

FILED

APR 17 2015

COA Nos. 32596-2-III XXX
32643-8-III

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION III

STEVEN P. KOZOL,
Appellant,

vs.

WASHINGTON STATE DEPARTMENT OF CORRECTIONS,
Respondent.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR WALLA WALLA COUNTY
HONORABLE JOHN W. LOHRMANN

APPELLANT STEVEN P. KOZOL'S OPENING BRIEF
(COA No. 32643-8-III)

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ORIGINAL

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INTRODUCTION

Under the Public Records Act, an agency must produce an identifiable record in its entirety when requested, unless all or a portion of the record is exempt from production.

Under the Public Records Act, an agency must conduct an adequate search for the requested records, which includes searching other locations where the record could reasonably exist.

An agency violates the Public Records Act when it destroys a record after receiving a request for the record, and the request has yet to be resolved through completion of judicial review.

When a plaintiff moves to amend claims, and the claims meet the criteria of CR 15(c), amendment cannot be denied by the court on the basis that the claims are otherwise time-barred.

ASSIGNMENTS OF ERROR

Assignment of Error No. 1: The trial court erred in denying Plaintiff's motion to amend complaint under CR 15(a),(c).

Assignment of Error No. 2: The trial court erred in denying Plaintiff's (second) motion to amend complaint under CR 15(a),(c), and Plaintiff's CR 42(a) motion for consolidation.

Assignment of Error No. 3: Plaintiff's 21 new claims were amended into the pleadings under CR 15(b).

Assignment of Error No. 4: The trial court erred in denying Plaintiff partial summary judgment, and in granting Defendant summary judgment dismissal.

ISSUES PERTAINING TO THE ASSIGNMENTS OF ERROR

Issues Pertaining to Assignment of Error No.1:

Issue No. 1: Was it an abuse of discretion to deny amendment of 21 new claims regarding records requests nos. PDU-15130 to PDU-15250?

Issue No. 2: Was it an abuse of discretion to deny amendment of 31 new claims regarding records requests nos. PDU-18880 to PDU-18910?

Issues Pertaining to Assignment of Error No. 2:

Issue No. 1: Did the trial court err in denying Plaintiff's second CR 15(a),(c) motion to amend?

Issue No. 2: Did the trial court err in denying Plaintiff's CR 42(a) motion for consolidation?

Issues Pertaining to Assignment of Error No. 3:

Issue No. 1: Were the 21 new claims amended under CR 15(b) without objection?

Issue No. 2: Did the court err in not granting Plaintiff's motion to strike Defendant's untimely response on summary judgment?

Issue No. 3: Were the 21 new claims tried by express or implied consent?

Issue No. 4: Did the trial court err in denying Plaintiff's CR 15(b),(c) motion to amend?

Issue No. 5: Were the 21 new claims of unlawful record destruction time-barred?

Issue No. 6: Was amendment of the 21 claims precluded because of the court's denial of Plaintiff's motion for voluntary dismissal of the claims in the companion case?

Issues Pertaining to Assignment of Error No. 4:

Issue No. 1: Was there evidence Defendant violated the Public Records Act that precluded summary judgment dismissal in favor of Defendant, and required partial summary judgment in favor of Plaintiff?

Issue No. 2: Did Defendant silently withhold records in responding to Plaintiff's PRA requests?

Issue No. 3: Was Defendant's search of records location inadequate?

Issue No. 4: Was Defendant's partial search for requested records an inadequate search?

Issue No. 5: Did Defendant's destruction of records violate RCW 42.56.100?

Issue No. 6: Does the Public Records Act permit an agency to sua sponte modify or change a specific records request without the requestor's consent?

Issue No. 7: Did the trial court err in denying Plaintiff's motion for CR 56(f) continuance?

Issue No. 8: Did a genuine dispute of material fact preclude summary judgment?

Issue No. 9: Was Defendant's evidence insufficient to support summary judgment dismissal?

STATEMENT OF FACTS

Pursuant to RAP 10.1(g), Appellant hereby incorporates and adopts all facts presented in COA No. 32596-2-III, Opening Brief of Appellant, at 3-7.

PROCEDURAL HISTORY

Plaintiff filed the complaint (CP 1-2), and then in response to Defendant's CR 12(e) motion, filed a first amended complaint. CP 8-9. Defendant filed its answer. CP 10-12. Plaintiff moved to amend the complaint under CR 15(a),(c). CP 14-55. Defendant filed an opposition to the motion. CP 56-68. Plaintiff filed his reply. CP 69-82. Plaintiff filed a supplemental memorandum and supporting declaration. CP 90-94.

The trial court denied the amendment by letter decision. CP 95. No order was entered denying this amendment. Plaintiff moved for reconsideration. CP 96-107. The trial court denied reconsideration by letter decision. CP 108. No order was entered denying reconsideration of amendment.

Plaintiff moved for partial summary judgment as to Defendant's violation of the PRA. CP 109-27. Defendant filed an opposition to partial summary judgment. CP 128-73. Plaintiff filed a CR 15(a),(c) motion to amend. CP 174-228. Plaintiff filed a CR 42(a) motion for reconsideration. CP 229-36. Plaintiff filed an amended motion for partial summary judgment. CP 240-402.

The trial court entered a decision and order denying the motion to consolidate, and the second CR 15(a),(c) motion to amend. CP 237-39. Plaintiff filed a CR 59 motion for

reconsideration. CP 453-62. Defendant filed its response. CP 514-32. Plaintiff filed his reply. CP 533-37.

