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DIVISION II

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STATE OF WASHINGTON

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

DEPUTY

ARTHUR WEST,

Appellant,

v.

WASHINGTON STATE ASSOCIATION OF CITIES,

Respondent.

On Review From Thurston County Superior Court
The Honorable Paula Casey
Cause No. 11-2-02266-5

BRIEF OF RESPONDENT
ASSOCIATION OF WASHINGTON CITIES

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I. SUMMARY OF ARGUMENT

This appeal involves a Public Records Act dispute. RCW 42.56 *et. al.* Respondent Association of Washington Cities (“AWC”)¹ has produced over 1,800 pages of documents and over 2,000 e-mails to appellant Arthur West (“West”), without redaction or claim of privilege, in response to his February 9, 2011 Public Records Act request that is the subject of this lawsuit. This appeal is focused on three e-mails that were produced by AWC in response to a subsequent and separate Public Records Act request from West dated September 12, 2011, but that West claims are responsive to his earlier February 9, 2011 request. The trial court reviewed these three e-mails *in camera* and determined that they were not responsive to West’s February 9, 2011 Public Records Act request. This Court should affirm that decision.

West admittedly intended to file this lawsuit against AWC seven months before he did so, regardless of whether he had a legal basis. The Public Records Act was never at issue and is not promoted by this lawsuit and the trial court ultimately sanctioned West for his vexatious conduct during the course of the litigation. This Court should affirm that decision.

¹ Incorrectly named in the caption as Washington State Association of Cities.

II. RESTATEMENT OF ASSIGNMENTS OF ERROR

1. Did the trial court correctly conclude, after an *in camera* review, that three e-mails produced by AWC on November 18, 2011 were not responsive to West's February 9, 2011 Public Records Act request for records?

2. Did the trial court correctly conclude that three invoices for legal services contained on an unrelated privilege log were not responsive to West's February 9, 2011 Public Records Act request for records?

3. Did the trial court correctly sanction West for his vexatious conduct during the course of litigation by requiring West to pay no less than \$1,000 for attorney fees to AWC to cover the cost to respond to West's improper motion for reconsideration?

III. STANDARD OF REVIEW

AWC agrees with the standard of review cited by West for the issues in this appeal. Because the trial court did not see or hear testimony requiring it to assess credibility or competency of witnesses, or to weigh evidence, this Court is in as good a position as the trial court and should review all issues *de novo*. *PAWS v. University of Washington*, 125 Wn.2d 243, 252-253, 884 P.2d 592 (1994).

IV. RESTATEMENT OF RELEVANT FACTS

Like any Public Records Act, RCW 42.56 *et. al.*, dispute, this case is, at its core, a discovery dispute. Therefore, AWC sets forth the following relevant facts related to this discovery dispute:

1. West's February 9, 2011 Public Records Act Request.

West submitted the following Public Records Act ("PRA") request to AWC on February 9, 2011:

1. All communications concerning SB 5025, 5022 and 5089 and their companion bills HB 1139, 1033 and 1289, to include any communications concerning drafts or proposals for of (*sic*) any related legislation.
2. All records of any lobbying or correspondence concerning the PRA, from June of 2010 to present, and any proposed alterations or amendments.
3. All information and communications on your "members only" website areas.

(CP: 50).

2. AWC's Response to West's February 9, 2011 Public Records Act Request.

AWC responded to West's PRA request with a letter dated February 16, 2011 acknowledging West's February 9, 2011 PRA request and requesting more than five days to respond. (CP: 53). In addition to this letter, General Counsel for AWC sent an e-mail to West on February 16, 2011 "with links to a portion of records responsive to his first and

second categories of documents identified in his request.” (CP: 42, 55-56).

