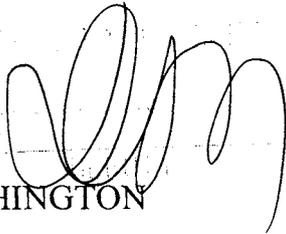


NO. 36252-0-II

BY: 

COURT OF APPEALS STATE OF WASHINGTON
DIVISION II

ARTHUR S. WEST,

Appellant.

v.

THURSTON COUNTY

Respondent.

RESPONDENT'S BRIEF

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ORIGINAL

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I. ASSIGNMENTS OF ERROR

Respondent Thurston County (the "County") does not assign any error to the trial court rulings in this matter.

II. PROCEDURAL ISSUES

There have been several procedural failings in Appellant Arthur S. West's ("West") appeal, making the record hard to comprehend. Provided for the Court is a brief summary of the procedural issues in this matter.

On April 25, 2007, West appealed the trial court's March 12 order dismissing all claims against Lee Smart with prejudice, with the exception of the Public Records Act claim. The RAPs are clear that a notice of appeal must be filed within 30 days. West fails to address the untimely appeal of the March 12 order in his brief.

On March 26, 2007, the trial court dismissed West's Public Records Act claim. He motioned for the court for reconsideration on this issue on April 4, 2007, but it was stricken on April 16 after West failed to confirm the hearing. West re-filed the motion for reconsideration on April 25, 2007, this time including both orders of

dismissal, despite the fact that the motion for reconsideration on the March 12 order was untimely. The court denied both motions.

On April 25, 2007, West filed an appeal of the March 26 order and the March 12 order dismissing his breach of contract claim. On September 17, 2007, West then amended the appeal to now include the trial court's May 7, 2007, order denying his motion for reconsideration of the March 12 and March 25 orders. Again, what West is attempting to do is to forego the RAPs and untimely appeal an issue, but chooses to not alert the Court to the problem.

Lastly, there are few references to the Clerk's Papers, therefore making his arguments hard to follow and difficult to respond. For example, in regards to West's entire argument regarding the preclusive effect of a previous order, West does not cite to any Clerk's Papers or Report of Proceedings, and leaves Respondents guessing as to what he is referring to.

III. STATEMENT OF FACTS

A. Summary

This suit involves a public records request by West for documents exempt under RCW 42.56.290. While the documents

were initially denied, the County subsequently voluntarily provided redacted documents to West.

On January 22, 2007, West made a records request requesting, “attorney billings related to the defense of the Thurston County Prosecutor’s office in Mason County Superior Court.” CP 153.¹ The request referred to the *Broyles v. Thurston County* case, Mason County Superior Court cause no. 04-2-00411-3 (“*Broyles*”). The *Broyles* case is now on appeal in Division II of the Court of Appeals.

On January 26, 2007, a letter was sent to West explaining why the documents were exempt under the Public Records Act. CP 154.² However, in a letter dated February 24, 2007, the County produced to West redacted copies of attorney fee bills related to the representation of counsel in *Broyles* even though the record requested by West was exempt under the Public Records Act, RCW 42.56.290. CP 73.³

¹ West’s record request to Thurston County. Copy at A-1.

² Letter dated January 26, 2007, sent to West by Lee Smart and signed by Michael Patterson. Copy at A-2.

³ Letter dated February 24, 2007, sent to West by Lee Smart and signed by Michael Patterson reflecting that the County only has records as to the first \$250,000.00 in attorney fee invoices. Copy at A-3

The County only possesses attorney fee invoices related to the first \$250,000.00 of the representation, which is the County's insurance deductible, and any invoice beyond this amount is not in the County's possession and is therefore not the County's public records. The County provided to West more of a response than was required under the relevant provisions of the Public Records Act.

The plaintiffs in *Broyles* made a motion to compel the same document requested by West under CR 26. CP 75-77.⁴ The court denied the motion. CP 79-80.⁵

B. Procedural History

On February 12, 2007, West filed a complaint against the County and Lee Smart for breach of contract, negligence, violation of the Public Records Act, and for judgment under the Declaratory Judgment Act. CP 144-52.⁶ It was undisputed that West was not a client of Lee Smart and had no contract with Lee Smart or the County.

⁴ Creatura declaration on plaintiffs' motion to compel attorney fee invoices. Copy at A-4.

⁵ Mason County Superior Court cause no. 04-2-00411-3, docket sub # 424 [order denying motion to compel]. Copy at A-5.

⁶ West's original complaint filed on February 12, 2007, in Mason County District Court. Copy at A-6.

Accordingly, on March 12, 2007, pursuant to CR 12(b)(6), the trial court dismissed all of West's claims against Lee Smart and Michael Patterson, and dismissed all claims against the County except West's Public Records Act claim. CP 61-62,⁷ 135.⁸ The trial court then issued a separate order directing the County to show cause as to why it should not have to produce the documents requested by West. CP 59-60.⁹

The County responded to the court's show cause order. CP 44-48,¹⁰ and on March 26, 2007, the court dismissed West's sole remaining Public Records Act claim against the County. CP 6-8.¹¹

On April 4, 2007, West motioned the trial court for reconsideration of its March 26, 2007, order dismissing the Public Records Act claim, which was stricken on April 16, 2007, after he failed to confirm the motion with the court. CP 160-164.¹² West re-filed the motion for reconsideration April, 25, 2007, this time motioning the court to reconsider both the March 12, 2007, and

⁷ Order granting defendants' 12(b)(6) motion to dismiss. Copy at A-7.

⁸ U.S. District Court Judgment dismissing plaintiff's claim. Copy at A-8.

⁹ Plaintiff's show cause order. Copy at A-9.

¹⁰ Defendant's response to plaintiff's show cause order. Copy at A-10.

¹¹ Order dismissing defendant's Public Records Act claim with prejudice. Copy at A-11.

March 26, 2007, order.¹³ On May 7, 2007, the court denied West's motion for reconsideration on both orders. CP 3.¹⁴

On April 25, 2007, West filed a notice of appeal, which he then amended on September 17, 2007.

After filing the notice of appeal, West then filed a motion to vacate the trial court's order on September 17, 2007, the subject of which was limited to the trial court's March 26, 2007, order that dismissed his Public Records Act claim against the County. On September 24, 2007, Mason County Commissioner, Richard Adamson, ordered the County to show cause as to why the trial court's March 26, 2007, should not be vacated in light of SHB 1897, Laws of 2007, Ch. 391.¹⁵ The show cause hearing was held on October 8, 2007, at which point the trial court properly denied West's Motion to vacate on October 8, 2007.

¹² Mason County Superior Court cause no. 07-2-00108-9, docket sub # 37, 42. Copy at A-12.

¹³ *Id.* at docket sub #44.

¹⁴ Order on Reconsideration. Copy at A-13.

C. Undisputed Facts

The County and Lee Smart set forth the following specific facts which involve the issues in this appeal. The facts are undisputed.

1. The attorney invoice documents requested by West under the Public Records Act are relevant to *Broyles v. Thurston County*, Mason County Superior Court cause no. 04-2-00411-3 (“*Broyles*”), a controversy to which the County is a party.

2. The *Broyles* case is now on appeal in Division II of the Court of Appeals.

3. The trial court denied production of the same invoices that West requested when plaintiffs in *Broyles* moved under CR 26 to compel them.

4. West was not a client of Lee Smart and had no contract with Lee Smart or the County.

5. The County only possesses attorney fee invoices related to the first \$250,000.00 of the representation, which is the County’s insurance deductible, and any invoice beyond this amount

¹⁵ Mason County Superior Court cause no. 07-2-00108-9, docket sub # 64. Copy at A-12.

is not in the County's possession and is therefore not the County's public records.

6. The County did provide West with a redacted copy of the requested record.

D. Summary of Argument

On March 12, 2007, the trial court properly dismissed all of West's claims against Michael A. Patterson and Lee, Smart, Cook, Martin & Patterson, PS, Inc. (collectively "Lee Smart") under CR 12(b)(6), where the law is well settled that a non-client cannot sue an attorney because he believes the attorney has given poor advice to a client.

West had until April 12, 2007, to file a notice of appeal on the trial court's final judgment of all claims against Lee Smart. West filed his notice of appeal on April 25, 2007, which was untimely. Any appeal of the March 12 order that dismissed his breach of contract claim is therefore untimely and not properly before this Court.

Notwithstanding West's untimely appeal of the March 12 order, the dismissal was proper because West lacked standing to

bring a breach of contract claim where he was neither a party or third-party beneficiary to a contract, nor a client of Lee Smart.

The trial court subsequently properly dismissed the sole remaining Public Records Act claim against the County, pursuant to RCW 42.56.290, where the only document sought by West was relevant to a lawsuit in which the County is currently involved and was not discoverable under Civil Rule 26.

IV. ISSUES ON APPEAL

A. Standard on Review

This appeal asks the Court to review the trial court's dismissal of claims arising under Washington's Public Records Act statute at RCW 42.56.290. The standard of review on a CR 12(b)(6) motion to dismiss, as well as statutory interpretation, is de novo. As a result, this Court needs to analyze these issues by bearing in mind the standard on CR 12(b)(6).

Whether a dismissal was appropriate under CR 12(b)(6) is a question of law that an appellate court reviews de novo. *Tenore v. AT&T Wireless Servs.*, 136 Wn.2d 322, 329-30, 962 P.2d 104 (1998). Under CR 12(b)(6), dismissal is appropriate only if "it

appears beyond doubt that the plaintiff cannot prove any set of facts which would justify recovery.” *Id.* at 330, *State ex rel. Evergreen v. WEA*, 140 Wn.2d 615, 629, 999 P.2d 602 (2000). In undertaking such an analysis, “a plaintiff’s allegations are presumed to be true and a court may consider hypothetical facts not included in the record.” *Id.* Statutory interpretation is also a question of law that is reviewed de novo. *W. Telepage, Inc. v. City of Tacoma Dep’t of Fin.*, 140 Wn.2d 599, 607, 998 P.2d 884 (2000).

In this matter, West has failed to present any set of facts that would justify this Court totally disregarding the very important attorney-client privilege and/or work product privilege. Instead, West continues to rely upon legal arguments and conclusory statements that he repeated at each stage in the trial court proceedings below.

Respondent established that there were no conceivable facts supporting West’s allegations that he was entitled to the protected documents and thus, the trial court’s dismissal of West’s claims was proper.

B. Appeal of the March 12 Order is Untimely and Not Properly Before this Court.

A party may appeal a superior court final judgment, which is the “final judgment entered in any action or proceeding, regardless of whether the judgment reserved for future determination an award of attorney fees or costs.” RAP 2.2(a)(1); *see also Carrara, L.L.C., v. Ron & E Enterprises, Inc.*, 137 Wn. App. 822, 825, 155 P.3d 161 (2007). “A party seeking review of a trial court decision reviewable as a matter of right must file a notice of appeal.” RAP 5.1(a). The notice must be filed within 30 days after the entry of the decision of the trial court which the party filing notice wants reviewed. RAP 5.2(a).

A final judgment is an order that “adjudicat[es] all the claims, counts, rights, and liabilities of all the parties.” RAP 2.2(d); *see also* CR 54; *Fox v. Sunmaster Prods., Inc.*, 115 Wn.2d 498, 503, 798 P.2d 808 (1990); *Anderson & Middleton Lumber Co. v. Quinault Indian Nation*, 79 Wn. App. 221, 225, 901 P.2d 1060 (1995) (final judgment is “a judgment that ends the litigation”), *aff’d*, 130 Wn.2d 862, 929 P.2d 379 (1996); *Rhodes v. D & D Enter., Inc.*, 16 Wn. App. 175, 178, 554 P.2d 390 (1976) (final judgment settles all issues

in a case). It must be “in writing and signed by the judge and filed forthwith.” CR 54(a)(1). An order granting dismissal is a final judgment if it meets these requirements. *See Lee v. Ferryman*, 88 Wn. App. 613, 622, 945 P.2d 1159 (1997).