Defendant filed a motion for summary judgment. CP 410-48. Plaintiff filed a response on summary judgment, and a CR 56(f) motion. CP 480-511. Plaintiff filed a supplemental memorandum on its response on summary judgment. CP 539-49. Plaintiff filed a CR 15(b),(c) motion to amend. CP 464-79. Plaintiff filed an omnibus supplemental memorandum on summary judgment, partial summary judgment, motion to amend, and motion to strike. CP 550-65.

The trial court entered an order granting summary judgment dismissal to defendant. CP 570-71. Plaintiff filed an omnibus motion for reconsideration on several motions. CP 573-79. The trial court entered an order denying Plaintiff's motion to reconsider, motion for CR 56(f) continuance, and motion for partial summary judgment. CP 596-97. Defendant filed a proposed judgment and cost bill, to which Plaintiff filed his objection. CP 592-95. The trial court entered judgment in favor of Defendant. CP 599.

ARGUMENT

A. The Trial Court Erred in Denying Leave to Amend Complaint Under CR 15(a), (c).

Plaintiff moved to amend 21 new claims pertaining to records requests PDU-15230 to PDU-15250, and 31 new claims pertaining to requests nos. PDU-18880 to PDU-18910. CP 14-

29. Supporting declaration evidence established Plaintiff had submitted a series of same-subject follow-up requests seeking silently withheld responsive records in all 53 requests. CP 30-55.

Defendant filed its opposition, arguing that both the 21 and 31 new claims were time-barred under RCW 42.56.550(6). CP 57-61. Defendant argued the claims did not relate back under CR 15(c). CP 62. Defendant claimed it would be prejudiced by the amendment. CP 63.

Plaintiff filed his reply, arguing that under Johnson v. Dept. of Corrections, 164 Wn.App. 769, 775, 265 P.3d 216 (2011) the 52 new claims were not time-barred, because accrual of the statute of limitations began from Defendant's last letter responding to Plaintiff's last same-subject follow-up request. CP 71-72.

Plaintiff also argued that (a) the 21 claims related back under CR 15(c) because they arose from the same conduct, transaction, or occurrence as that set forth in the original complaint (CP 73); and, (b) in regards to the 31 new claims, Defendant's silent withholding of responsive pages, and Plaintiff exercising due diligence in communications with his attorney resulted in Plaintiff not discovering the fact that records were withheld in these request until more than one-year after the records were made available in May 2012. CP 73-74, 81-82.

The court issued a letter decision denying the amendment. The letter decision stated no basis for the decision. CP 95. No order was ever entered.

Plaintiff filed a timely motion for reconsideration, noted with oral argument, arguing the 21 new claims met the CR 15(c) relation-back criteria, precluding denial of amendment. CP 98-102. Plaintiff also sought to bring the 31 claims under CR 15(d). CP 103. Plaintiff argued the 31 claims were timely under Johnson v. DOC. CP 103. Plaintiff pointed out that Defendant failed to establish any actual, specific prejudice, other than being sued for additional claims. CP 102.

On December 31, 2013 the court struck Plaintiff's oral arguments and issued a letter decision denying reconsideration, stating no basis for the decision. CP 108. No order was ever entered.

1. CR 15 standard of review

Rule 15(a) specifically provides that leave to amend "shall be freely granted when justice so requires." CR 15(a). The rule serves to facilitate proper decisions on the merits, to provide parties with adequate notice of the basis of the claims and defenses asserted against them, and to allow amendment of the pleadings except where amendment would result in prejudice to the opposing party. Wilson v. Horsley, 137 Wn.2d 500, 505, 974 P.2d 316 (1999); Caruso v. Local Union No. 690, 100 Wn.2d 343, 349, 670 P.2d 240 (1983).

When reviewing the court's decision to deny leave to amend, appellate courts apply a manifest abuse of discretion test. Caruso, 100 Wn.2d at 351.

2. It was an abuse of discretion to deny amendment of the 21 claims re: nos. PDU-15230 to 15250.

The trial court denied amendment of the 21 new claims ostensibly on the basis they were time-barred. This was untenable for two reasons. First, the claims were brought within one year of Defendant's last response to Plaintiff's last follow-up request. The record before the court at the time showed the agency's last response was dated July 2, 2013. CP 51. Under Johnson, Plaintiff had one year to bring these new claims. Johnson, 164 Wn.App. at 778-79. Moving to amend these claims in December 2013 was timely.

Second, the 21 claims were not time-barred because they met the relation-back criteria of CR 15(c). The record before the court established that (1) the 21 new claims were submitted at the same time as the 1 claim already pled (CP 24, 30); (2) Defendant's same employee responded to all 22 requests at the same time (CP 24, 30); (3) Defendant identified responsive records in the 21 requests at the same time as the 1 claim already pled (CP 25, 31); (4) Plaintiff's December 8, 2011 follow-up letter asked for all 22 sets of records to be sent to the same email address (CP 25); (5) Defendant's December 20, 2011 letter agreed to email all

22 sets of records to the same email address (CP 25); (6) Defendant emailed responsive records for the 1 claim already pled at the same time as it emailed records for the 21 new claims (CP 25); (7) Plaintiff sent Defendant a series of same-subject follow-up request letters, each of which addressed all 22 claims simultaneously (CP 36-55); (8) Defendant classified these 21 new claims as being part of this litigation on 1 claim when it responded to notice of the 21 new claims by listing them all as "Walla Walla County Superior Court Cause No. 12-2-00285-2" (CP 38, 51); (9) the 21 new claims, as well as the 1 claim pled, all were requests for the same class of records originating from the Washington State Penitentiary (CP 90-94).