Internally, AWC started working on West’s PRA request in several ways. First, the General Counsel for AWC “sent an e-mail to AWC’s legislative team, communications staff and accountant regarding [West’s] request for records with a plan for indentifying key individuals with responsive records.” (CP: 44) Next, “a notice was posted in the AWC employee electronic newsletter of [West’s] request for records and a public records hold.” (CP: 44). And AWC’s General Counsel “sent an e-mail to the IT team and key legislative communications and training program staff which identified the search terms to be utilized when searching AWC’s Outlook and other electronic records. The following search terms were developed in consultation with key staff and utilized by AWC in locating documents responsive to AWC’s request:

a. All e-mails and calendar items dated December 1, 2010 through February 10, 2011 containing the following terms: SB 5025, SSB 5025, HB 1034, SB 5022, SSB 5022, SB 5089, HB 1299, HB 1139, SB 5062, HB 1033, HB 1289, SHB 1289. These terms included the bills listed in plaintiff’s request, as well as related, companion, and subsequent versions of the bills and other legislation related to public records in the 2011 legislative session. . . .

b. All e-mails to and from Victoria Lincoln and Serena Dolly, AWC’s primary legislative staff on public records issues, dated June 1, 2010 through February 10, 2011, sent and received by AWC’s legislative contacts on public records issues, Ramsey Ramerman, Everett assistant city

attorney and past president of the Washington Association of Public Records Officers; Joe Beavers, Mayor of Gold Bar; Ginger Eagle, Washington Public Ports Association; Brian Enslow, Washington State Association of Counties; Tim Ford, assistant attorney general; and Ben Lindekugel, Association of Washington Public Hospital Districts. . . .

c. All e-mails to and from AWC legislative staff members (identified above) and selected others including Dave Williams, Dave Catterson, Steve Gorcester, Candice Bock, Candice Holcombe, Serena Dolly, Sheri Sawyer, Victoria Lincoln, Ashley Probart, Sheila Gall, Alicia Seegers Martinelli, dated June 1, 2010 through February 10, 2011 with the following search terms: “requests by or on behalf of an inmate,” “Attorney General,” “statute of limitations,” “Meet and confer,” “notice” and “cure,” or “Tim Ford.” These were identified by legislative staff as common terms for legislation related to public records in the 2011 session.

d. All e-mails to and from legislative and training staff identified as Steve Gorcester, Candice Holcombe, Serena Dolly, Sheri Sawyer, Victoria Lincoln, Sheila Gall, and Alicia Seegers Martinelli, dated June 1, 2010 through February 10, 2011, containing the following search terms: “public records,” RCW 42.56,” or “public disclosure.”

e. All calendar items and e-mails to and from Michelle Harvey and Kate Cherrington, communications staff, dated June 1, 2010 through February 10, 2011, from individuals responsible for magazine and electronic newsletter articles. Those individuals are identified as Bill Hutfilz, Ted Katauskas, Rachel Shaw, Samantha Gardner, Flannary Collins, Ramsey Ramerman, Julie Underwood, Annaliese Harksen, Janessa Hurd, Jean Godden, Angela Belbeck, Dawn Todd, Kathy Turner, Doris Sorum, Janessa Hurd and Wendy Fowler. The January/February 2011 issue of AWC’s Cityvision magazine focused on articles related to public records issues.

f. All e-mails received from plaintiff's e-mail address, awestaa@gmail.com, from June 1, 2010 through February 10, 2011.

(CP: 44-46).

In addition, AWC's General Counsel "worked with legislative, communications, accounting, and training staff to identify responsive computer files and records and gathered paper files related to legislative subject matter, policy development process, PDC reports, and training files related to public records legislation. This search included all of AWC's paper files, the AWC website, AWC's Facebook page, AWC's Twitter page, AWC's YouTube channel videos, electronic newsletters, Outlook files, computer files for legislative, training and communications staff, AWC's training website, AWC surveys, PDC lobbying reports, and CityVision magazine." (CP: 46).

In all, AWC produced over 1,800 pages of records and more than 2,000 e-mails to West, without redaction or claim of privilege, in response to his February 9, 2011 PRA request that is the subject of this lawsuit. (CP: 47).

3. March 3, 2011 Stipulated Settlement and Judgment.

On March 3, 2011, West and AWC entered into a Stipulated Settlement and Judgment ("Judgment") related to a separate lawsuit by

West against AWC alleging a violation of the PRA. (CP: 58-61). Of significance, the Judgment provides, in part, as follows:

3.5 . . . West shall file no action against AWC for a period of six (6) months after entry of this judgment. . . .

3.8. This Judgment terminates any pending obligation of AWC to West under the PRA. Any document not previously produced to West in discovery in [this case], produced on discs delivered to West by AWC on November 8, 2010; or, produced to West by AWC on December 15, 2010 and prior to the date of entry of this Judgment, shall be subject to a new PRA request. That is, any new PRA request from West will be a new request and subject to new production obligation of AWC, as may be required under the PRA.