The trial court ordered all of West’s claims against the County and Lee Smart to be “dismissed with prejudice as to all parties,” reserving only the Public Records Act claim against Thurston County. CP 61-62.¹⁶ The order was on the merits, done in open court, and signed by the judge, Mr. Patterson and West. *Id.* The order was a final, dispositive judgment and therefore has the same preclusive effect as a full trial of the issue. *Lee*, 88 Wn. App. at 622; *see also Bunce Rental Inc., v. Clark Equip. Co.*, 42 Wn. App. 644, 648, 713 P.2d 128 (1986).

RAP 2.4(c) does permit review of a final judgment not designated in the notice of appeal when the appeal is taken from an order deciding a timely post-trial motion to amend the judgment pursuant to CR 59. *See Comment, RAP 2.4(c)*. While West did motion the court for reconsideration of the March 12 and March 26 orders, the motion for the March 12 order was not timely filed.

CR 59(b) states that a “motion for a new trial or for reconsideration shall be filed not later than 10 days after the entry of judgment, order, or other decision.” Here, West filed the motion for reconsideration of the trial court’s March 12 order on April 25, 2007, – forty four days *after* the order was entered. CP 160-164.¹⁷

West cannot simply amend his brief to include an issue he did not properly preserve for appeal. Any and all issues related to the court’s March 12 order dismissing all claims except for the Public Records Act, as well as the trial court’s May 7 decision denying West’s motion for reconsideration of the March 12 order, is not properly before the Court and cannot now be decided on appeal.

1. Breach of Contract claim was properly dismissed.

Notwithstanding West’s untimely appeal, the trial court properly dismissed West’s claim where it appeared beyond a reasonable doubt that he failed to present any facts that would justify recovery. *See State ex rel. Evergreen*, 140 Wn.2d 615 at 629.

¹⁶ Copy at A-7.

¹⁷ Mason County Superior Court cause no. 07-2-00108-9, docket sub # 44. Copy at A-12.

The sole factual basis upon which all of West's claims were brought against Lee Smart was that Lee Smart was acting as counsel for the County in responding to a public records request. West is not a client of Lee Smart and has no contract with Lee Smart. Thus, West does not have a basis for any claims against Lee Smart.

Moreover, Lee Smart is not liable to West based on its capacity as counsel for the County, as reflected in a number of case, notably *Trask v. Butler*, 123 Wn.2d 835, 843, 872 P.2d 1080 (1994); *McKasson v. State*, 55 Wn. App. 18, 29, 776 P.2d 971 (1989), *rev. denied* 113 Wn.2d 1026, 782 P.2d 1069.

The importance of an attorney's loyalty to his client, and his duty to give his best advice for the client's interests without responsibility to third parties is almost too obvious to need citation of authority. The rule of nonliability and the reasons therefore are clearly enunciated in the following cases ... ¹⁸

McKasson, 55 Wn. App. at 29.

To make an attorney liable for negligent confidential advice not only to the client who enters into a

¹⁸ Quoting *McDonald v. Stewart*, 182 N.W.2d 437, 440 (Minn. 1970) ("attorney acting within the scope of his employment as attorney is immune from liability to third persons for actions arising out of that professional relationship"); *D. & C. Textile Corp. v. Rudin*, 41 Misc. 2d 916, 919, 246 N.Y.S.2d 813 (1964) ("Public policy requires that attorneys ... shall be free to advise their clients without fear that the attorney will be personally liable to third persons if the advice the attorneys have given to their clients later proves erroneous"); *Goodman v. Kennedy*, 18 Cal. 3d 335, 344, 556 P.2d 737, 134 Cal. Rptr. 375 (1976). See also *Int'l Ultimate v. St. Paul Fire & Marine*, 122 Wn. App. 736, 758, 87 P.3d 774 (2004);

transaction in reliance upon the advice but also to the other parties to the transaction with whom the client deals at arm's length would inject undesirable self-protective reservations into the attorney's counseling role. The attorney's preoccupation or concern with the possibility of claims based on mere negligence (as distinct from fraud or malice) by any with whom his client might deal would prevent him from devoting his entire energies to his client's interests ... The result would be both an undue burden on the profession ... and a diminution in the quality of the legal services received by the client.

Goodman v. Kennedy, 18 Cal. 3d 335, 344, 556 P.2d 737 (1976)

(quotation marks omitted).

It is vital for clients to be able to rely on the unqualified loyalty of their chosen attorney. It is vital for an attorney to be able to freely advise the client without concern as to possible effects on third parties, even if the advice is inaccurate or ill chosen. We see no reason to extend a duty to parties outside the attorney-client relationship beyond the narrow exception currently recognized in Washington law.

McKasson, 55 Wn. App. at 30.¹⁹

¹⁹ See also Restatement (Third) of the Law Governing Lawyers § 57(2)-(3), and comments a, b, and g; *Beatie v. DeLong*, 561 N.Y.S.2d 448 (N.Y.App.Div.1990) ("Mere negligence by an attorney giving advice to his client is insufficient to give a right of action to a third party injured thereby"); *Maness v. Star-Kist Foods, Inc.*, 7 F.3d 704, 709 (8th Cir.1993) ("an attorney who acts within the scope of the attorney-client relationship will not be liable to third persons for actions arising out of his professional relationship unless the attorney exceeds the scope of his employment or acts for personal gain"); *Brown Mackie College v. Graham*, 981 F.2d 1149 (10th Cir.1992) (lawyer not liable to school for advising student clients to withdraw); *Los Angeles Airways, Inc. v. Davis*, 687 F.2d 321 (9th Cir.1982) (lawyer not liable for advising breach, even though lawyer hoped this would improve lawyer's standing with client).

[P]ublic policy dictates that attorneys must remain free to counsel their clients without fear of subjecting themselves to liability as a result of the proper discharge of their professional obligations. Clients as well must feel free to seek out an attorney's advice on any issue at any time. Any rule to the contrary would constitute a serious impairment to the attorney-client relationship, and a resulting deleterious effect on the administration of justice.

Schick v. Lerner, 193 Cal. App. 3d 1321, 1329, 238 Cal. Rptr. 902 (1987) (citation omitted).

a. West Lacked Standing

The trial court's dismissal of West's breach of contract claim was proper because he lacked standing to bring such a claim. "The general rule is that the doctrine of standing prohibits a litigant from asserting another's legal right." *Miller v. United States Bank, N.A.*, 72 Wn. App. 416, 424, 865 P.2d 536 (1994). A party must have standing to bring a breach of contract claim. *See e.g., DeAtley v. Barnett*, 127 Wn. App. 478, 483, 112 P.3d 540 (2005). Whether someone has standing is a question of law. *Kayes v. Pacific Lumber Co.*, 51 F.3d 1449, 1454 (9th Cir. 1995). West has never alleged that he was a signatory to a contract between the County and Lee Smart,

or that he was an intended beneficiary of any contract between the County and Lee Smart.

A third-party beneficiary contract exists when the contracting parties, at the time they enter into the contract, intend that the promisor will assume a direct obligation to the claimed beneficiary. *Postlewait Constr., Inc. v. Great Am. Ins. Cos.*, 106 Wn.2d 96, 99, 720 P.2d 805 (1986). The test of intent is an objective one: Whether performance under the contract necessarily and directly benefits the third party. *Postlewait Constr., Inc.*, 106 Wn.2d at 99. An incidental, indirect, or inconsequential benefit to a third party is insufficient to demonstrate an intent to create a contract directly obligating the promisor to perform a duty to a third party. *Del Guzzi Constr. Co. v. Global N.W. Ltd.*, 105 Wn.2d 878, 886, 719 P.2d 120 (1986).

Warner v. Design & Build Homes, Inc., 128 Wn. App. 34, 43, 114 P.3d 664 (2005).

At the time Lee Smart and the County entered into a contract, none of the contracting parties even knew that West existed. It is impossible that West was an intended beneficiary. Thus, West did not have standing to sue any of the defendants for breach of contract.

Rather, West alleges that Lee Smart “breached their contract with the public and Thurston County.” CP 144-52 at ¶ 4.1.²⁰ Lee

²⁰ Copy at A-6.

Smart has no contract with the public, their client is the County, and West has no standing to sue for breach of contract between Lee Smart and the County. The law does not recognize the concept that an attorney representing a municipal corporation has implied contractual obligations to the public. It would be outrageous to burden the legal profession with a new doctrine that held an attorney contractually liable to the public for any and all decisions an attorney might make in the course of representing a client.

West failed to show that he had standing to allege a breach of contract between the County and Lee Smart. Nor did West provide evidence of any violations of the provisions of the contract between the County and Lee Smart. The complete failure of West to obtain any basis for his claims prior to filing his lawsuit is foundation for claims of CR 11. At the very least, West's breach of contract claim as to all parties properly failed as a matter of law

C. The Trial Court Properly Ruled that the Record Requested by West is Exempt under RCW 42.56.290.

The record requested by West is exempt from production under RCW 42.56.290, a specific exemption provided for in the Public Records Act. "Records that are relevant to a controversy to

which an agency is a party but which records would not be available to another party under the rules of pretrial discovery for causes pending in the trial courts are exempt from disclosure under this chapter.” RCW 42.56.290 [formerly RCW 42.17.310(1)(j)].

It is undisputed that the attorney fee invoices requested by West are relevant to *Broyles v. Thurston County*, Mason County Superior Court cause no. 04-2-00411-3 (“*Broyles*”), a controversy to which the County was and remains a party on appeal. It is also undisputed that the court denied production of the invoices when plaintiffs in *Broyles* moved under CR 26 to compel them. The record requested by West meets the criteria set forth on RCW 42.56.290, and so it is exempt from production under the Public Records Act.

The term “controversy” in RCW 42.56.290 and RCW 42.17.310(1)(j) is inclusive of past and present litigation as well as “reasonably anticipated” litigation. *See Dawson v. Daly*, 120 Wn.2d 782, 791, 845 P.2d 995 (1993). It is undisputed, and undisputable, that *Broyles* is a controversy to which the County is and remains a party on appeal. Thus, the only remaining question is, whether the

records would be available to another party under the rules of pretrial discovery.

The pretrial discovery rules referred to in RCW 42.56.290 are those set forth in Civil Rule 26. *Limstrom v. Ladenburg*, 136 Wn.2d 595, 609, 963 P.2d 869 (1998). See also *Kleven v. King County Prosecutor*, 112 Wn. App. 18, 24, 53 P.3d 516 (2002); *Overlake Fund v. City of Bellevue*, 70 Wn. App. 789, 794, 855 P.2d 706 (1993). Here, West requested copies of the attorney fee invoices by Lee, Smart, Cook, Martin & Patterson, PS, Inc. from their representation in *Broyles v. Thurston County*, in which the County remains involved in litigation. The plaintiffs in that action made a motion to compel the documents under CR 26, and the court denied the motion. CP 80.²¹ Denial of the motion to compel, in addition to the general knowledge that attorney fee invoices cannot be obtained in discovery, supports the proposition that the record requested by West is exempt from discovery.

The document sought by West meets the exemption in RCW 42.56.290, where the record: (1) is relevant to a controversy to

²¹ Mason County Superior Court cause no. 04-2-00411-3, at entry 424. Copy at A-5.

which an agency is a party and (2) is not available to another party under the rules of discovery. Thus, this Court should find that the trial court properly ruled that West was not entitled to the document sought.

1. The documents are protected by the attorney-client and work product privilege.

The exemption for attorney-client privilege, as discussed below, is provided for in another section of the Public Records Act, RCW 42.56.070(1) [formerly RCW 42.17.260(1)], which exempts from disclosure documents that fall within the specific exemptions of other statutes. RCW 5.60.060(2)(a) codifies the attorney-client privilege, which the courts have interpreted as an exemption falling under the protection of RCW 42.56.070(1). *See Hangartner v. City of Seattle*, 151 Wn.2d 439, 90 P.3d 26 (2004); *Soter v. Cowles Publ'g Co.*, 131 Wn. App. 882, 902-03, 130 P.3d 840 (2006).