Defendant's argument was meritless, that simply because Mr. Kozol was pleading each of the 22 claims as separate violations of the PRA, they could not meet the criteria of CR 15(c). CP 62-63.

By the requirement of CR 15(c), these 21 new claims have to arise out of the conduct, transaction or occurrence that was set forth or attempted to be set forth in the original complaint. But to be clear, these 21 claims do not have to literally be the exact same conduct set forth in the original pleading; this is not what CR 15(c) states. Rather, the new claims must only arise out of the pleaded conduct, transaction or occurrence. By this distinction, the fact that Plaintiff submitted all 22 requests at the

same time, to the same agency, to the same public records officer, and for the same class of records, alone establishes all 22 claims to arise out of the same "conduct, transaction or occurrence" as initially pled. CR 15(c).

Consideration of the totality of facts that both Plaintiff and Defendant several times treated all 22 requests as one set of records requests, and that the agency even emailed/produced the 1 set of records at the same time as producing records for the 21 new claims, goes to further solidify all 22 claims to have arisen from the same conduct, transaction or occurrence. Defendant's classifying all 22 claims as being part of the same case, "No. 12-2-00285-2" leaves no doubt that they were considered part of the same conduct, transaction or occurrence.

"The test for relation-back...is...whether the defendant had notice of the lawsuit and accordingly was not prejudiced...." Komavongsa v. Haskell, 149 Wn.2d 288, 317, 67 P.3d 1068 (2003); see also Beal for Martinez v. City of Seattle, 134 Wn.2d 769, 782, 954 P.2d 237 (1998) ("The purpose of CR 15(c)...is to permit amendment provided the defendant is not prejudiced and has notice.")

Seven follow-up letters notifying Defendant of withheld records constitutes adequate notice.¹

¹ It stands to reason that if Defendant had any other knowledge of these potential claims, such as from the prison reading and copying Plaintiff's mail, or similar, this would further establish the notice element for relation back under CR 15(c).

Additionally, there is no merit to argument that delay in bringing these claims was inexcusable neglect. Inexcusable neglect is only considered when amending a new party. A new claim is not subject to the inexcusable neglect analysis. Stansfield v. Douglas County, 146 Wn.2d 116, 122, 43 P.3d 498 (2002). It is an abuse of discretion to deny amendment solely on the basis that the moving party has delayed seeking amendment. Caruso, 100 Wn.2d at 349.

"[S]ince a new claim relates back, there is no risk that it will be barred by the statute of limitations (assuming the original claim was filed within the time allowed)." Karl B. Tegland, Vol.14 Wash. Practice: Civil Procedure (2nd ed. 2012), §12:40 (citing RTC Transport Inc. v. Walton, 72 Wn.App. 386, 864 P.2d 969 (Div.3, 1994)).

Finally, there was no prejudice from the amendment. Defendant's argument of prejudice amounted to simply praying, "Don't let him sue us, because then he'll sue us." A party opposing amendment must establish actual prejudice that cannot be cured by a continuance. Simply having to meet new claims is not sufficient prejudice to deny amendment. If it was, no amendment would ever be granted. Something more is required. Thomas v. French, 30 Wn.App. 811, 638 P.2d 613 (1981).

Nor is there any prejudice from potentially facing additional statutory penalties. CP 63. Penalties in this case are only available if (a) the PRA was violated, and

(b) if the agency acted in bad faith. Defendant's CR 11 certified Answer stated it did not violate the PRA, so penalties would be nonexistent. CP 10-12. At this stage, Plaintiff simply was seeking records, and there was no evidence of bad faith. Claims of unduly prejudicial penalties were not supported, and were thus unfounded and conclusory, and insufficient to establish prejudice. However, "[t]he PRA is a forceful reminder that agencies remain accountable to the people of the State of Washington." Yousoufian v. Office of Ron Sims, 168 Wn.2d 444, 466, 229 P.3d 735 (2010). Ergo, penalties, whether real or potential, are not reason to cause prejudice from amendment of these 21 claims.

It was untenable to deny amendment of these 21 new claims as time-barred when they were timely under Johnson, and also related-back under CR 15(c). An untenable legal conclusion is an abuse of discretion. Lisby v. PACCAR, Inc., 178 Wn.App. 516, 521, 316 P.3d 1100 (2013). Likewise, a ruling based on an erroneous legal interpretation is necessarily an abuse of discretion. Maziar v. Wash. St. Dept. of Corrections, 2014 WL 1202985 *12 (citation omitted).

3. The trial court erred in denying leave to amend 31 claims re: requests nos. PDU-18880 to 18910.

Plaintiff sought to amend 31 claims regarding requests nos. PDU-18880 to PDU-18910 under CR 15(a). CP 14-29. Defendant made available what it purported to be all

responsive records on May 16, 2012. CP 31. Plaintiff's series of same-subject follow-up requests included these 31 requests. Therefore, under Johnson, 164 Wn.App. at 778-79, these 31 claims were brought within one year of the agency's last response to Plaintiff's last follow-up request, and were therefore not time-barred.²

Defendant had adequate notice of these claims from being sent seven follow-up letters, so there was no prejudice. CP 36-55. Moreover, any venue considerations could be easily resolved either by stipulation of the parties, or by removing all claims to Thurston County Superior Court. CP 77-78. Venue issues cannot preclude amendment of these claims, as a matter of law. Leave to amend should have been freely granted.