(CP: 59-60) (emphasis added). The six month moratorium on any action by West against AWC ended on September 3, 2011.

4. West's March 3, 2011 New Public Records Act Request.

On the same date, March 3, 2011, West sent an e-mail to AWC's General Counsel: "Please regard this as a renewal of all pending records requests . . ." (CP: 63). Since the Judgment terminated any pending obligations of AWC to West under the PRA, there were no pending records requests in existence. This was a new PRA request that asked for the same records as West's February 9, 2011 request, plus the following:

For the period February 27, 2004 to February 27, 2007; (a) All records, correspondence, and expenditures made in relation to, or for, lobbying purposes, to include records of any registered lobbyists you employ in any fashion; (b) All records or correspondence of any form related to Thurston County, Tumwater or Olympia.

(CP: 176, 65). AWC responded on March 10, 2011 by letter to West reiterating AWC's understanding of the scope of West's new PRA request and informing him that, because much of his March 3, 2011 request was identical to past requests, it would not be providing electronic or paper copies previously provided to him. (CP: 65).

5. West's April 21, 2011 New Public Records Act Request.

On April 21, 2011, West sent another new PRA request to AWC via e-mail. (CP: 69). "Please consider this as a formal request under RCW 42.56, for disclosure of records, including all previous requests. This request incorporates by reference all previous requests." (CP: 69). In the same e-mail, West asked AWC "Please let me know when . . . the 2010-11 lobbying records will be disclosed." (CP: 70). AWC asked West to clarify: "Please confirm that the public records-related legislative documents from your February 2011 request are the scope of documents you referred to in your e-mail as 2010-11 lobbying documents." (CP: 69). West simply responded "The scope of "lobbying" should be interpreted broadly." (CP: 69).

6. West's April 28, 2011 New Public Records Act Request.

In response to West's April 21, 2011 PRA request, AWC sent an email to him dated April 28, 2011 acknowledging West's April 21, 2011 request and informing him that a portion of the responsive records would

be produced on May 6, 2011. (CP: 43-44). Within three hours of sending this e-mail to West on April 28, 2011, West responded with yet another new PRA request: "Thank you. Please regard this as a request to reopen all pending requests, and especially the most recent inquiries." (C: 69-70).

7. AWC Completed its Response to West's February 9, 2011 Public Records Act Request no Later Than June 30, 2011.

Between February and June of 2011, AWC was actively producing documents in response to West's numerous PRA requests, including to his February 9, 2011 request.

- February 16, 2011: list of links to a portion of records responsive to the first and second categories of his February 9, 2011 request. (CP: 55-56).
- March 10, 2011: letter informing West that several boxes of responsive document were available for his review. (CP: 65).
- March 25, 2011: letter informing West that several more boxes of responsive documents were available for his review. (CP: 67).
- May 6, 2011: letter to West enclosing records responsive to his request. (CP: 72).
- May 31, 2011: letter to West enclosing records responsive to his request. (CP: 74).
- June 10, 2011: letter to West enclosing records responsive to his request. (CP: 75).
- June 30, 2011: letter to West enclosing records responsive to his request. (CP: 76).

The June 30, 2011 letter states: ""With this installment, AWC is considering your documents request to be closed." (CP: 76).

8. West's September 12, 2011 New Public Records Act Request.

Over two months later, on September 12, 2011, West submitted yet another PRA request to AWC. (CP: 181-182). West mistakenly titled this request as a "Violation of Public Records Act."

Please regard this as a notice that the AWC is in violation of the Public Records Act in regard to its statutory duty to reply to the recent request for records of AWC lobbying and AWC contacts with Mike Armstrong.

(CP: 182). West sent this document via e-mail and due to technical issues that are not at issue here, AWC did not receive West's September 12, 2011 request until October. (CP: 183). Because West had not previously requested "records of AWC lobbying and AWC contacts with Mike Armstrong," AWC considered this a new PRA request, as it was required to do:

While you did not clarify your request in response to Mark Erickson's October 26, 2011 letter to you, *AWC conducted a search for communications with Rep. Armstrong from June 2010 to February 2011 in response to your September 12, 2011 e-mail.* Enclosed is a disk with records related to that search, including ones previously provided to you this year based on a search for documents related to lobbying on public records and specific related legislation.

