the PRA’s definition of ‘agency’ does not include the judiciary—is sufficient to support *Nast*’s holding.” *City of Federal Way v. Koenig*, 167 Wn.2d 341, 347, 217 P.3d 1172 (2009). Mr. West errs in contending that an association composed entirely of judges somehow falls within the coverage of the PRA, when the court has previously held that “the judiciary” does not. *See id.* at 347 (excluding “the judiciary” from the PRA).

In lieu of coverage by the PRA, the Washington Supreme Court has addressed public access to judicial records through a separate court

rule. GR 31.1 (adopted but not yet in effect).³ The court rule explains which entities are governed by GR 31.1, rather than the by the PRA:

- (1) This rule applies to the Supreme Court, the Court of Appeals, the superior courts, the district and municipal courts, and the following judicial branch agencies:
 - i. All judicial organizations that are overseen by a court, including entities that are designated as agencies, departments, committees, boards, commissions, task forces, and similar groups;
 - ii. The Superior Court Judges' Association, *the District and Municipal Court Judges' Association*, and similar associations of judicial officers and employees; and
 - iii. All subgroups of the entities listed in this section (k)(1).
- (2) This rule applies to the Washington State Office of Civil Legal Aid and the Washington State Office of Public Defense.

GR 31.1(k)(1) & (2) (emphasis added). The rule according represents the determination of the Supreme Court that the DMCJA is covered by the rule, not by the PRA.⁴ *Id.*

The PRA does not apply to the judiciary, and GR 31.1 is not yet in effect. It therefore follows that the Superior Court was correct in determining that the DMCJA was not required by the PRA to produce records for Mr. West.

³ That GR 31.1 was not yet in effect at the time Mr. West made this request for records does not affect the analysis of this case. It cannot be that the DMCJA only becomes part of the judicial branch upon the effectiveness of a court rule.

⁴ A comment to the rule explains that it does not cover court clerks because they are covered by the PRA. Comment to GR 31.1(k)(1).

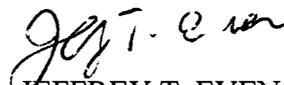
IV. CONCLUSION

An association of judges, who become members of the association by operation of law simply by holding judicial office, is quintessentially part of the judiciary. The superior court therefore correctly rejected Mr. West's contention that the DMCJA is covered by the PRA. The State joins in the arguments offered by the DMCJA, and respectfully suggests that this Court should affirm the decision of the superior court dismissing this action.

RESPECTFULLY SUBMITTED this 10th day of April 2015.

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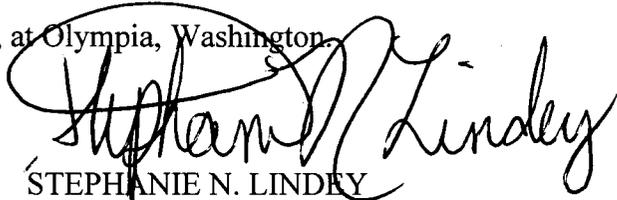
Certificate of Service

I certify, under penalty of perjury under the laws of the state of Washington, that on this date I caused to be served, via regular USPS mail a true and correct copy of the Brief of Respondent, State of Washington, upon the following:

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