B. The Trial Court Erred in Denying Plaintiff's (second) CR 15(a),(c) Motion to Amend, and Motion to Consolidate

After the trial court denied Plaintiff's initial motion to amend the 52 new claims, he filed the 21 new claims (PDU-15230 to PDU-15250) in a new action, Kozol v. WDOC, WWCSC No. 13-2-00930-8. CP 601-07. On April 26, 2014, Plaintiff filed (GR 3.1) both a (second) motion to amend under CR 15(a),(c), and a CR 42(a) motion for consolidation. Amendment sought to add claims of PRA violations in requests nos. PDU-15230 to PDU-15250. CP 175-76. Amendment was based

² Though not before the court at the time, Defendant's last response to Plaintiff's last follow-up request actually occurred on December 12, 2013. CP 788-89.

upon voluntary dismissal of the claims in the companion case. CP 180, 184-90. The alternate motion to consolidate sought to consolidate the 21 claims from the companion case with the 1 claim in the instant case. CP 229-36.

Consolidation was denied on the grounds that "By order entered in Cause No. 13-2-00930-8 this same date, the Court denied the motion to consolidate and does so in this case as well." CP 237-38. The May 12, 2014 order summarily denied the (second) CR 15(a),(c) motion to amend on the grounds, "[t]he Plaintiff's Motion to Amend Complaint is denied as it was previously by Judge Wolfram." CP 239. Denial of consolidation and amendment were error.

1. Standard of review

Denial of amendment, and consolidation, are generally reviewed on appeal under an abuse of discretion standard. However, because in this case Plaintiff filed a motion for reconsideration on both the (second) CR 15(a),(c) motion to amend, and the motion to consolidate (CP 453-62), the de novo standard of review applies.

When an order on a CR 59 motion is based upon rulings of law, no element of discretion is present, and the rulings are subject to de novo review. Allyn v. Boe, 87 Wn.App. 722, 729, 943 P.2d 364 (1997), review denied, 134 Wn.2d 1020; Detrick v. Garretson Packing Co., 73 Wn.2d 804, 812, 440 P.2d 834 (1968).

Further, the trial court heard Plaintiff's motion for reconsideration as part of the hearing on Plaintiff's motion for partial summary judgment and Defendant's motion for summary judgment. RP 4. Accordingly, the denials of reconsideration on Plaintiff's (second) CR 15(a),(c) motion and motion for consolidation are reviewed on appeal under the de novo standard. Folsom v. Burger King, 135 Wn.2d 658, 663, 958 P.2d 301 (1998) (de novo review standard applies to "all trial court rulings made in conjunction with a summary judgment motion."); Keck v. Collins, ___ Wn.App. ___, 325 P.3d 306 (Div.3, 2014).

2. (Second) CR 15(a),(c) motion to amend

As established above, the trial court erred in denying Plaintiff's first motion to amend, as the claims were not time-barred, and related back under CR 15(c).

Here, in denying the second CR 15(a),(c) motion, Judge Lohrmann substituted Judge Wolfram's decision as his own, and denied the second motion because Judge Wolfram had denied the first motion. Because Judge Wolfram's letter decision stated no reason for the denial (CP 95, 108), it was untenable for Judge Lohrmann to merely substitute this prior vague (and legally erroneous) ruling, and apply it instead of applying his own judgment. Judge Lohrmann failed to exercise any discretion.

Moreover, as Plaintiff explained, the second motion was substantively different, as it only raised 21 new claims

instead of 52. Compare CP 23-29, to CP 222-28. Also, the 21 claims all arose from within Walla Walla county, so no venue issues were involved, and the additional fact of Plaintiff's eighth follow-up request on November 22, 2013 was an element that could not have been pled in the first motion to amend filed on November 18, 2013. This fact is material to the statute of limitations holding in Johnson.

Because of the substantive differences in the two CR 15(a),(c) motions, it was error for Judge Lohrmann to summarily deny the second motion simply upon the basis that Judge Wolfram denied a very different motion five months earlier.

The record shows that Judge Lohrmann was apparently displeased with Plaintiff's attempts to practice proper notice pleading and amendment under the Civil Rules. However, while any judge is entitled to his or her personal feelings, such feelings, or rulings based thereupon, do not override the fundamental principles of the Civil Rules, which are purposed to "'facilitate a proper decision on the merits,' and not to erect formal and burdensome impediments to the litigation process." Caruso, 100 Wn.2d at 349 (quoting Conley v. Gibson, 355 U.S. 41, 48, 78 S.Ct. 99, 2 L.Ed.2d 80 (1957)).

Because these 21 new claims, as a matter of law, related-back to the original complaint under CR 15(c), and were also not time-barred under Johnson, Judge Lohrmann's stated basis for denial ("The tactics used by Plaintiff in

this case are recognized for what they are: a ploy to circumvent Judge Wolfram's prior ruling and this simply will not be allowed." CP 238) appears to be based more upon his personal opinion about Plaintiff, rather than upon the liberal application standard of CR 15.

When construing the comparable federal rule, Fed.R.Civ.P. 15(a), the United States Supreme Court has said the declaration that leave shall be freely given constitutes a "mandate [that] is to be heeded." Foman v. Davis, 371 U.S. 178, 182, 83 S.Ct. 227, 230, 9 L.Ed.2d 222 (1962)(citation omitted). Failure to grant leave without proper justification is therefore not an exercise of discretion, but an abuse of discretion. Id.

Because the trial court was required to grant CR 41(a)(1)(B) dismissal of these 21 claims in the companion case (see COA No. 32596-2-III, Opening Brief of Appellant, at 41-44), and because these 21 claims were not time-barred, and related-back, this second motion to amend should have been freely granted.

3. CR 42(a) motion for consolidation

Appellant's motion for consolidation in this case was not opposed by Respondent, as it filed no response or objection to the motion before the May 12, 2014 order was entered.