(CP: 190)(emphasis added). There are three e-mails in this November 18, 2011 production that West alleges are responsive to his February 9, 2011 PRA request. (CP: 377-381).

9. AWC Produced an Exemption and Redaction Log on December 1, 2011 Related to Earlier Public Records Act Requests That Had Been Renewed by West.

On December 1, 2011, AWC produced an exemption and redaction log for documents “primarily related to [West’s] April 21, 2011 request . . .” (CP: 197-200). Included on this log are fifteen monthly statements from the law firm of Foster Pepper to AWC beginning on February 20, 2008 and continuing through August 10, 2010. (CP: 199-200). Foster Pepper represented AWC in the earlier lawsuit that resulted in the Stipulated Settlement and Judgment on March 3, 2011. (CP: 58-61). West alleges that three of the fifteen Foster Pepper invoices on the log are responsive to his February 9, 2011 PRA request.

10. The Trial Court Decided, and West Does Not Dispute, That This Lawsuit is Related *Only* to West’s February 9, 2011 Public Records Act Request.

West filed his Complaint in this action against AWC on October 20, 2011 in Thurston County Superior Court alleging that AWC failed to respond to his February 2011 PRA (“PRA”) request “for records concerning the AWC’s lobbying to weaken the PRA and for AWC communications with Rep. Mike Armstrong.” (CP: 5). A review of his February 9, 2011 RPA request reveals exactly what West requested and he most definitely did *not* request records “concerning AWC’s lobbying to weaken the PRA and for AWC communications with Rep. Mike

Armstrong.” (CP: 50). Instead, that is what he requested in his September 12, 2011 PRA request. (CP: 190).

In response to West’s complaint, defense counsel for AWC wrote to West informing him that AWC’s records show that all documents responsive to his February 9, 2011 request for records had been produced and asking West to identify the basis of his lawsuit. (CP: 33- 40). The letter also put West on notice that AWC believed that West’s complaint lacked merit and was potentially sanctionable under Washington CR 11. (*Id.*). West responded by letter accusing counsel of extortion as well as violations of “18 USC and U.S. Postal regulations concerning threats and harassing communications.” (CP: 39).

As required for any PRA action, an expedited scheduling conference was set in this matter on January 27, 2012 to identify exactly what documents West thought he was entitled to and did not have. Thurston County Local Rule 16(c)(1)(E). West failed to appear at this hearing. (CP: 364).

11. Both Parties Moved for Summary Judgment.

AWC moved for summary judgment asserting that it had fully complied with West’s February 9, 2011 PRA request and that his complaint, therefore, failed to state a claim upon which relief could be granted and was not well grounded in fact. (CP: 18-31). West filed a

cross-motion for summary judgment alleging that AWC withheld PRA records from him and only produced these records after West filed this lawsuit. (CP: 77-95). The trial court heard oral argument and requested that the parties jointly submit all records produced by AWC to West on November 18, 2011 that had not previously been produced to West as part of earlier document productions. (CP: 372, 373-385, 387-408). West focuses his arguments here on three e-mails that were part of that production. (CP: 377-381, also produced at 390-397). The trial court agreed to conduct an *in camera* review of these three e-mails and determined that “none of these three documents are responsive to Mr. West’s February 2011 records request.” (CP: 416). The trial court granted AWC’s Motion for Summary Judgment. (CP: 416).

12. Facts Related to the Imposition of Sanctions Against West.

AWC requested that sanctions be assessed against West in every brief it filed with the court: in its Answer (CP: 15); in its Motion for Summary Judgment (CP: 29-31, 367-369); in its Response to Plaintiff’s Supplemental Brief in Support of Summary Judgment (CP: 412-413); and in its Opposition to Plaintiff’s Motion for Reconsideration (CP: 435, 460-461).

In each of these briefs, AWC set forth the reasons that sanctions should be imposed. Initially, AWC sought CR 11 sanctions because there

were no facts to support West's claim. (CP: 29-31). In good faith, AWC wrote to West, after he filed his Complaint, to inform West that AWC's records showed that all documents responsive to his February 9, 2011 PRA request had been produced. (CP: 37). West responded by accusing AWC of extortion and "violation of 18 U.S.C. and U.S. Postal regulations concerning threats and harassing communications." (CP: 39). Then West failed to appear at the required scheduling conference where the purpose was to identify the issues in dispute. Thurston County Local Rule 16(c)(1)(E).