To support his assertion that the attorney-client privilege or work product doctrine is not protected in the Public Records Act, West repeatedly relied on his erroneous interpretation of an isolated statement in *Dawson v. Daly*, 120 Wn.2d 782, 790, 845 P.2d 995 (1993), regarding former RCW 42.17.310(1)(j) (“This exemption

incorporates the work product doctrine as a ‘rule of pretrial discovery’”) (emphasis added). While RCW 42.56.290 may “incorporate” the work product doctrine as a rule of pretrial discovery, *Dawson* and other cases cited by West, such as *Kleven* and *Overlake*, discuss aspects of the attorney-client privilege/work product doctrine as they related to those particular cases. But these cases cited by West do not limit RCW 42.56.290 to being only about the attorney-client privilege/work product doctrine.

The language of RCW 42.56.290 is clear and easily understood. There was no argument by West that RCW 42.56.290 is ambiguous and, in fact, courts discussing former RCW 42.17.310(1)(j), which is identical to the present statute RCW 42.56.290, have already held that the language of the statute is not ambiguous. *Kleven v. King County Prosecutor*, 112 Wn. App. 18, 24, 53 P.3d 516 (2002) (“A plain language interpretation of [RCW 42.17.310(1)(j)] is that records relevant to a controversy to which an agency is a party are exempt from public inspection and copying under the public records act if those records would not be available to another party under superior court rules of pretrial discovery”).

The court will not construe a statute unless it is ambiguous. *See Cerrillo v. Esparza*, 158 Wn.2d 194, 205-206, 142 P.3d 155 (2006) (“Where statutory language is plain and unambiguous, courts will not construe the statute but will glean the legislative intent from the words of the statute itself.”); *State ex rel. George v. Seattle*, 184 Wash. 560, 564, 52 P.2d 360 (1935) (“A cardinal rule of statutory construction, followed by the courts, is that, where a statute is clear upon its face and is fairly susceptible of but one construction, that construction must be given”).

Under the plain language of the RCW 42.56.290, when the elements of the statute are met then the records “are exempt from disclosure under this chapter.” That means the records in their entirety are exempt – there is no requirement to provide even redacted copies of the record. There has been no challenge as to the relevancy of the requested record to the *Broyles* case (in which the County is a party) or that the motion to compel the records under CR 26 was unsuccessful. Thus, the records are exempt under the terms of the Public Records Act.

Finally, West did not challenge the evidence that the County only possess the first \$250,000.00 in attorney fee invoices, which is the amount of the County's deductible. The County is not required to create or obtain records that it does not possess in order to respond to a public records request. *See e.g., Smith v. Okanogan County*, 100 Wn. App. 7, 14, 994 P.2d 857 (2000).

2. SHB 1897's subsequent statement of legislative intent does not affect the trial court's dismissal of West's Public Records Act claim.

Undoubtedly, the County recognizes and respects the important and fundamental nature of the public's right to have a transparent and open government allowing public oversight. *Progressive Animal Welfare Society v. University of Washington*, 125 Wn.2d 243, 251, 884 P.2d 592 (1994). But the very same case that West relies upon also recognizes that the Act is not without exemptions from disclosure, noting that since its adoption, the number of exemptions has increased from 10 to "40-odd exemptions today." *Id.* at 258.

In Laws of 2007, Chapter 391, also known as SHB 1897, the State Legislature provided a restatement of the Act's intent, neither

creating a statutory amendment nor rescinding any exemptions provided for in the Act. Indeed, the trial court also determined that SHB 1897 did nothing more than provide a broad statement of legislative intent with uncertain application of RCW 42.56.290, finding that it did not warrant vacating its prior ruling dismissing West's Public Records Act claim against the County.

The County has never stated that attorney invoices are to be withheld in their entirety, but has only repeatedly informed West that the disputed invoices in its possession are not public records under RCW 42.56.290.²² However, notwithstanding the County's right to refuse production of the invoices, the County nonetheless provided redacted copies of the invoices to West, which was and still is more than he is entitled to under SHB 1897, in hopes of avoiding further litigation with him and unnecessarily wasting this Court's time and resources. West's insistence that he is entitled to the attorney invoices in light of SHB 1897 is meritless and the trial court's decision should stand.

²² RCW 42.56.290 states: "Records that are relevant to a controversy to which an agency is a party but which records would not be available to another party under the rules of pretrial discovery for causes pending in the superior courts are exempt from disclosure under this chapter."

3. If SHB 1897 is a statutory amendment and not merely a restatement of legislative intent, it is prospective only.

Even if SHB 1897 were considered a statutory amendment and not a statement of legislative intent, it still would not apply to West's document request. A statutory amendment is presumed to be prospective. *State v. Smith*, 144 Wn.2d, 613, 665, 30 P.3d 1245 (2002). The presumption against retroactive application of a statute or amendment "is an essential thread in the mantle of protection that the law affords the individual citizen." *State v. Cruz*, 139 Wn.2d 186, 190, 985 P.2d 384 (1999) (quoting *Lynce v. Mathis*, 519 U.S. 433, 439, 117 S.Ct. 891 (1997)). Although this presumption may be overcome in certain circumstances, generally courts disfavor retroactivity. *In re Estate of Burns*, 131 Wn.2d 104, 110, 928 P.2d 1094 (1997).

The presumption of prospective application can be overcome only if it is: (1) intended by the legislature to apply retroactively, (2) curative in that it clarifies or technically corrects ambiguous statutory language, or (3) remedial in nature. *McGee Guest Home, Inc. v. Dep't of Soc. & Health Services*, 142 Wn.2d 316, 324-25, 12

P.3d 144 (2000). Legislative intent for retroactivity must be clearly found within the statute's language. *Landgraf v. USI Film Prods.*, 511 U.S. 244, 268-69, 114 S.Ct. 1483 (1994); *State v. Douty*, 92 Wn.2d 930, 935, 603 P.2d 373 (1979). An amendment is curative and remedial if it clarifies or technically corrects an ambiguous statute without changing prior case law constructions of the statute. *In re Pers. Restraint of Matteson*, 142 Wn.2d 298, 308, 12 P.3d 585 (2000). Curative amendments will be given retroactive effect only if they do not contravene any judicial construction of the original statute. *State v. Jones*, 110 Wn.2d 74, 82, 750 P.2d 620 (1988). To do so would "make the legislature a court of last resort." *State v. Dunaway*, 109 Wn.2d 207, 216 n. 6, 743 P.2d 1237 (1987).

Nowhere in the text of SHB 1897 does the legislature state its intent that SHB 1897 is either an amendment or that it is to be applied retroactively. Therefore, it cannot be argued that in enacting SHB 1897 the legislature intended for it to apply retroactively. Furthermore, this Court has already construed the language of RCW 42.56.290 in a manner inconsistent with SHB 1897. Indeed, the courts in both *O'Conner v. Dep't of Social & Health Services*, 143

Wn.2d 895, 25 P.3d 426 (2001), and *Kleven v. King County Prosecutor*, 112 Wn. App. 18, 53 P.3d 516 (2002) expressly found the language of RCW 42.17.310(1)(j) [now re-codified as RCW 42.56.290] to be completely unambiguous and without need for interpretation. “Although RCW 42.17.310(1)(j) is awkwardly worded, it is not however, ambiguous. A plain language interpretation of RCW 42.17.310(1)(j) is that records relevant to a controversy to which an agency is a party are exempt from public inspection and copying under superior court rules of pretrial discovery.” *Kleven*, 112 Wn. App. 18 (citing *O’Connor*, 143 Wn.2d 895).

The plain language of RCW 42.56.290 has never been successfully challenged. It is without ambiguity, and Washington courts have so held. In this regard, West’s Appellate argument that SHB 1897 represents a “change of law” is self-defeating. If this Court were to read SHB 1897 in the manner West apparently requests, *i.e.*, that under RCW 42.56.290, SHB 1897 requires the production of all attorney invoices in a public entity’s possession, even while a party to a pending suit, and to justify each redaction,

then SHB 1897, if anything, is a **new law** without retroactive application. In essence, the legislature has “clarified” a statute that Washington courts have found to be unambiguous. Thus, at the very least, SHB 1897 can only be a **new law**, and because the legislature did not expressly state its intention to have it apply retroactively, it applies prospectively only.²³ West’s appeal necessarily fails on that basis.

4. Although not required, the County has already provided West with the requested record.

While the record West seeks to obtain from the County is exempt under the Act, the County has nonetheless made a good faith effort to produce what it can to West without disclosing the litigation strategy of its attorneys. This includes redacted copies of attorney fee invoices in the possession of the County, which is the first \$250,000.00 in billings.

As stated above, RCW 42.56.070(1) [formerly RCW 42.17.260(1)] exempts from disclosure documents that fall within the specific exemptions of other statutes. RCW 5.60.060(2)(a)

²³ Cf. Laws of 2007, ch. 317 SHB 5340 § 3, which was made effective the same day as SHB 1897, noting that “[this act is **remedial and retroactive...**” (emphasis

codifies the attorney-client privilege, which the courts have interpreted as an exemption falling under the protection of RCW 42.56.070(1). See *Hangartner v. City of Seattle*, 151 Wn.2d 439, 90 P.3d 26 (2004); *Soter v. Cowles Publ'g Co.*, 131 Wn. App. 882, 902-03, 130 P.3d 840 (2006).

In regard to the invoices, descriptions of the work done by the attorneys have been redacted, but the invoices include the date of any billing, the initials of the individuals billing, how much time was billed, and the total billing amount. The redactions to the invoices are in the work descriptions of the invoices. Even if the documents were not already exempt under RCW 42.56.290, the information contained in the description section of the attorney fee invoices contain attorney-client privileged information that would properly be redacted out under the Public records Act.

Even if the documents were not exempt from the Public Records Act in their entirety, which they are, the County has produced redacted copies of the invoices to West and those portions of the attorney fee invoices that have been redacted contain

added). Where the Legislature intends a Substitute House Bill to apply retroactively, it will explicitly state as such. Copy at A-14.

information that is also exempt under the Public Records Act, since it includes attorney-client privileged information. The County has already provided West with more than it is required to provide him with under the facts of this case.

As discussed above, RCW 42.56.070(1) exempts from disclosure documents that fall within the specific exemptions of other statutes, and RCW 5.60.060(2)(a) codifies the attorney-client privilege, which the courts have interpreted as an exemption falling under the protection of RCW 42.56.070(1). *See Hangartner, Soter, supra.*

Although the records are exempt from production under RCW 42.56.290, it has remained undisputed that the County did provide West with a redacted copy of the requested record. The County redacted the description of the work the attorneys had performed, but provided each date of billing, the initials of the individuals billing, how much time was billed, and the total billing amount. The portion of the records that was redacted contains information that is also exempt under the Public Records Act, since it includes attorney-client privileged information.

West is inaccurate where he argues: “the billings at issue here are not mental impressions, nor are the factual written statements ... they are billing statements issued by an attorney, for the purpose of collecting money.” Ap. Brief at 9. It is no secret that an attorney’s billing records generally contain descriptions of communications with the client, descriptions of the law researched, and descriptions as to the progress of motions. It is also true that an attorney’s billing records reveal an attorney’s approach to a case, how much time he or she is spending on specific issues or motions, and will generally reveal an overall case strategy, even when any individual entry may seem innocuous. As such, as a matter of policy, it would be blatantly unfair to force a party to produce such records right in the middle of the litigation when it might disadvantage the agency’s case.

5. An *in camera* review of the requested documents was unnecessary.

In regard to judicial review of agency actions, the Public Records Act specifically provides that “[t]he court may conduct a hearing based solely on affidavits.” RCW 42.56.550(3). Where a case may properly be determined solely on the briefing and

affidavits, it is not necessary for the appellate court to remand back to the trial court for an in camera review of documents. *See Smith*, 100 Wn. App. at 11.

An in camera review of the invoices was not required, where the documents are clearly within the exemptions provided for in the Public Records Act, and West did not show why the requested document is not exempt. This is not a case where the court must go through a set of documents to determine what should and should not be produced.

No production was required, and the County has produced more than it was required to in a show of good faith. This Court need not engage in any additional determinations.

6. The trial court did not rule that a “January 22 Broyles order” had preclusive effect.

West argues that the “court erred in finding the January 22 Broyles order to have preclusive effect when west [sic] was not a party to or in privity with the parties to the action, when there was no full adjudication.” Ap. Brief at 11. However, his argument is unclear and confusing, notwithstanding the fact that he fails to refer

to or cite to any Clerk's Paper that indicates the court has ruled as such.