Judge Lohrmann denied this motion to consolidate because he erroneously viewed the 21 claims as time-barred,

when instead they were timely under Johnson, and related back under CR 15(c), as a matter of law. Ante. Judge Lohrmann denied the motion for consolidation in the companion case, on this same untenable legal conclusion, and then cited the same reason for denying consolidation here. CP 237-38.

Not only do the 21 claims share concurrence with the 1 instant claim for purposes of CR 15(c) criteria, as well as involving the same class of silently-withheld record, but the same agency employee(s) conducted the records searches in all 22 claims, and unlawfully destroyed the records, thereby raising identical legal defenses and analyses. CP 229-36.

Because this establishes the necessary similarity to warrant consolidation, yet Judge Lohrmann stated such legal practitionering "simply w[ould] not be allowed" because it "circumvent[ed] Judge Wolfram's prior ruling," Judge Lohrmann's denial of consolidation was error under de novo review. It was also an abuse of discretion because it was manifestly unreasonable, and exercised on untenable grounds and for untenable reasons.

The wording in the referenced May 12, 2014 order denying consolidation in companion case No. 13-2-00930-8 reveals the reason consolidation was denied in this case: "The granting of consolidation in this case would effectively accomplish what the Plaintiff had sought to do by amending its complaint in the previous case." CP 809.

Thus, Judge Lohrmann placed great emphasis on restricting Plaintiff's ability under the Civil Rules to have the 21 claims reached on the merits, but gave little weight to the liberal application mandate of CR 15. Frankly, the very fact that Judge Lohrmann stated the consolidation would "effectively accomplish" Plaintiff's goal (of having the 21 claims amended and reached on the merits) goes to establish that not only was Judge Lohrmann's denial of consolidation manifestly unreasonable and exercised for untenable reasons, but it also establishes the self-evident fact that the 21 claims could be cured of any statute of limitation deficiency perceived by Judge Lohrmann, and ultimately reached on the merits, if consolidation was granted.

Because the 21 claims were timely under Johnson, and related back under CR 15(c), it was both clear error, as well as an abuse of discretion, to deny consolidation on the grounds the claims were time-barred, or because consolidation would effectively allow the 21 claims to be reached on the merits.

C. 21 Claims Were Amended Into Pleadings Under CR 15(b)

1. 21 claims were amended without motion per CR 15(b), and Plaintiff's motion to strike untimely response on summary judgment should have been granted

On January 18, 2014 Plaintiff filed (GR 3.1) its CR 56 Motion for Partial Summary Judgment. CP 109-13; 114-27.

Defendant filed its Opposition to Motion for Partial Summary Judgment on February 12, 2014. CP 128-173.

On May 11, 2014 Plaintiff filed (GR 3.1) its Amended Motion for Partial Summary Judgment. CP 104. In this amended motion, which replaced the initial motion in its entirety, Plaintiff included the 21 other claims, now seeking partial summary judgment on all 22 claims regarding requests nos. PDU-15229 to PDU-15250. CP 241-44, 246-48. This amended motion presented evidence of PRA violations in all 22 claims. CP 250-54.

The amended motion was re-noted for June 19, 2014. CP 403. Defendant did not file a timely response or objection to this amended motion, which under CR 56(c) was required to be filed "not later than 11 calendar days before the hearing." CR 56(c). Because Defendant filed its Opposition to Plaintiff's Amended Motion for Partial Summary Judgment on June 13, 2014, only 6 calendar days before the hearing, Plaintiff filed and noted a motion to strike the noncompliant filing. CP 566. Plaintiff moved to strike the entirety of Defendant's Response to Amended Partial Summary Judgment. CP 553.

Upon motion, the trial court may strike a late filing "unless good cause is shown for, or justice requires, the granting of an extension of time." CR 5(d)(2). Alternately, upon motion, the trial court may forgive a late filing, "for

cause shown...where the failure to act was the result of inexcusable neglect." CR 6(b)(2).

An appellate court reviews the trial court's motion to strike ruling de novo when part of a summary judgment proceeding. Keck v. Collins, ___ Wn.App. ___, 325 P.3d 306, 312-14 (Div.3, 2014)("[A]ll trial court rulings" literally includes rulings concerning timeliness of filings.)

Here, the trial court was required to grant Plaintiff's motion to strike the entirety of Defendant's response to Plaintiff's amended motion for partial summary judgment. See Davies v. Holy Family Hosp., 144 Wn.App 483, 500, 183 P.3d 283 (Div.3, 2008)(Untimely response on summary judgment not allowed where party failed to establish any basis for its failing to comply with the time period set forth in CR 56(c)); Idahosa v. King County, 113 Wn.App. 930, 935-36, 55 P.3d 657 (2002)(Granting motion to strike untimely response on summary judgment motion; response not to be considered under CR 56(c)).

Because the untimely response must be stricken upon Plaintiff's motion, as a matter of law, there was no proper objection made to Plaintiff bringing the additional 21 claims in his amended motion for partial summary judgment. Because there was no objection to these 21 claims, the claims were amended into the pleadings under CR 15(b).

Additionally, Defendant presented substantial evidence of the additional 21 claims in its summary judgment filings:

"22 Grievances...PDU-15229 - PDU-15250" (CP 142-43); "22 separate grievances...22 separate grievance log numbers...these 22 requests" (CP 160); "How about with the other 21 requests....for those other 21 requests" (CP 161); "a number of similar requests at the same time as the request in this case....these other requests....grievance log numbers...55 requests....these requests....all the requests....all the record responses...any of the responses" (CP 411); "related to grievances" (CP 414); "at least 55 [withholdings]...records believed to be withheld....these withheld records....any of these withheld records" (CP 430); "We're talking about the other 54 requests....it was 53 other requests, not 55....are all these records the same back page....in those causes of action....amend the complaint as you're aware I've served a copy of that on you" (CP 431); "I'm claiming at least the back page of each one of those was withheld" (CP 432).