AWC added to its basis for sanctions against West by setting forth facts and argument demonstrating that West's litigation tactics were troublesome and bordering on dishonest. (CP: 367-369). When AWC was forced to respond to West's improperly filed "Supplemental Brief in Support of Summary Judgment" (CP: 373-385), AWC renewed its request for sanctions because of West's dilatory conduct. West "could have made any of the arguments in his Supplemental Brief either in his moving papers or at the time of oral argument." (CP: 412).

Finally, after the trial court reviewed the three documents at issue and concluded that none of them were responsive to West's February 9, 2011 records' request (CP: 416), West moved for reconsideration offering no new arguments for the trial court to consider. (CP: 426-429). AWC

once again renewed its request for sanctions arguing that West's own dilatory conduct subjected him to sanctions. (CP: 435-436). West failed to appear at status conferences and failed to respond, in good faith, to meet and confer requests from AWC's counsel. (CP: 436). Moreover, AWC argued that it was forced to spend attorneys fees responding to a Motion for Reconsideration that simply re-argued a motion already lost, in violation of the rule governing motions for reconsideration (CP: 432). Considering this history, when the trial court entered its Order Denying Plaintiff's Motion for Reconsideration, it awarded fees incurred by AWC in responding to West's Motion for Reconsideration in an amount no less than \$1,000. (CP: 464).

V. ARGUMENT

1. The Three E-mails at Issue in This Appeal Are Responsive to West's September 12, 2011 Public Records Act Request for Documents but Not to West's February 9, 2011 Request.

West asserts that three e-mails produced by AWC on November 18, 2011 were improperly withheld from him in response to his February 9, 2011 PRA request. The three e-mails were produced to West in response to his September 12, 2011 PRA request wherein he specifically asked for "records of AWC lobbying and AWC contacts with Mike Armstrong." (CP: 182). West had never before made this request. Thus,

AWC considered it a new request and conducted a new search for documents that revealed the three e-mails at issue.

These e-mails are not responsive to West's February 9, 2011 PRA request. That request very specifically sought any communications concerning drafts or proposals for any legislation related to *specific* bills introduced into the 2011 legislative session, and, all records of proposed or drafted amendments or alterations to the PRA from June 2010 to February 9, 2011, and all postings on AWC's members only website. (CP: 50).

The Washington Supreme Court has held that the standard of reasonableness applies to an Agency's search for records. "The adequacy of a search is judged by a standard of reasonableness, that is, the search must be reasonably calculated to uncover all relevant documents." *Alliance of Spokane County v. Spokane County*, 172 Wn.2d 702, 726, 261 P.3d 119 (2011). AWC's search was more than reasonable, by anyone's standards, for documents and e-mails responsive to West's February 9, 2011 request. (CP: 44-46). Indeed, AWC produced over 1,800 documents and more than 2,000 e-mails in response to West's February 9, 2011 request.

Each of the three e-mails at issue are between Serena Dolly, a legislative and policy analyst with AWC, and Representative Armstrong.

(CP: 377-381, also duplicated at 390-397). While the documents speak for themselves, it is fair to summarize each of these e-mails as reminders by Ms. Dolly to Rep. Armstrong about logistics for the upcoming Annual Conference. These e-mails were never posted to the AWC's members-only website. These e-mails do not mention any of the specific proposed House Bills or Senate Bills referenced in West's February 9, 2011 PRA request. Nor do these e-mails mention or address any related lobbying or amendments to legislation. They simply are not responsive to West's February 9, 2011 PRA request and the trial court correctly concluded the same.

West asserts that each of these three e-mails falls within the date range of June 2010 to February 9, 2011 which was the date range specified by West for records of lobbying or correspondence concerning the PRA. But just because the e-mails fit within West's time frame does not mean they are responsive to his specific request. There is nothing about these three e-mails that mentions or discusses lobbying efforts related to the PRA. In his February 9, 2011 PRA request, West requested *and received* Rep. Armstrong's materials entitled "Rules for Playing in the Open Government Sandbox." West did not ask for all logistical communications leading up to Rep. Armstrong's presentation at the AWC Annual Conference.