In the trial court's order dismissing West's sole remaining cause of action, nowhere does it state that it is giving preclusive effect to any January 22 order decided in *Broyles*. CP 28-29. As previously stated above, it was undisputed that the trial court denied production of the invoices when plaintiffs in *Broyles* moved under CR 26 to compel the document. However, the trial court's subsequent dismissal of West's claim was independent of any issue decided in *Broyles*. See CP 28-29. Thus, West's argument necessarily fails.

D. Respondent Thurston County moves for costs, including attorney fees, on appeal for West's frivolous lawsuit.

The rules of appellate procedure permit an award of attorney fees to a prevailing respondent in a frivolous appeal. *Boyles v. Department of Retirement Sys.*, 105 Wn.2d 499, 508-09, 716 P.2d 869 (1986); see RAP 18.9(a). An appeal is frivolous when there are no debatable issues upon which reasonable minds could differ and when the appeal is so totally devoid of merit that there was no reasonable possibility of reversal.

Mahoney v. Shinpoch, 107 Wn.2d 679, 691, 732 P.2d 510 (1987).

See also *Skilcraft Fiberglass v. Boeing Co.*, 72 Wn. App. 40, 48, 863

P.2d 573 (1993) (“RAP 18.1 and RAP 18.9(a) allow this court to award attorney fees for a frivolous or improper appeal”); *Heigis v. Cepeda*, 71 Wn. App. 626, 634, 862 P.2d 129 (1993); *Griffin v. Draper*, 32 Wn. App. 611, 616, 649 P.2d 123 (1982) (citing *Streater v. White*, 26 Wn. App. 430, 613 P.2d 187 (1980)).

Attorney fees are awarded even when the appellant has raised meritorious issues as against one party but only nonmeritorious issues as against another party. *Orwick v. Fox*, 65 Wn. App. 71, 91, 828 P.2d 12 (1992). Clearly, attorney fees should be awarded to respondents for West’s frivolous claims against Lee Smart, even if, arguendo, there could be a debate about the Public Records Act claim against the County

V. CONCLUSION

The trial court’s dismissal of West’s case should be affirmed, and attorney fees should be awarded to the County for West’s frivolous appeal, where the trial court followed well-established law by dismissing West’s case when:

1. West’s claims failed under the well-established law in *McKasson*, *Trask*, and other legal authority, holding that a non-client

cannot sue an attorney because he thinks the attorney has given bad advice to his client.

2. West lacked standing to bring a breach of contract claim where it is undisputed that West is neither a party nor a third-party beneficiary to any contract.

3. The Public Record that West requested was and is exempt under RCW 42.56.290 and, while the document was initially denied, the County subsequently provided redacted documents to West.

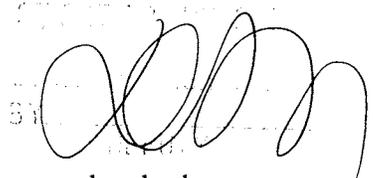
RESPECTFULLY SUBMITTED this 17th day of October, 2007.

PATTERSON, BUCHANAN, FOBES
LEITCH, KALZER & WAECHTER, P.S.

By:


Michael A. Patterson, WSBA No.7976
Attorneys for Respondent

CERTIFICATE OF SERVICE



The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the below date I mailed or caused delivery of a true copy of the foregoing **Respondent's Brief** to:

Arthur S. West
120 State Avenue N.E., #1497
Olympia, WA 98501

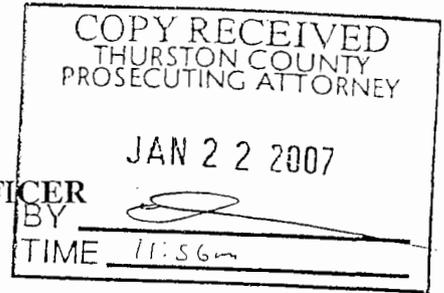
DATED: October 18, 2007, at Seattle, Washington.


Carrol Clark

APPENDIX

Record Request, CP 153	A-1
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EXHIBIT A-1

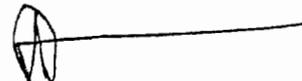


TO: THURSTON COUNTY PUBLIC RECORDS OFFICER
RE: PUBLIC RECORDS REQUEST
FROM: ARTHUR S. WEST
120 State Ave. N. E. #1497
Olympia, WA. 98501

Please consider this a formal request under the Washington State Public Records Act (PRA) for copies of the complete records and official public records concerning the attorney billings related to the defense of the Thurston County Prosecutor's office in Mason County Superior Court, and any records mentioned in any records request by the Olympian or any other entity presently being withheld from disclosure.

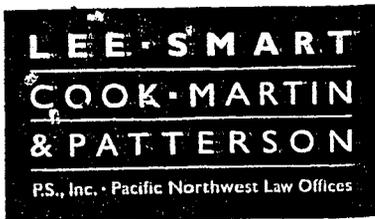
Specifically this refers to the records of billings from the firm of **Lee, Smart, Cook, Martin and Patterson**. The law firm should "get Smart" and make full disclosure of the public records at issue in order to forestall a loss of public confidence in their integrity.

Done January 22, 2007



ARTHUR S. WEST

EXHIBIT A-2



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Duncan K. Fobes
Steven G. Wraith
Karen A. Kalzer
Tammy L. Williams
Kenneth E. Hepworth
Charles P.E. Leitch
Michelle A. Corsi
Craig L. McIvor
Ketia B. Wick

January 26, 2007

Arthur S. West
120 State Ave. NE #1497
Olympia, WA 98501

Re: Response to Public Records Request of January 22, 2007.

Dear Mr. West:

This letter is being sent in response to your public records request, dated January 22, 2007. Specifically, you requested Thurston County to produce the legal bills that it incurred in the defense of the case of *Broyles v. Thurston County*. For the reasons provided below, there are no responsive documents to your request and/or the documents requested are exempt from production under the statute cited.

First, you request public records related to the defense of Prosecuting Attorney Ed Holm in the Mason County Superior Court. Our client in the *Broyles* case was Thurston County, not Prosecuting Attorney Ed Holm, so there are no responsive records to your request. However, even if our client had been Mr. Holm, the requested documents would still be exempt from disclosure under the statute.

RCW 42.56.290 [formerly RCW 42.17.310(1)(j)] states: "Records that are relevant to a controversy to which an agency is a party but which records would not be available to another party under the rules of pretrial discovery for causes pending in the superior courts are exempt from disclosure under this chapter."

Attorney bills are not available to another party under the rules of pretrial discovery, and while a jury has returned a verdict in the above-referenced lawsuit, the controversy is on going, with motions continuing in the trial court. The records that you have requested are relevant to that controversy, since part of the controversy still includes a dispute regarding attorney fees. An appeal is also imminent, after which the case could be returned to the superior court again. Therefore, the records that you have requested are exempt from public disclosure.

RCW 42.56.070(1) [formerly RCW 42.17.260(1)] also exempts from disclosure documents that fall within the specific exemptions of other statutes. RCW 5.60.060(2)(a) is another statute that codifies the attorney-client privilege. The documents that you have requested are attorney work product that is protected by the attorney-client privilege of RCW 5.60.060(2)(a), therefore they are also exempt from production under RCW 42.56.070(1). This is a second reason why the records that you have requested are exempt from public disclosure.

Donald F. Austin II
Carrie M. Bixel
William L. Cameron
Mary E. DePaolo
Jenny M. Downey
Alison H. Grennan
Michael A. Guadagno
Sean D. Jackson
Nicholas L. Jenkins
William R. Kiendl
Keith J. Kuhn
Matthew F. LaMotte
Jennifer Lauren
Janine E. Leary
Eric L. Lewis
Daniel G. Lloyd
Rosemary J. Moore
Eric S. Newman
Jennifer R. Porto
Marc Rosenberg
John W. Schedler
Kirsten A. Schuitz
Peter E. Sutherland
Matthew D. Taylor
Melisa K. Thompson
William H. Waechter
Brian P. Waters

Of Counsel:
Donna M. Young

Retired:
Fred T. Smart

Nelson T. Lee
1920-2004
John Patrick Cook
1934-2001

Arthur S. West
January 24, 2007
Page 2

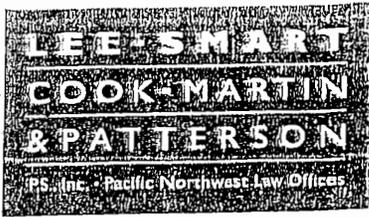
Very truly yours,



Michael A. Patterson

MAP/mr

EXHIBIT A-3



1800 One Convention Place, 701 Pike Street
Seattle, Washington 98101-3929

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Patricia K. Buchanan
Duncan K. Forbes
Steven C. Wraith
Karen A. Kalzer
Tatony L. Williams
Kenneth E. Hepworth
Charles P.E. Leitch
Michelle A. Corsi
Craig L. McIvor
Katie B. Wick

February 24, 2007

Arthur S. West
120 State Ave. NE #1497
Olympia, WA 98501

Re: Production of redacted attorney fee invoices.

Dear Mr. West:

While it is still our position that the attorney invoices in the Broyles matter that you requested are exempt from disclosure under RCW 42.56.290, which is separate and distinct from the exemption for information protected by the attorney-client privilege and attorney work product privilege, we are providing you with copies of the redacted bills for the first \$250,000.00 in attorney fees incurred in this litigation, including the dates of service, timekeepers, and the amount of time billed by each timekeeper on a daily basis. These are the attorney fee records from the Broyles case in the possession of the County that you requested. We hope this resolves your request for these documents.

Please contact me if you have any questions.

Very truly yours,

Michael A. Patterson

MAP/mr
cc: Commissioners

Donald F. Austin II
Carrie M. Bixel
William L. Cameron
Mary E. DePaolo
Jenny M. Downey
Alison H. Grennan
Michael A. Guadagnoc
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Melisa K. Thompson
William H. Waechter
Brian P. Waters

Of Counsel:
Donna M. Young

Retired:
Fred T. Smart

Nelson T. Lee
1920-2004
John Patrick Cook
1934-2001

EXHIBIT A-4

FILED
JAN 22 2007
CLERK OF COURT

SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR MASON COUNTY

AUDREY BROYLES, VONDA SARGENT,
and SUSAN SACKETT-DANPULLO,

Plaintiffs,

vs.

THURSTON COUNTY,

Defendant

NO. 04 2 00411 3

DECLARATION OF J. RICHARD
CREATURA IN SUPPORT OF MOTION
TO COMPEL PRODUCTION OF
DOCUMENTS

HEARING DATE: January 22, 2007

VISITING JUDGE: David E. Foscoe

I, J. Richard Creatura declare as follows:

1. I am over the age of eighteen and am competent to make this Declaration based upon personal knowledge. I am one of the attorneys for Plaintiffs in this matter and make this Declaration in support of Plaintiffs' Motion to Compel Production of Documents.

2. On November 29, 2006, following a jury verdict in favor of the Plaintiffs, I caused to have served on the Defendant a Request for Production of Documents, a copy of which is attached hereto as Exhibit A. We requested the following:

Request for Production No. 1: Please produce copies of any and all bills, including a detailed description of time and charges sent to you by attorneys and experts to defend the following cases: Mason County Superior Court Cause No. 04-2-00411-3 and Thurston County Superior Court Cause No. 02-2-00051-4.

CREATURA DECLARATION MOTION TO COMPEL - 1
[Broyles decl of creatura in support of motion to compel.doc]

LAW OFFICES
GORDON, THOMAS, HONEYWELL, MALANCA,
PETERSON & DAHEIM LLP
1201 PACIFIC AVENUE, SUITE 2100
POST OFFICE BOX 1157
TACOMA, WASHINGTON 98401-1157
(253) 620-8500 • FACSIMILE (253) 620-8588

1 3. At the time of serving this Request for Production, I also sent a letter to lead
2 attorney, Michael Patterson, a copy of which is attached hereto as Exhibit B. I advised him,
3 among other things, that he should feel free to redact materials that he considered attorney-
4 client privileged. I stated:

5 We would expect that any attorney-client privileged information
6 would be redacted, but are most interested in the time and
7 expenses incurred.