In response to Defendant raising the 21 additional claims in its summary judgment motion, Plaintiff replied on the merits of the 21 additional claims. CP 480-96. Furthermore, the trial court ruled on the merits of these 21 claims brought in the amended motion for partial summary judgment, as the court expressly denied the amended motion. CP 597.

Therefore, the 21 additional claims were tried by the "express or implied consent of the parties," and "should

be treated in all respects as if they had been raised in the pleadings." CR 15(b).

Pleadings may be deemed amended under CR 15(b) to conform to issues "tried" by the parties, or when "the parties acknowledge the existence of an issue during discovery and argument on pretrial motions." Karl B. Tegland, Vol.3A, Wash. Practice - Rules Practice: CR 15 (6th ed. 2013), at p. 3009; see e.g., Denny's Restaurants Inc. v. Security Union Title Ins. Co., 71 Wn.App. 194, 213-14, 859 P.2d 619 (1993)(because claim of mutual mistake was argued by both parties at summary judgment proceedings, trial court should have allowed amendment to conform to the evidence); Bickford v. City of Seattle, 104 Wn.App. 809, 17 P.3d 1240, review denied, 144 Wn.2d 1019, 32 P.3d 284 (2001)(despite city's failure to claim right to setoff in answer, because the attorneys for both parties discussed the defense and acknowledged it could be presented to the jury, city was allowed to assert claim); Maziarski v. Blair, 83 Wn.App. 835, 924 P.2d 409 (1996)(where defendant rejected offset for the first time after trial but before final judgment, pleadings were deemed amended based on the parties' argument on the merits and the trial judge's determination of the issues on the merits.)

Here, Defendant clearly had more than adequate notice that there was potential for these 21 other claims to be brought, and even answered in sworn admissions that it knew

the facts of these other 21 claims. CP 384-86. Additionally, Defendant had notice as of March 12, 2014 that it had destroyed original (double-sided) grievance forms responsive to these other 21 PRA requests. CP 389-91. Because these destructions were unlawful, prohibited by agency policy and records retention schedule, and squarely violated the PRA, Defendant had notice that additional claims could be brought on these newly-occurring, freestanding PRA violations of RCW 42.56.100. CP 393-400.

Because the 21 additional claims were brought without objection, and/or were tried by the express or implied consent of the parties, they were amended into the pleadings under CR 15(b).

2. The Court erred in not granting Plaintiff's CR 15(b),(c) motion to amend

On May 21, 2014 Plaintiff filed (GR 3.1) a CR 15(b),(c) motion to amend the 21 claims on requests nos. PDU-15230 to PDU-15250. CP 464-79. The trial court's written orders contain no denials of this motion. CP 570-71, 596-97.

Applying the de novo review standard to this motion brought as part of the summary judgment proceedings, it was error to not grant the motion to amend. The 21 additional claims were presented without objection, and, were also tried by the express or implied consent of the parties. Ante.

The court should have freely granted this motion to amend.

3. 21 new claims of unlawful destruction of records were not time barred

As established above and in the consolidated briefing, these 21 new claims for silently withholding, inadequate search, and other PRA violations were timely under Johnson, and the claims met the relation-back criteria of CR 15(c), and therefore were not time-barred.

But because these 21 claims also include unlawful destruction violations under RCW 42.56.100, the claims are not time-barred, because while Plaintiff exercised due diligence in requesting these records (CP 36-55), Defendant concealed the fact that it had unlawfully destroyed these original (double-sided) records in December 2012. Defendant first notified Plaintiff of these 21 unlawful destructions in its discovery answers of March 12, 2014. CP 389-90.

These 21 unlawful destructions each constitute an additional violation of the PRA. See COA No. 32596-2-III, Opening Brief of Appellant, at 16-20. Accordingly, the accrual of any statute of limitations began on the date Plaintiff knew of the destructions, which was approximately March 15, 2014, upon receipt of Defendant's March 12, 2014 discovery answers. Because these new unlawful destruction claims brought in the May 11, 2014 Amended Motion for Partial Summary Judgment (CP 246) were not objected to, or were tried by the express or implied consent of the parties, and therefore amended under CR 15(b), the 21 unlawful destruction claims

cannot be time barred, as they were brought by amendment within approximately 60 days after Plaintiff learned of the facts of these claims. This was well within the statute of limitations in either RCW 42.56.550(6), RCW 4.16.115, or RCW 4.16.130.

4. Amendment of 21 claims was not precluded by denial of motion for voluntary dismissal

Defendant squarely addressed the 21 additional claims on summary judgment and also addressed the contingency dismissal of these claims in companion case no. 13-2-00930-8, CP 411. Because the 21 new claims were amended under CR 15(b), dismissal without prejudice, contingent upon the amendment, should have been granted.³ Instead, the court dismissed with prejudice, which was improper. It is legally untenable to preclude amendment here on a basis that the 21 claims were previously dismissed, albeit erroneously, with prejudice in the companion case.