West also asserts, without citation to authority, that Rep. Armstrong was one of the primary sponsors of the legislation identified in his February 9, 2011 PRA request. However, a review of the history of these pieces of legislation, submitted by West, reveals that Rep. Armstrong was *not* a named sponsor of any of the subject legislation. (CP: 156-172). This is simply one more reason why these three e-mails are not responsive to West's February 9, 2011 PRA request.

West has failed to meet his burden in this action of proving that AWC wrongfully withheld documents. *Alliance of Spokane County v. Spokane County*, 172 Wn.2d 702, 726, 261 P.3d 119 (2011).

2. The Exemption and Redaction Log Produced by AWC Was In Response to a Different Public Records Act Request Made by West.

On December 1, 2011, AWC produced an exemption and redaction log for documents primarily related to West's April 21, 2011 PRA request. (CP: 197-200). Included on this log are fifteen monthly statements from the law firm of Foster Pepper to AWC beginning on February 20, 2008 and continuing through August 10, 2010. (CP: 199-200). West asserts that because three of the Foster Pepper legal bills are dated between June 2010 and February 9, 2011, that they are necessarily responsive to West's February 9, 2011 PRA request for "all records of any . . . correspondence concerning the PRA from June of 2010 to [February 9, 2011]."

Once again, just because the privilege log entries fit within West's time frame does not mean they are responsive to his specific request. Foster Pepper represented AWC in the earlier PRA litigation brought by West in which the Stipulated Settlement and Judgment was entered. (CP: 58-61). Legal bills from a firm defending AWC in litigation brought by West are not, under any circumstances, "correspondence concerning the Public Records Act." West is fully aware that the work of Foster Pepper was related to litigation and not legislation. The trial court correctly concluded that a select number out of several legal bills appearing on an exemption and redaction log related to a separate PRA request by West are *not* responsive to West's February 9, 2011 PRA request.

3. This Case Was Brought by West for an Improper Purpose.

The PRA stands for the proposition that full access to information concerning the conduct of government on every level must be assured as a fundamental and necessary precondition to the sound governance of a free society. *Neighborhood Alliance of Spokane County v. Spokane County*, 172 Wn.2d 702, 714-715, 261 P.3d 119 (2011) (internal citations omitted). AWC asserts that this lawsuit was brought by West *not* to advance the purpose behind the PRA of full disclosure of public records, but was instead brought by West for in improper purpose.

As the record reflects, West made several PRA requests to AWC between February and September of 2011. (CP:50,63,69,70). The record also reflects that AWC conducted an extensive search for records responsive to these PRA requests. (CP:44-46) Finally, the record reflects that AWC acted in good faith by producing over 1,800 documents and over 2,000 e-mails to West in response to these PRA requests. (CP: 55-56, 65, 67, 72, 74, 75, 76). Clearly, AWC produced a large volume of documents and conducted an exhaustive internal search in order to respond to West's PRA.

But it is equally clear that none of this would ever have been sufficient for West because he was not seeking full access to information under the PRA about AWC's alleged efforts to lobby "the legislature to weaken and limit the application of the public records act." (CP: 175). Instead, West brought this lawsuit for an admitted improper purpose, unrelated to the PRA: "I was angry [at AWC about the prior PRA lawsuit]. I still am. I feel that AWC tricked me." (CP: 174). On March 3, 2011, the very same day that West entered into the Stipulated Settlement and Judgment in the prior PRA lawsuit against AWC, West wrote the following to AWC:

Please regard this as a renewal of all pending records requests and *notice of intent to refile for an action for fraud and violation of the PRA in September of 2011.*

(CP: 63) (emphasis added). The Stipulated Settlement and Judgment specifically prohibited West from filing any action against AWC for six months after entry of the Judgment. (CP: 59). Those six months were up on September of 2011. West intended to file this action against AWC regardless of whether he had any legal basis to do so.

West is a vexatious litigant who, by his own admission, is no stranger to litigation. (CP: 173). In an Order to Show Cause against West filed by the Honorable Judge Leighton of the U.S. District Court for the Western District of Washington in three separate actions involving West², Judge Leighton details West's litigation history which includes filing or joining 49 Washington state court cases and 18 cases in the Western District of Washington since 1999. In a separate case³, the Honorable Judge Settle of the U.S. District Court for the Western District of Washington also found West to be a "vexatious litigant."