8 4. At about the same time, Ms. Bloomfield sent a letter to Thurston County
9 requesting public disclosure of documents, pursuant to RCW 42.56, et seq. In response to that
10 request, the Defendant again refused to produce the records. However, in the responsive
11 letter, attached hereto as Exhibit C, dated December 14, 2006, Defendant Thurston County
12 acknowledges that these time records are relevant to the issue regarding attorneys fees:

13 The records that you have requested are relevant to that
14 controversy, since part of the controversy will include a dispute
15 regarding attorneys fees.

16 5. On December 29, 2006, despite having previously admitting the relevance of
17 the documents, Defendant Thurston County refused to produce them. See Exhibit A.

18 6. After receiving this response, I sent an email to Mr. Patterson asking him if we
19 could set up a discovery conference. A copy of that email is attached hereto as Exhibit D.

20 7. On Monday, January 8, 2007, I had an opportunity to discuss this matter with
21 Mr. Patterson on the telephone and he advised me that the County's position remained the
22 same. Therefore, I advised him that this appeared to be a matter that needed to be resolved by
23 the Court. I believe that we have made a reasonable effort to reach agreement with opposing
24 counsel on this matter, but that we have not been able to reach an accommodation.

25 8. I had an opportunity to observe the efforts put in by counsel for both the
26 Plaintiffs and the Defendant in this case during the last three months. I have also had an

1 opportunity to review the extensive record accumulated by the Plaintiffs and the Defendant,
2 including depositions, pleadings, and motions. One indicator of the amount of effort that
3 needed to be expended by the Plaintiffs in preparing this case is the corresponding effort by
4 the Defendant to defend against the Plaintiffs' claims. Therefore, the records of the County
5 regarding the attorneys' time and costs incurred are one indicator of the reasonableness of the
6 charges by Plaintiffs' counsel. It is for this reason that we have requested that these
7 documents be produced.
8

9 I DECLARE UNDER THE PENALTY OF PERJURY UNDER THE LAWS OF THE
10 STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT TO
11 THE BEST OF MY KNOWLEDGE.

12 Dated this 12 day of January, 2007 at Tacoma, Washington.

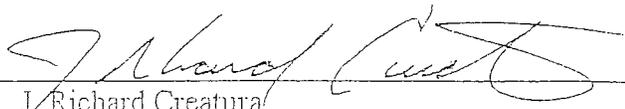
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EXHIBIT A-5

[Order Documents](#) | [Available Courts](#) | [Total Litigator](#) | [Lexis.com](#) | [Sign Out](#) | [Learning Center](#)

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Docket

Washington Superior Courts

WA Superior - Mason

04-2-00411-3

Audrey Broyles et al V Thurston County Prosecuting Attorn

This case was retrieved from the court on Wednesday, February 28, 2007 Update

Header

Case Number: 04-2-00411-3

Date Filed: 05/05/2004

Date Full Case Retrieved: 02/28/2007

Misc: *Published Depositions in Box in Locked V.

[\[Summary\]](#) [\[Names\]](#) [\[Docket\]](#) [\[Accounting\]](#) [\[Judgments\]](#) Binders With Judge's Copy of #187 W/Exh

Summary

Cause/Class: Personal Injury

Judgment#: 06-9-1098-1

Resolution: Jury Verdict After Trial

Date:

Completion: Judgment/Order/Decree Filed

Date:

Status: On Appeal

Date:

		1-22-2007/Grays Harbor Judge
411	01/12/07	Note For Motion Docket/Renoted Mt For Attorneys Fees & Costs
		2-26-2007/Grays Harbor Judge
412	01/12/07	Note For Motion Docket/Renoted Mt For Supplemental Judgment RE Tax Offset/2-26-07/Grays Harbor Jdg Stricken Per Bloomfield Ltr #426
413	01/18/07	Objection / Opposition/Def's to Pla Motion to Compel
414	01/18/07	Declaration of Michael Patterson
415	01/18/07	Affidavit/Dclr/Cert of Service
416	01/22/07	Order Denying Motion/Petition Judge Foscue
417	01/23/07	Motion For Award of Attorney's Fees And Costs
418	01/23/07	Declaration of Rebecca Roe RE Attorneys Fees
419	01/23/07	Declaration of Paul Stritmatter
420	01/23/07	Motion For Supplemental Judgment Re Tax Offset
421	01/23/07	Declaration of Scott Ritchie, Cpa Re Tax Consequences of Award
422	01/23/07	Declaration of Robbyn Washington
423	01/23/07	Declaration of Stephanie Bloomfield Re Attorneys Fees & Costs
[424	01/24/07	Order Denying Motion/Petition Motion to Compel]
425	01/24/07	Motion Hearing Date Received in Clerk's Office
426	02/08/07	Correspondence/Bloomfield/Striking Motion For Tax Offset/Judge Foscue
427	02/14/07	Notice of Appeal to Court of Appeal
-	02/14/07	Affidavit/Dclr/Cert of Service
-	02/14/07	Filing Fee Received
		Patterson, Michael Alexander
428	02/14/07	Declaration of Dennis Laporte
429	02/14/07	Declaration of William D Kamerrer
430	02/14/07	Objection / Opposition/Def's to Pla's MT For Costs & Attorney Fees
431	02/14/07	Notice/Def's That Pla's MT For Supplemental Judgment Has Been

2

EXHIBIT A-6

unlawfully, and that Michael A. Patterson of Lee, Smart, Cook, Martin, and Patterson negligently breached his duty as counsel for Thurston County to render conscientious service to the public, and that as a result of these actions, Plaintiff is entitled to the relief herein sought.

II PARTIES AND JURISDICTION

2.1 Plaintiff West is a landowner in Mason County and a citizen abiding and conducting business in Thurston County in the State of Washington. He has standing to maintain this action in all of its particulars.

2.2 Thurston County is a quazi-municipal corporation bound by all duly enacted laws pertaining to said corporation. As principal of defendant PATTERSON and LEE, SMART, COOK, MARTIN and PATTERSON, P. S., Inc, Thurston County is bound by the actions of their agent.

2.3 MICHAEL A PATTERSON is a duly authorized counsel for and agent of Thurston County, and as government counsel is bound by a duty of conscientious service to the public. (See Meza v. DSHS)

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Olympia, WA. 98501

2.4 LEE, SMART, COOK, MARTIN and PATTERSON is a law firm and an incorporated entity that is a necessary party to this action.

2.5 Pursuant to RCW 42.56, RCW 36.01.050 and records on file with the office of the Administrator for the Courts, the Mason County Superior Court has jurisdiction over the parties and subject matter of this claim.

III ALLEGATIONS

3.1 On or about January 22, 2006, Plaintiff West served a public records request upon Thurston County for the official public records of the attorney fees billed by LEE, SMART, COOK, MARTIN and PATTERSON in their work as government counsel and as agents of Thurston County.

3.2 The BIAW and the Olympian have also requested said records.

3.3 By letter dated both January 24 and January 26, Defendant PATTERSON and LEE, SMART, COOK, MARTIN and PATTERSON, P.

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Olympia, WA. 98501

3

S., Inc. (Hereafter Lee Smart Inc.) denied plaintiff West's request.

3.4 By such act, and by attempting to secure what must be presumed to be unconscionable fees, defendants Patterson and Lee Smart Inc. breached their duty and the express and implied terms of their contract with Thurston County, and plaintiff West, a citizen of Thurston County, for which breach they should be equitably barred from collecting any fees whatsoever.

3.5 By their misconduct, defendants also unreasonably violated the Washington State Public Records Act, as duly enacted by initiative, as amended by duly enacted law, and as published in prima facie form under RCW Title 42.56. This damaged West, the Media, the BIAW and the public.

3.6 Plaintiff maintains that as self proclaimed experts on attorney misconduct issues and as government counsel defendants Lee Smart, Inc.

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4

and PATTERSON must be held to an elevated duty of care, and should be equitably be required to reimburse Thurston County for the expenses and costs of this suit and any costs, fees or penalties awarded.

3.7 Defendant's conduct, and all of it, was willful, wanton, and unreasonable, damaging plaintiff and the public and unreasonably delayed public disclosure of records vital to the operation of democracy in the state of Washington and a proper accounting of public funds.

IV CAUSES OF ACTION

BREACH OF CONTRACT

4.1 By and through all of the acts and omissions described above defendants Lee Smart, Inc. and PATTERSON breached their contract with the public and Thurston County, creating a cause of action for breach of contract, damaging plaintiff, Thurston County, and the Public, for which

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5

they are comprehensively liable and for which relief should issue as requested below.

NEGLIGENCE

4.2 By and through all of the acts and omissions, described above defendants Lee Smart, Inc. and PATTERSON negligently violated duties of care and elevated duties of care, damaging plaintiff, Thurston County, and the Public, for which they are comprehensively liable and for which relief should issue as requested below.

PUBLIC RECORDS ACT CLAIM

4.3 By and through all of the acts and omissions described above, defendants Lee Smart, Inc. and PATTERSON and Thurston County, unreasonably withheld records and official public records, creating a cause

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6

of action for breach of contract, damaging plaintiff and the Public, for which they are comprehensively liable and for which relief should issue as requested below.

DECLARATORY JUDGMENTS ACT CLAIM

4.4 By and through all of the acts and omissions described above defendants Lee Smart, Inc. and PATTERSON and Thurston County created a cause of action for declaratory relief, damaging plaintiff, and the Public, and creating an uncertainty relating to the operation of government of statewide significance, for which they are comprehensively liable and for which relief should issue as requested below.

V REQUEST FOR RELIEF

Plaintiff respectfully requests the following relief:

5.1 That an order issue under the seal of this court declaring that

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COMPLAINT

ARTHUR S. WEST ⁷
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defendants MICHAEL PATTERSON and LEE, SMART, COOK, MARTIN and PATTERSON, P. S., Inc. Breached their contract and duty of care as governmental counsel, and barring them from collecting any fees costs, or reimbursement of any kind for their services to and/or in association with Thurston County.

5.2 That an order to show cause issue, all records requested be disclosed as public records, and that fees, costs and penalties be awarded plaintiff, and to any other person or entity whose public records request predates this filing and who wishes to intervene into or effectively participate in this action.

5.3 That the court determine, based upon the record as it is developed, whether defendant PATTERSON, LEE, SMART, COOK, MARTIN and PATTERSON, P. S., Inc. or Thurston County should properly be ultimately liable for any Public Record Act costs, fees, and penalties awarded.

PLAINTIFF'S
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COMPLAINT

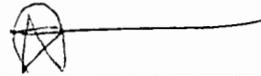
ARTHUR S. WEST
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Olympia, WA. 98501

8

5.4 Such other relief as may be equitable and just.

I certify the foregoing to be correct and true under penalty of perjury
of the laws of the State of Washington.

Done this day of February 12, 2007.



ARTHUR S. WEST

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EXHIBIT A-7

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PAT SWARTOS, Clerk of the Superior Court of Mason Co. Wash.

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SUPERIOR COURT OF WASHINGTON FOR MASON COUNTY

ARTHUR S. WEST,

Plaintiff,

vs.

THURSTON COUNTY; MICHAEL A. PATTERSON; LEE, SMART, COOK, MARTIN & PATTERSON, PS, INC.

Defendants.

NO. 07-2-00108-9

ORDER GRANTING DEFENDANTS' MOTION TO DISMISS UNDER CR 12(b)(6)

~~PROPOSED~~

THIS MATTER, having come regularly before the Court in the above-captioned matter upon Defendants' Motion to Dismiss Under CR 12(b)(6), and the Court having reviewed the files and pleadings herein, including:

- 1. Defendant's Motion to Dismiss Under CR 12(b)(6);
- 2. Plaintiff's Opposition to Defendants' Motion to Dismiss Under CR 12(b)(6);
- 3. Defendants' Reply in Support of Defendant's Motion to Dismiss Under CR 12(b)(6);
- 4. _____ ;
- 5. _____ ;
- 6. _____ .