As explained above and in the companion briefing, the 21 additional claims encompassed new, freestanding PRA violations for 21 unlawful destructions of original (double-sided) grievance forms that were specifically requested by Plaintiff. It was error to dismiss the unlawful destruction claims as time-barred in case no. 13-2-00930-8,

³ As explained in the companion Opening Brief in COA No. 32596-2, the voluntary dismissal without prejudice was required to be granted because the contingency for dismissal was met when the 21 new claims were amended into this case under CR 15(b) when brought in the May 11, 2014 amended summary judgment motion.

as they were not only concealed by Defendant and not learned of by Plaintiff until approximately March 15, 2014, despite the exercise of due diligence follow-up requests, but also, as new violation claims that do not trigger the one-year statute of limitations in RCW 42.56.550(6), these claims were brought by amendment within either three years (RCW 4.16.115), or two years (RCW 4.16.130) of the actual destruction dates.

Because dismissal with prejudice of these claims in Case No. 13-2-00930-8 was error as a matter of law, such improper dismissal cannot preclude amendment under CR 15(b),(c) in this case, where Plaintiff's voluntary nonsuit was mandatory. "Since the voluntary dismissal of a claim is no longer raised by the pleadings, it may be added back to the pleadings by amendment under CR 15" as long as the requirements for the rule are met. Hubbard v. Scroggin, 68 Wn.App. 883, 889, 846 P.2d 580 (1993). This operative allowance exists whether the voluntarily dismissed claim is amended back into the same pleadings, or into a different pleading in another action.

D. It Was Error to Deny Partial Summary Judgment to Plaintiff, and to Grant Summary Judgment to Defendant

Plaintiff's amended motion for partial summary judgment, filed on May 11, 2014 (GR 3.1) (CP 404), moved for summary judgment as to liability only, for Defendant's

multiple violations of the Public Records Act in responding to 22 records requests, nos. PDU-15229 to PDU-15250.

Plaintiff's motion presented PRA violations that included (a) failing to identify withheld records, a.k.a. "silent withholding"; (b) failing to provide a brief explanation on the withholdings; (c) unlawfully destroying original responsive records; (d) failing to initially respond to the 22 records requests within five days. CP 240-48.

As established above, Defendant's response to the amended motion for partial summary judgment was not filed within the 11 calendar days prior to the hearing, and Plaintiff's motion to strike the untimely response was to be granted as a matter of law.⁴ See CR 56(c); Davies, 144 Wn.App. at 500; Idahosa, 113 Wn.App. at 935-36.

At the prompting of Judge Lohrman (CP 238-39, 410), Defendant filed a motion for summary judgment. This motion was based on the argument that the agency's search was adequate because Plaintiff's request was "inexact", that the original back page of each grievance form requested was not used by the agency and was "merely instructional for the offender," and that the back pages were not responsive to Plaintiff's requests "for documents related to grievances," and as such, Plaintiff was not wrongfully denied any records. CP 413-15.

⁴ Defendant failed to move to shorten or extend time to file this response, and failed to move to reschedule Plaintiff's partial summary judgment hearing.

The trial court erred in denying partial summary judgment for Plaintiff and in granting summary judgment dismissal for Defendant, because Defendant's arguments were legally untenable, and Plaintiff was entitled to partial summary judgment as a matter of law.

1. Defendant silently withheld records, because absent a claimed exemption, Defendant was required to produce the requested original grievance/complaint forms in their entirety, as they were identifiable public records

The PRA requires agencies to respond to requests for only "identifiable public records." RCW 42.56.080. See Hangartner v. City of Seattle, 151 Wn.2d 439, 447-48, 90 P.3d 26 (2004). A party seeking public records under the PRA must "at a minimum...identify the documents with reasonable clarity to allow the agency to locate them." Hangartner, 151 Wn.2d at 447. "[A] proper request under the [PRA] must identify with reasonable clarity those documents that are desired." Id., at 448

"A '[p]ublic record' is any writing containing information relating to the conduct of government...regardless of physical form or characteristics. Beal v. City of Seattle, 150 Wn.App. 865, 872, 209 P.3d 872 (2009)(citing RCW 42.56.020(2)). "An identifiable public record is one for which the requestor has given a reasonable description enabling the government employee to locate the requested record." Id.

There is no question that Plaintiff's 22 requests each expressly requested, by separate sentence, "the original complaint form." CP 256-77. Defendant confirmed several times that Plaintiff's requests each sought the original complaint/grievance form. CP 282-302, 204-24, 330-71, 384. "[If] the agency was unclear about what was requested, it was required to seek clarification." Neighborhood Alliance of Spokane County v. County of Spokane, 172 Wn.2d 702, 727, 261 P.3d 119 (2011).

Defendant admitted that each original complaint form is a double-sided, two-page public record, comprised of pages "DOC 05-165 Front" and "DOC 05-165 Back." CP 501. Defendant's evidence also establishes this fact. CP 442-45, 742-46. Defendant's arguments confirm this as well. CP 411, 621.

The PRA "requires all state and local agencies to disclose any public record upon request, unless the record falls within certain specific exemptions." Progressive Animal Welfare Society v. Univ. of Washington, 125 Wn.2d 243, 250, 884 P.2d 592 (1994)(PAWS II). Failure to provide an explanation is a "silent withholding" which occurs when "an agency...retain[s] a record or portion without providing the required link to a specific exemption, and without providing the required explanation of how the exemption applies to the specific record withheld." Id., at 270 (emphasis added). "An agency must explain and justify any

withholding, in whole or in part, of any requested records."

Resident Action Council v. Seattle Housing Authority, 177 Wn.2d 417, 432, 300 P.3d 376 (2013) (emphasis added) (citing RCW 42.56.070(1), .210(3), .520.)