AWC asserts that this lawsuit was brought by West *not* to advance the purpose behind the PRA. Therefore, AWC requests that this Court affirm the trial court's Order Granting Summary Judgment in favor of AWC and deny any request by West for relief.

² Those actions are: *Arthur West v. Bruce and Rhonda Hilyer, et. al.*, Cause No. 10-05395-RBL; *Arthur West v. Bryan Chushkoff, et. al.*, Cause No. 10-5547-RBL; and *Michael McCall and Arthur West v. Intercity Transit, et. al.*, Cause No. 10-5564-RBL.

³ *Arthur West v. Maxwell*, Cause No. 10-5275-BJS, Bar Order, Dkt. #59 at p. 11.

4. The Trial Court's Inherent Power to Sanction is Governed not by Rule or by Statute but by the Control Necessarily Vested in Courts to Manage Their own Affairs so as to Achieve the Orderly and Expeditious Disposition of Cases.

Vexatious conduct during the course of litigation, also known as procedural bad faith, is one type of recognized sanctionable bad faith conduct. *Greenbank Beach & Boat Club, Inc. v. Bunney*, 168 Wn. App. 517, 525-527, 280 P.3d 1133 (2011) (internal citations omitted). Procedural bad faith does not relate to the merits of the case; instead, it refers to “vexatious conduct during the course of litigation.” *Rogerson Hiller Corp. v. Port of Port Angeles*, 96 Wn. App. 918, 927-29, 982 P.2d 131 (1999), *review denied*, 140 Wn.2d 1010 (2000) (quoting Jane P. Mallor, *Punitive Attorneys' Fees for Abuses of the Judicial System*, 61 N.C. L. Rev. 613, 644 (1983). “The purpose of this type of award is ‘to protect the efficient and orderly administration of the legal process.’” *Id.*

This court has held that a trial court's inherent authority to sanction litigation conduct may be appropriate if an act affects “the integrity of the court and, [if] left unchecked, would encourage future abuses.” *Wilson v. Ellison*, 2008 Wash. App. LEXIS 1213, 31-32 (May 20, 2008) (citations omitted). Even though the trial court did not set forth a finding of bad faith against West, this Court is in the same position as the trial court to acknowledge West’s vexatious conduct throughout the litigation, and in particular, in filing his motion for reconsideration, and to affirm the trial

court's imposition of attorneys fees in favor of AWC of no more than \$1,000.

West exhibited a pattern of vexatious conduct throughout this case. Initially, when asked by counsel for AWC to explain the basis for his accusation that AWC had not complied with the PRA related to West's February 9, 2011 request, West responded by letter accusing counsel of extortion as well as violations of "18 USC and U.S. Postal regulations concerning threats and harassing communications." (CP: 39).

Then, West failed to appear at the scheduling conference to inform the court and counsel what the issues were in his case against AWC. (CP: 364). Without seeking leave of court to do so, West filed a "Supplemental" Memorandum in Support of Cross-Motion for Summary Judgment (CP: 373-386), to which AWC was forced to respond. (CP: 409-413). After the trial court ruled in favor of AWC, West filed a Motion for Reconsideration arguing that the trial court had committed an error of law. CR 59(a)(8) (CP: 426-429). But West cited no law in his motion and he raised no new arguments. Instead, he simply reiterated what he had argued in his Cross-Motion for Summary Judgment, his Reply in Support of Cross-Motion for Summary Judgment, and his Supplemental Memorandum in Support of Cross-Motion for Summary Judgment. In reviewing the totality of the circumstances and West's

conduct throughout the litigation, the trial court correctly required West to pay up to \$1,000 in attorneys fees to AWC for responding to his motion for reconsideration. AWC asserts that decision should be affirmed.

VI. CONCLUSION

Based on the foregoing facts and argument, Respondent Association of Washington Cities respectfully requests that this Court affirm the decision of the trial court to grant summary judgment to AWC and to award up to \$1,000 in sanctions against West for responding to West's Motion for Reconsideration.

DATED this 11th day of January, 2013.

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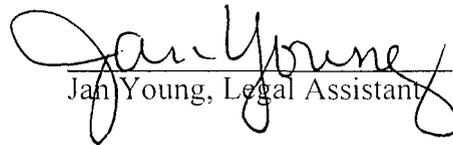
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CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of January, 2013, I
mailed a true and correct copy of the foregoing document on the following
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