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and the Court being otherwise fully advised in the premises, NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

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ORDER GRANTING DEFENDANT'S MOTION TO DISMISS UNDER CR 12(b)(6)- 1

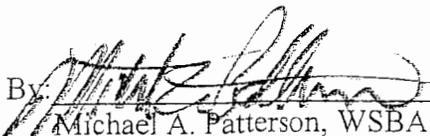
LEE · SMART · COOK · MARTIN & PATTERSON
P.S., Inc. · Pacific Northwest Law Offices
1800 One Convention Place · 701 Pike Street · Seattle · WA · 98101-3929
Tel. 206.624.7990 · Toll Free 877.624.7990 · Fax 206.624.5944

1. Defendant's Motion to Dismiss Under CR 12(b)(6) is GRANTED;
2. All of plaintiffs causes of action are dismissed with prejudice as to all parties, with the exception of the Public Records Act claim against Thurston County;
3. _____

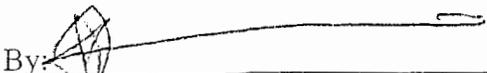
DONE IN OPEN COURT this 12 day of March, 2007.



JUDGE / ~~COMMISSIONER~~

Presented by:
LEE, SMART, COOK, MARTIN
& PATTERSON, P.S., INC.
By: 
Michael A. Patterson, WSBA No. 7976
Marc Rosenberg, WSBA No. 31034
Of Attorneys for Defendants

~~Approved as to Form; Notice of
Presentation Waived;~~
objections taken

By: 

Arthur S. West

EXHIBIT A-8

EXHIBIT A-9

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PAT SWARTOS, Clerk of the Superior Court of Mason Co. Wash.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR MASON COUNTY

Arthur S. West,)	
plaintiff)	No. 07-2-00108-9
)	
Vs.)	PLAINTIFF'S
)	SHOW CAUSE
THURSTON COUNTY,)	ORDER
MICHAEL A. PATTERSON,)	
LEE, SMART, COOK, MARTIN))	
and PATTERSON, P.S., Inc.)	
defendants)	

This matter having come before the Court on ~~February~~ ^{March 12, 2007}, ~~ex parte~~,
pursuant to motion of Plaintiff West, and the court having reviewed the
files and records of this case, the following order is hereby entered:

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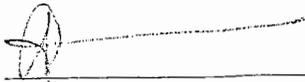
PLAINTIFF'S
SHOW CAUSE
ORDER

1
ARTHUR S. WEST
120 State Ave. N. E. #1497
Olympia, WA. 98501

1. That Thurston County is hereby ordered to appear, through counsel,
before ~~Division~~ of the Mason County Superior Court on ~~February~~ ^{March 26th} __,
2007, at ^{1:30} ~~9:00~~ AM, to show cause why it should not be required to disclose
the records requested by plaintiff under ~~the PRA~~. RCW 42-56

And the same is hereby **ORDERED** this ^{12th} day of ~~February~~ ^{March}, 2007.

Presented by



ARTHUR S. WEST


Michael A. Botelho
Att'y for
THURSTON COUNTY


Tonia Shill
JUDGE/COMMISSIONER

PLAINTIFF'S
SHOW CAUSE
ORDER

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EXHIBIT A-10

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SUPERIOR COURT OF WASHINGTON FOR MASON COUNTY

ARTHUR S. WEST,

Plaintiff,

vs.

THURSTON COUNTY,

Defendant.

NO. 07-2-00108-9

DEFENDANT'S RESPONSE TO
PLAINTIFF'S SHOW CAUSE ORDER

Hearing Noted:
Monday, March 26, 2007 at 1:30 pm

I. INTRODUCTION

Defendant Thurston County (the "County") hereby responds to the Order entered by this Court on March 12, 2007, which provided: "Thurston County is ordered to ... show why it should not be required to disclose the records requested by plaintiff under RCW 42.56."

Pursuant to this order, the County provides the following reasons: (1) the requested document is exempt under RCW 42.56.290, and (2) despite the fact that the document is completely exempt from production under the statute, the County has already provided plaintiff Arthur West with a redacted copy of the record he has sought, and the redactions contain information that is exempt from the Public Records Act under RCW 42.56.070(1). West has not shown the exemptions do not apply, or why a redacted record is insufficient.

The County provides legitimate grounds why it should not be required to further disclose the record requested by West. West's request for this record is the sole basis for his

27

1 Public Records Act so, if the court is satisfied that the County has provided a legitimate basis,
2 it also requests that West's Public Records Act claim be dismissed with prejudice.

3 II. FACTS

4 On January 22, 2007, Mr. West made a records request requesting, "attorney billings
5 related to the defense of the Thurston County Prosecutor's office in Mason County Superior
6 Court." Ex. 1.¹ The request referred to the case *Broyles v. Thurston County*, Mason County
7 Superior Court cause no. 04-2-00411-3 ("*Broyles*"). The *Broyles* case is now on appeal in
8 Division II of the Court of Appeals.

9 On January 26, 2007, a letter was sent to Mr. West explaining why the documents
10 were exempt under the Public Records Act. Ex. 2.² However, in a letter dated February 24,
11 2007, the County produced to West redacted copies of attorney fee bills related to the
12 representation of counsel in *Broyles* even though the record requested by West was exempt
13 under the Public Records Act, RCW 42.56.290. Ex. 3.³ The County only possesses attorney
14 fee invoices related to the first \$250,000.00 of the representation, which is the County's
15 insurance deductible, and any invoice beyond this amount is not in the County's possession
16 and is therefore not the County's public records. Ex. 4.⁴ The County provided to West more
17 of a response than was required under the relevant provisions of the Public Records Act.

18 The plaintiffs in *Broyles* made a motion to compel the same document requested by
19 Mr. West under CR 26. Ex. 5.⁵ The court denied the motion. Ex. 6.⁶ *See also* Mason County
20 Superior Court cause no. 04-2-00411-3, docket sub # 424 [order denying motion to compel].

21
22 ¹ Exhibits cited to herein are attached to the Declaration of Michael A. Patterson. Ex. 1 is Mr. West's
records request.

23 ² Exhibit 2 is a letter sent to West on January 26, 2007.

24 ³ Exhibit 3 is a letter to West dated February 24, 2007.

25 ⁴ Exhibit 4 is correspondence reflecting that the County only has records as to the first \$250,000.00 in
attorney fee invoices.

⁵ Exhibit 5 is the *Creatura* declaration on plaintiffs' motion to compel attorney fee invoices.

⁶ Exhibit 6 is the docket showing the order denying plaintiffs' motion to compel attorney fee invoices.

1 III. ARGUMENT AND AUTHORITIES

2 A. The record requested by West is exempt under RCW 42.56.290.

3 The record requested by West is exempt from production under RCW 42.56.290, a
4 specific exemption provided for in the Public Records Act. "Records that are relevant to a
5 controversy to which an agency is a party but which records would not be available to another
6 party under the rules of pretrial discovery for causes pending in the superior courts are exempt
7 from disclosure under this chapter." RCW 42.56.290 [formerly RCW 42.17.310(1)(j)].

8 The term "controversy" in RCW 42.56.290 /RCW 42.17.310(1)(j) is inclusive of past
9 and present litigation as well as "reasonably anticipated" litigation. *See Dawson v. Daly*, 120
10 Wn.2d 782, 791, 845 P.2d 995 (1993). It is undisputed, and undisputable, that *Broyles* is a
11 controversy to which the County is a party, and we can also reasonably anticipate that there
12 will be future litigation after appeal. Thus, the only remaining question is, whether the
13 records would be available to another party under the rules of pretrial discovery.

14 The pretrial discovery rules referred to in RCW 42.56.290 are those set forth in Civil
15 Rule 26. *Limstrom v. Ladenburg*, 136 Wn.2d 595, 609, 963 P.2d 869 (1998). *See also Kleven*
16 *v. King County Prosecutor*, 112 Wn. App. 18, 24, 53 P.3d 516 (2002); *Overlake Fund v. City*
17 *of Bellevue*, 70 Wn. App. 789, 794, 855 P.2d 706 (1993). Here, West requested copies of the
18 attorney fee invoices by Lee, Smart, Cook, Martin & Patterson, PS, Inc. from their
19 representation in *Broyles v. Thurston County*, in which the County is involved in litigation.
20 The plaintiffs in that action made a motion to compel the documents under CR 26, and the
21 court denied the motion. Ex. 5-4. Denial of the motion to compel, in addition to the general
22 knowledge that attorney fee invoices cannot be obtained in discovery, supports the proposition
23 that the record requested by West is exempt from discovery.

24 The document sought by West meets the exemption in RCW 42.56.290, where the
25 record: (1) is relevant to a controversy to which an agency is a party [plaintiffs in *Broyles v.*

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DEFENDANT'S RESPONSE TO PLAINTIFF'S SHOW
CAUSE ORDER - 3

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1 *Thurston County*, Mason County Superior Court cause no. 04-2-00411-3 moved for
2 production of the documents in relation to an attorney fee dispute], Ex. 5, and (2) is not
3 available to another party under the rules of discovery [the court denied the motion to compel,
4 showing they are not discoverable]. Ex. 6.

5 Mr. West, in his prior briefing, discussed a State Legislative session in which an
6 amendment to the Public Records Act was being discussed to address attorney fee bills as they
7 relate to claims of attorney-client privilege. However, not only have those changes not yet
8 been adopted as law, but that session did not address the specific issue of records that are
9 exempt under RCW 42.56.290. Mr. West cites to the Public Records Act and provides the
10 authority as to why disclosure is generally mandated, but he also does not address why the
11 specific documents that he is seeking do not fall under the exemption stated.

12 **B. The County provided redacted documents to West, although it was not**
13 **required to provide him with any of the exempt documents.**

14 While the record West seeks to obtain from the County is exempt under the Act, the
15 County has made a good faith effort to produce what it can to West without disclosing the
16 litigation strategy of its attorneys. Ex. 3. This includes redacted copies of attorney fee
17 invoices in the possession of the County, which is the first \$250,000.00 in billings.

18 RCW 42.56.070(1) [formerly RCW 42.17.260(1)] exempts from disclosure documents
19 that fall within the specific exemptions of other statutes. RCW 5.60.060(2)(a) codifies the
20 attorney-client privilege, which the courts have interpreted as an exemption falling under the
21 protection of RCW 42.56.070(1). *See Hangartner v. City of Seattle*, 151 Wn.2d 439, 90 P.3d
22 26 (2004); *Soter v. Cowles Publ'g Co.*, 131 Wn. App. 882, 902-03, 130 P.3d 840 (2006).

23 In regard to the invoices, descriptions of the work done by the attorneys has been
24 redacted, but the invoices include the date of any billing, the initials of the individuals billing,
25 how much time was billed, and the total billing amount. The redactions to the invoices are in
the work descriptions of the invoices. Even if the documents were not already exempt under

{1018335.DOC}

DEFENDANT'S RESPONSE TO PLAINTIFF'S SHOW
CAUSE ORDER - 4

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1800 One Convention Place · 701 Pike Street · Seattle · WA · 98101-3929
Tel. 206.624.7990 · Toll Free 877.624.7990 · Fax 206.624.5944

1 RCW 42.56.290, the information contained in the description section of the attorney fee
2 invoices contain attorney-client privileged information that would properly be redacted out
3 under the Public records Act.

4 Even if the documents were not exempt from the Public Records Act in their entirety,
5 which they are, the County has produced redacted copies of the invoices to Mr. West and
6 those portions of the attorney fee invoices that have been redacted contain information that is
7 also exempt under the Public Records Act, since it includes attorney-client privileged
8 information. The County has already provided Mr. West with more than it is required to
9 provide him with under the facts of this case.

10 **C. There is no need for an in camera review of the requested documents.**

11 In regard to judicial review of agency actions, the Public Records Act specifically
12 provides that “[t]he court may conduct a hearing based solely on affidavits.” RCW
13 42.56.550(3). Mr. West has indicated that he will seek an in camera review of the record that
14 he is seeking. An in camera review of the invoices is not required here, where the documents
15 are clearly within the exemptions provided for in the Public Records Act.

16 **IV. CONCLUSION**

17 For the reasons provided, the County has shown cause why the records sought by Mr.
18 West are exempt from disclosure under RCW 42.56. The court should therefore dismiss
19 West’s Public Record Act claim.

20 DATED this 16th day of March, 2007.

21 LEE SMART COOK MARTIN &
22 PATTERSON, P.S., INC

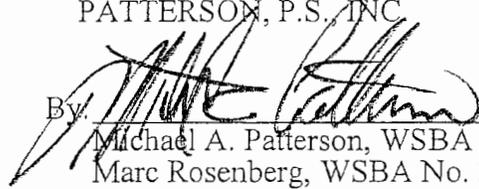
23 By: 
24 Michael A. Patterson, WSBA No. 7976
25 Marc Rosenberg, WSBA No. 31034
Of Attorneys for Defendant
Thurston County

EXHIBIT A-11

RECEIVED & FILED

03 MAR 26 2007

PAT SWARTOS, Clerk of the
Superior Court of Mason Co. Wash.

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SUPERIOR COURT OF WASHINGTON FOR MASON COUNTY

ARTHUR S. WEST,

Plaintiff,

vs.

THURSTON COUNTY,

Defendant.

NO. 07-2-00108-9

ORDER ON PLAINTIFF'S SHOW
CAUSE ORDER

~~PROPOSED~~ TAS

THIS MATTER, having come regularly before the Court in the above-captioned matter upon Plaintiff's Motion for Order Showing Cause, and the Court having reviewed the files and pleadings herein, including:

1. Plaintiff's Motion for Order Showing Cause;
2. Court's Order Granting Plaintiff's Motion for Order Showing Cause
3. Defendant's Response to Plaintiff's Showing Cause Order;
4. Declaration of Michael A. Patterson in Opposition to Plaintiff's Motion for

Order Showing Cause;

~~5. Plaintiff's Opposition to Defendants' Response to Plaintiff's Showing Cause~~

Order;

6. Defendant's Reply in Support of Defendant's Response to Plaintiff's Showing

Cause Order;

34

{1018551.DOC}
ORDER ON PLAINTIFF'S SHOW CAUSE ORDER - 1

LEE SMART COOK MARTIN & PATTERSON

P.S., Inc. - Pacific Northwest Law Offices
1800 One Convention Place - 701 Pike Street - Seattle - WA - 98101-3929
Tel. 206.624.7990 - Toll Free 877.624.7990 - Fax 206.624.5944

6. ~~7.~~ Plaintiff's Motion to Strike and Declaration in Reply

7. ~~8.~~ Plaintiff's Declaration Re Lack of Authority
to represent Thurston County

8. ~~9.~~ Plaintiff's Reply in support of Disclosure ^{in Camera} Review

and the Court being otherwise fully advised in the premises, NOW, THEREFORE, IT

IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. The record requested by Arthur West (attorney fee invoices from counsel in the
Broyles case) is exempt from disclosure under RCW 42.56.290.

2. The court will not compel the production of the requested record.

3. Plaintiff's Public Records Act claim is dismissed with prejudice.

4. Plaintiff's Complaint in the above-captioned matter is dismissed with prejudice

in its entirety.

5. ~~_____~~

DONE IN OPEN COURT this ~~25~~ day of March, 2007.

^{TFS} 26

Toni G. Sheld
JUDGE / COMMISSIONER

Presented by:

LEE, SMART, COOK, MARTIN
& PATTERSON, P.S., INC.

By: Marc Rosenberg
Michael A. Patterson, WSBA No. 7976
Marc Rosenberg, WSBA No. 31034
Of Attorneys for Defendants

~~Approved as to Form, Notice of
Presentation Waived;~~

Objections respectfully taken to ruling

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By: 
Arthur S. West

EXHIBIT A-12



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Superior Court Case Summary

Court: Mason Co Superior Ct
Case Number: 07-2-00108-9

Sub	Docket	Date	Docket Code	Docket Description	Misc Info
-	02-12-2007		\$FFR PLA0001	Filing Fee Received West, Arthur S	200.00
-	02-12-2007		CICS	Case Information Cover Sheet	
1	02-12-2007		SM	Summons Copy/not Original Signature	
2	02-12-2007		CMP	Complaint/plaintiff's Original	
3	02-16-2007		NTAPR ATD0001	Notice Of Appearance Patterson, Michael Alexander	
-	02-16-2007		AFSR	Affidavit/dclr/cert Of Service	
4	02-23-2007		MT	Motion -show Cause	
5	02-23-2007		MT	Motion -show Cause	
6	02-23-2007		NT ACTION	Notice Show Cause	03-05- 2007MT
6	02-23-2007		NT ACTION	Notice Show Cause Continued To 3-12-07	03-05- 2007MT
7	02-27-2007		NTMTDK ACTION	Note For Motion Docket Def's Mt To Dismiss Claims	03-12- 2007MT
7	02-27-2007		NTMTDK ACTION	Note For Motion Docket Wendy Larsen, Mike Patterson Office	03-12- 2007MT
7	02-27-2007		NTMTDK ACTION	Note For Motion Docket Confirmed Hearing 3/7/2007	03-12- 2007MT
-	02-27-2007		AFSR	Affidavit/dclr/cert Of Service	
8	03-01-2007		MTDSM	Motion To Dismiss Claims/def's	
9	03-01-2007		AFSR	Affidavit/dclr/cert Of	

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If you are viewing a district m appellate court docket, you m see future court appearances dates if there are any. Since s generally calender their casel systems, this search tool cann superior court calendering info

Contact Information

Mason Co Superior Ct
 419 N 4th St, Fl 2
 PO Box X
 Shelton, WA 98584-0078
Map & Directions
 360-427-9670[Phone]
 360-427-8443[Fax]
[Visit Website](#)

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10	03-01-2007	OB	Objection / Opposition To Pla's Mt For Show Cause Order,etc		
11	03-01-2007	DCLR	Declaration Of Michael Patterson		
12	03-01-2007	AFSR	Affidavit/dclr/cert Of Service		
13	03-05-2007	HCNTSTP ACTION	Hearing Continued: Stipulated Show Cause	03-12- 2007MT	
14	03-07-2007	OB	Objection / Opposition To Pla's Mt For Show Cause Order		
15	03-07-2007	DCLR	Declaration Of Michael Patterson		
16	03-07-2007	AFSR	Affidavit/dclr/cert Of Service		
17	03-08-2007	MTAF	Motion And Affidavit/declaration To Strike/pla's		
18	03-09-2007	RPY	Reply/def's In Support Of Motion		
19	03-09-2007	DCLR	Declaration/supplemental Of Michael Patterson		
20	03-09-2007	AFSR	Affidavit/dclr/cert Of Service		
21	03-12-2007	DCLR	Declaration/2nd Supplemental Of Michael Patterson		
22	03-12-2007	ORGMT	Order Granting Motion/petition To Dismiss/public Act Claim Remains		
23	03-12-2007	ORTSC ACTION	Order To Show Cause Show Cause	03-26- 2007MT	
24	03-12-2007	MTHRG	Motion Hearing		
25	03-12-2007	DCLR	Declaration/west's		
26	03-12-2007	DCLR	Declaration/pla's Re Counsel's Lack Of Authority To Represent		
26	03-12-2007	DCLR	Declaration/pla's Re Counsel's Thurston County		
27	03-19-2007	RSP	Response/def's To Pla's Show Cause Order		

28	03-19-2007	DCLR	Declaration Of Michael Patterson	
29	03-19-2007	AFSR	Affidavit/dclr/cert Of Service	
30	03-22-2007	MTRC	Motion For Reconsideration/pla's	
31	03-22-2007	RPY	Reply In Support Of Disclosure Or In Camera Review	
32	03-23-2007	RPY	Reply/def's In Support Of Def's Response To Pla's Show Cause Order	
33	03-23-2007	AFSR	Affidavit/dclr/cert Of Service	
34	03-26-2007	ORSC	Order On Show Cause	
35	03-26-2007	MTHRG	Motion Hearing	
36	04-04-2007	MTRC	Motion For Reconsideration	
37	04-04-2007	NTIS ACTION	Notice Of Issue Mt To Reconsider Order Of 3-26-07	04-16-2007MT
38	04-12-2007	OB	Objection / Opposition	
39	04-12-2007	DCLR	Declaration Of Michael Patterson	
40	04-12-2007	AFSR	Affidavit/dclr/cert Of Service	
41	04-16-2007	NT	Notice/pla's Supplemental Exhibit	
42	04-16-2007	HSTKIC	Hearing Stricken: In Court Other	
43	04-25-2007	NACA	Notice Of Appeal To Court Of Appeal	
-	04-25-2007	\$FFR PLA0001	Filing Fee Received West, Arthur S	250.00
44	04-25-2007	NTIS ACTION	Notice Of Issue Motions To Reconsider 3-12 & 3-26	05-07-2007MT
44	04-25-2007	NTIS ACTION	Notice Of Issue Orders/confirmed/west/4-25-07	05-07-2007MT
44	04-25-2007	NTIS ACTION	Notice Of Issue Confirmed/west/5-2-07	05-07-2007MT
45	05-01-2007	TRLC	Transmittal Letter - Copy Filed Naca/order On Pla's Show Cause Or	
45	05-01-2007	TRLC	Transmittal Letter - Copy Filed	

			Order Granting Def's Mt To Dismiss	
45	05-01-2007	TRLC	Transmittal Letter - Copy Filed To Coa/filing Fee Pd/no Afsr	
46	05-07-2007	ORDYMT	Order Denying Motion/petition	
47	05-07-2007	MTHRG	Motion Hearing	
48	05-14-2007	CRRSP	Correspondence From The Court Of Appeals	
49	05-21-2007	CRRSP	Correspondence From The Court Of Appeals	
50	06-08-2007	DSGCKP	Designation Of Clerk's Papers	
51	07-24-2007	LTR	Letter Re Costs Of Clerk's Papers	
52	09-06-2007	MTSC ACTION	Motion For Order To Show Cause Confirmed By Arthur West 9/18/07	
53	09-17-2007	MTSC	Motion For Order To Show Cause	
54	09-17-2007	NTIS ACTION	Notice Of Issue Mt For Order To Show Cause 1:30	09-24- 2007MT
54	09-17-2007	NTIS ACTION	Notice Of Issue Mt To Vacate	09-24- 2007MT
55	09-17-2007	NTIS	Notice Of Issue See #54	
56	09-17-2007	NACA	Notice Of Appeal To Court Of Appeal Amended	
57	09-17-2007	DSGCKP	Designation Of Clerk's Papers Amended	
58	09-19-2007	CLP	Clerk's Papers Sent Supplemental Amended Notice Of Appeal #56	
59	09-19-2007	CLP	Clerk's Papers Sent	
60	09-20-2007	RSP	Response Of Def In Opposition To Plaintiffs Mt For Show Cause	
61	09-20-2007	DCLR	Declaration Of Michael Patterson In Support Of Def Resp In	

61	09-20-2007	DCLR	Oppo- Declaration Of Michael Patterson Sition To Plaintiffs Mt For Show	
61	09-20-2007	DCLR	Declaration Of Michael Patterson Cause Order	
62	09-20-2007	AFSR	Affidavit/dclr/cert Of Service	
62.1	09-24-2007	RSP ACTION	Response In Support Of Show Cause Confirmed 10-02-07 Arthur West	
63	09-24-2007	ORSC ACTION	Order On Show Cause Confirmed 10-02-07 Arthur West	10-08- 2007MT
62.1	09-24-2007	RSP ACTION	Response In Support Of Show Cause Show Cause @ 1:30	
63	09-24-2007	ORSC ACTION	Order On Show Cause Show Cause @ 1:30	10-08- 2007MT
62.2	09-24-2007	MT	Motion To Strike	
64	09-24-2007	MTHRG	Motion Hearing	
65	10-01-2007	RSP	Response/def's To Pla's Show Cause Order On Motion To Vacate	
-	10-01-2007	DCLR	Declaration Of Faxed Document	
66	10-01-2007	DCLR	Declaration Of Michael Patterson	
67	10-05-2007	RPY	Reply In Support Of Vacation	
68	10-08-2007	MTHRG	Motion Hearing	

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EXHIBIT A-13

IN THE SUPERIOR COURT OF THE STATE
OF WASHINGTON FOR MASON COUNTY

RECEIVED & FILED
MAY - 7 2007
PAT SWARTOS, Clerk of the
Superior Court of Mason Co. Wash.

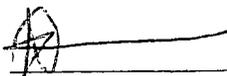
ARTHUR S. WEST,)	No. 07-2-00108-9	OK
Plaintiff)		
v.)	ORDER ON	
THURSTON COUNTY, et al,)	RECONSIDERATION	
Respondents.)		

This matter having come before the Court on May 7, 2007, on plaintiff's 2 motions for reconsideration, and the Court being fully advised in the premises, the Court enters the following order.

Plaintiff's motions for reconsideration are denied.

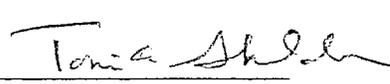
And the same is hereby ORDERED this 7th day of may, 2007.

Presented by



Arthur West

Thurston County



JUDGE 40

ORDER ON
RECONSIDERATION

ARTHUR WEST
120 State Ave N.E. #1497
Olympia, WA. 98501

EXHIBIT A-14

CERTIFICATION OF ENROLLMENT
SUBSTITUTE SENATE BILL 5340

Chapter 317, Laws of 2007

60th Legislature
2007 Regular Session

DISABILITY DEFINITION

EFFECTIVE DATE: 07/22/07

Passed by the Senate April 20, 2007
YEAS 46 NAYS 2

BRAD OWEN

President of the Senate

Passed by the House April 18, 2007
YEAS 62 NAYS 35

FRANK CHOPP

Speaker of the House of Representatives

Approved May 4, 2007, 3:27 p.m.

CHRISTINE GREGOIRE

Governor of the State of Washington

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 5340** as passed by the Senate and the House of Representatives on the dates hereon set forth.

THOMAS HOEMANN

Secretary

FILED

May 7, 2007

Secretary of State
State of Washington

SUBSTITUTE SENATE BILL 5340

AS AMENDED BY THE HOUSE

Passed Legislature - 2007 Regular Session

State of Washington 60th Legislature 2007 Regular Session

By Senate Committee on Judiciary (originally sponsored by Senators Kline, Swecker, Fairley, Kohl-Welles, Shin, Pridemore, McAuliffe, Regala, Murray, Spanel, Franklin, Rockefeller, Kauffman and Keiser)

READ FIRST TIME 02/27/07.

1 AN ACT Relating to the definition of disability in the Washington
2 law against discrimination, chapter 49.60 RCW; amending RCW 49.60.040;
3 and creating new sections.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** The legislature finds that the supreme
6 court, in its opinion in *McClarty v. Totem Electric*, 157 Wn.2d 214, 137
7 P.3d 844 (2006), failed to recognize that the Law Against
8 Discrimination affords to state residents protections that are wholly
9 independent of those afforded by the federal Americans with
10 Disabilities Act of 1990, and that the law against discrimination has
11 provided such protections for many years prior to passage of the
12 federal act.

13 **Sec. 2.** RCW 49.60.040 and 2006 c 4 s 4 are each amended to read as
14 follows:

15 The definitions in this section apply throughout this chapter
16 unless the context clearly requires otherwise.

17 (1) "Person" includes one or more individuals, partnerships,
18 associations, organizations, corporations, cooperatives, legal

1 representatives, trustees and receivers, or any group of persons; it
2 includes any owner, lessee, proprietor, manager, agent, or employee,
3 whether one or more natural persons; and further includes any political
4 or civil subdivisions of the state and any agency or instrumentality of
5 the state or of any political or civil subdivision thereof;

6 (2) "Commission" means the Washington state human rights
7 commission;

8 (3) "Employer" includes any person acting in the interest of an
9 employer, directly or indirectly, who employs eight or more persons,
10 and does not include any religious or sectarian organization not
11 organized for private profit;

12 (4) "Employee" does not include any individual employed by his or
13 her parents, spouse, or child, or in the domestic service of any
14 person;

15 (5) "Labor organization" includes any organization which exists for
16 the purpose, in whole or in part, of dealing with employers concerning
17 grievances or terms or conditions of employment, or for other mutual
18 aid or protection in connection with employment;

19 (6) "Employment agency" includes any person undertaking with or
20 without compensation to recruit, procure, refer, or place employees for
21 an employer;

22 (7) "Marital status" means the legal status of being married,
23 single, separated, divorced, or widowed;

24 (8) "National origin" includes "ancestry";

25 (9) "Full enjoyment of" includes the right to purchase any service,
26 commodity, or article of personal property offered or sold on, or by,
27 any establishment to the public, and the admission of any person to
28 accommodations, advantages, facilities, or privileges of any place of
29 public resort, accommodation, assemblage, or amusement, without acts
30 directly or indirectly causing persons of any particular race, creed,
31 color, sex, sexual orientation, national origin, or with any sensory,
32 mental, or physical disability, or the use of a trained dog guide or
33 service animal by a (~~disabled~~) person with a disability, to be
34 treated as not welcome, accepted, desired, or solicited;

35 (10) "Any place of public resort, accommodation, assemblage, or
36 amusement" includes, but is not limited to, any place, licensed or
37 unlicensed, kept for gain, hire, or reward, or where charges are made
38 for admission, service, occupancy, or use of any property or

1 facilities, whether conducted for the entertainment, housing, or
2 lodging of transient guests, or for the benefit, use, or accommodation
3 of those seeking health, recreation, or rest, or for the burial or
4 other disposition of human remains, or for the sale of goods,
5 merchandise, services, or personal property, or for the rendering of
6 personal services, or for public conveyance or transportation on land,
7 water, or in the air, including the stations and terminals thereof and
8 the garaging of vehicles, or where food or beverages of any kind are
9 sold for consumption on the premises, or where public amusement,
10 entertainment, sports, or recreation of any kind is offered with or
11 without charge, or where medical service or care is made available, or
12 where the public gathers, congregates, or assembles for amusement,
13 recreation, or public purposes, or public halls, public elevators, and
14 public washrooms of buildings and structures occupied by two or more
15 tenants, or by the owner and one or more tenants, or any public library
16 or educational institution, or schools of special instruction, or
17 nursery schools, or day care centers or children's camps: PROVIDED,
18 That nothing contained in this definition shall be construed to include
19 or apply to any institute, bona fide club, or place of accommodation,
20 which is by its nature distinctly private, including fraternal
21 organizations, though where public use is permitted that use shall be
22 covered by this chapter; nor shall anything contained in this
23 definition apply to any educational facility, columbarium, crematory,
24 mausoleum, or cemetery operated or maintained by a bona fide religious
25 or sectarian institution;

26 (11) "Real property" includes buildings, structures, dwellings,
27 real estate, lands, tenements, leaseholds, interests in real estate
28 cooperatives, condominiums, and hereditaments, corporeal and
29 incorporeal, or any interest therein;

30 (12) "Real estate transaction" includes the sale, appraisal,
31 brokering, exchange, purchase, rental, or lease of real property,
32 transacting or applying for a real estate loan, or the provision of
33 brokerage services;

34 (13) "Dwelling" means any building, structure, or portion thereof
35 that is occupied as, or designed or intended for occupancy as, a
36 residence by one or more families, and any vacant land that is offered
37 for sale or lease for the construction or location thereon of any such
38 building, structure, or portion thereof;

1 (14) "Sex" means gender;

2 (15) "Sexual orientation" means heterosexuality, homosexuality,
3 bisexuality, and gender expression or identity. As used in this
4 definition, "gender expression or identity" means having or being
5 perceived as having a gender identity, self-image, appearance,
6 behavior, or expression, whether or not that gender identity, self-
7 image, appearance, behavior, or expression is different from that
8 traditionally associated with the sex assigned to that person at birth;

9 (16) "Aggrieved person" means any person who: (a) Claims to have
10 been injured by an unfair practice in a real estate transaction; or (b)
11 believes that he or she will be injured by an unfair practice in a real
12 estate transaction that is about to occur;

13 (17) "Complainant" means the person who files a complaint in a real
14 estate transaction;

15 (18) "Respondent" means any person accused in a complaint or
16 amended complaint of an unfair practice in a real estate transaction;

17 (19) "Credit transaction" includes any open or closed end credit
18 transaction, whether in the nature of a loan, retail installment
19 transaction, credit card issue or charge, or otherwise, and whether for
20 personal or for business purposes, in which a service, finance, or
21 interest charge is imposed, or which provides for repayment in
22 scheduled payments, when such credit is extended in the regular course
23 of any trade or commerce, including but not limited to transactions by
24 banks, savings and loan associations or other financial lending
25 institutions of whatever nature, stock brokers, or by a merchant or
26 mercantile establishment which as part of its ordinary business permits
27 or provides that payment for purchases of property or service therefrom
28 may be deferred;

29 (20) "Families with children status" means one or more individuals
30 who have not attained the age of eighteen years being domiciled with a
31 parent or another person having legal custody of such individual or
32 individuals, or with the designee of such parent or other person having
33 such legal custody, with the written permission of such parent or other
34 person. Families with children status also applies to any person who
35 is pregnant or is in the process of securing legal custody of any
36 individual who has not attained the age of eighteen years;

37 (21) "Covered multifamily dwelling" means: (a) Buildings

1 consisting of four or more dwelling units if such buildings have one or
2 more elevators; and (b) ground floor dwelling units in other buildings
3 consisting of four or more dwelling units;

4 (22) "Premises" means the interior or exterior spaces, parts,
5 components, or elements of a building, including individual dwelling
6 units and the public and common use areas of a building;

7 (23) "Dog guide" means a dog that is trained for the purpose of
8 guiding blind persons or a dog that is trained for the purpose of
9 assisting hearing impaired persons;

10 (24) "Service animal" means an animal that is trained for the
11 purpose of assisting or accommodating a (~~disabled person's~~) sensory,
12 mental, or physical disability of a person with a disability;

13 (25) (a) "Disability" means the presence of a sensory, mental, or
14 physical impairment that:

15 (i) Is medically cognizable or diagnosable; or

16 (ii) Exists as a record or history; or

17 (iii) Is perceived to exist whether or not it exists in fact.

18 (b) A disability exists whether it is temporary or permanent,
19 common or uncommon, mitigated or unmitigated, or whether or not it
20 limits the ability to work generally or work at a particular job or
21 whether or not it limits any other activity within the scope of this
22 chapter.

23 (c) For purposes of this definition, "impairment" includes, but is
24 not limited to:

25 (i) Any physiological disorder, or condition, cosmetic
26 disfigurement, or anatomical loss affecting one or more of the
27 following body systems: Neurological, musculoskeletal, special sense
28 organs, respiratory, including speech organs, cardiovascular,
29 reproductive, digestive, genitor-urinary, hemic and lymphatic, skin,
30 and endocrine; or

31 (ii) Any mental, developmental, traumatic, or psychological
32 disorder, including but not limited to cognitive limitation, organic
33 brain syndrome, emotional or mental illness, and specific learning
34 disabilities.

35 (d) Only for the purposes of qualifying for reasonable
36 accommodation in employment, an impairment must be known or shown
37 through an interactive process to exist in fact and:

1 (i) The impairment must have a substantially limiting effect upon
2 the individual's ability to perform his or her job, the individual's
3 ability to apply or be considered for a job, or the individual's access
4 to equal benefits, privileges, or terms or conditions of employment; or

5 (ii) The employee must have put the employer on notice of the
6 existence of an impairment, and medical documentation must establish a
7 reasonable likelihood that engaging in job functions without an
8 accommodation would aggravate the impairment to the extent that it
9 would create a substantially limiting effect.

10 (e) For purposes of (d) of this subsection, a limitation is not
11 substantial if it has only a trivial effect.

12 NEW SECTION. Sec. 3. This act is remedial and retroactive, and
13 applies to all causes of action occurring before July 6, 2006, and to
14 all causes of action occurring on or after the effective date of this
15 act.

Passed by the Senate April 20, 2007.

Passed by the House April 18, 2007.

Approved by the Governor May 4, 2007.

Filed in Office of Secretary of State May 7, 2007.