Providing the required explanation is important not only because it informs the requestor why the documents are being withheld, but also because failure to provide the explanation "vitiates the reviewing court's ability to conduct the statutorily required de novo review." Id. See Gronquist v. Wash. St. Dept. of Licensing, 175 Wn.App. 729, 754, 309 P.3d 538, 550 (2013) (WDOL "failed to give any kind of explanation when it sent the redacted application to Gronquist. Clearly, failure to provide any of the information required by RCW 42.56.210(3) was a violation of the PRA.")

Defendant has admitted it did not identify or produce each of the 22 second/back pages of original grievance forms requested by Plaintiff. CP 384-85, 777. This constitutes 22 silent withholdings. Silently withholding is prohibited. Resident Action Council, 177 Wn.2d at 432.

Defendant admitted that it did not produce each of the 22 requested original complaint/grievance forms in their entirety.⁵ CP 384.

Plaintiff's 22 requests expressly sought an identifiable record of original (double-sided) complaint/grievance forms. Plaintiff never requested partial

⁵ The trial court considered this evidence at the same time as Plaintiff's motion for reconsideration in the companion case, as the court heard several motions in both cases simultaneously. RP 3-5, 7.

documents or limited pages of a document. The PRA requires the requested records to be produced in their entirety.

"The Public Records Act does not allow silent withholding of entire documents or records, any more than it allows silent editing of documents or records." PAWS II, 125 Wn.2d at 270. (emphasis added). See Yousoufian v. Office of Ron Sims, 152 Wn.2d 421, 445 n.3, 98 P.3d 463 (2004) (Sanders, J., dissenting, in part) ("However, the agency's failure to include pages of a single record would undeniably lead to a 'refus[al] to allow inspection or copying of a specific public record or class of records.' [RCW 42.56.550(1)].")

2. Defendant's inadequate search violated the PRA and precluded summary judgment dismissal

"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." Neighborhood Alliance of Spokane County v. County of Spokane, 172 Wn.2d 702, 720, 261 P.3d 119 (2011). "What will be considered reasonable will depend on the facts of each case." Id. "[W]hether the search was reasonably calculated and therefore adequate is separate from whether additional responsive documents exist but are not found." Id.

"Additionally, agencies are required to make more than a perfunctory search and to follow obvious leads as they are uncovered. The search should not be limited to one or more places if there are additional sources for the information requested. Indeed, the agency cannot limit its search to only one record system if there are others likely to turn up the information requested."

Id.

When utilizing a motion for summary judgment concerning the adequacy of a PRA search, "the agency bears the burden, beyond material doubt, of showing its search was adequate." Id., at 721. To do so, the agency may present "reasonably detailed, nonconclusory affidavits submitted in good faith." Id.

"These should include the search terms and the type of search performed, and they should establish that all places likely to contain responsive materials were searched."

Id., at 721.

i. Inadequate search location

Here, Defendant established that its practice is to specifically not scan or retain the second/back page of each original paper grievance form "DOC 05-165" when scanning documents to create what it considered to be a "grievance record" in the "OMNI" database system. CP 743, 442.

After electronically scanning the front page of each original (double-sided) grievance form filed by an inmate, the original (double-sided) paper grievance forms are retained for at least 6 months at the local site, and are eventually destroyed. CP 388

Upon these facts, Defendant knew that the original paper (double-sided) grievance forms existed, or could have reasonably existed, in its local paper file system. Because Defendant's declaration evidence expressly stated that staff elects to not include the second/back page when electronically scanning a DOC 05-165 double-sided grievance form filed by

an inmate, the Defendant by its own admission knew the original, unscanned, second/back pages existed in the local paper file system. "[S]ummary judgment is inappropriate; here the search was inadequate because the record itself revealed positive indicators of overlooked materials." Neighborhood Alliance, 172 Wn.2d at 736 (Madsen, C.J., concurring).

However, the only evidence submitted by Defendant shows that its record searches in these 22 requests were strictly limited to its electronic database file containing the scanned copies of grievance documents. CP 137, 442, 447-48. The record is devoid of any evidence showing Defendant conducted a search of its local paper file system to locate the (double-sided) "original" grievance/complaint forms specifically requested by Plaintiff.

Accordingly, because the DOC knew the original (double-sided) paper grievance forms were retained for at least 6 months,⁶ and specifically elected to not scan the second/back pages into a computer database system, its complete failure to search its local paper file system in these requests constitutes an inadequate search in all 22 requests under the standard announced in Neighborhood Alliance.

⁶ Defendant destroyed the original (double-sided) paper grievance forms requested in PDU-15230 to PDU-15250 in December 2012 and February 2013. CP 389-90. This is approximately 20 months after receiving Plaintiff's requests on April 15, 2011. CP 256-77. The original paper forms thus existed at the time of the agency's records searches on April 19, 2011.

Notably, DOC Public Disclosure Coordinator Theresa Pernula inquired to Debra Tracy at the Washington State Penitentiary, "Am I to assume there are no records other than what is on Liberty then?" CP 142. In response, Debra Tracy stated, "This is everything we have at WSP." CP 142. This was clearly not true, as not only did the 22 original (double-sided) paper grievance forms still exist in the local paper file system, but no search was ever conducted in this secondary file system.

All the more egregious is that the WSP Public Disclosure Coordinator, Debra Tracy, stated in her search directive email to Lee Young, "Please search all documentation you may have for the following public disclosure request." CP 143 (emphasis added). Yet knowing that WSP staff elected to not scan the back pages of original (double-sided) paper grievance forms into the computer database, Lee Young and Debra Tracy represented the scanned "grievance packets" to be everything existing at WSP. To the contrary, each of the 22 requested original grievance forms were only partially produced, because the local paper files were never searched.

This is virtually the same scenario as that resolved by the Supreme Court in Neighborhood Alliance, where the agency argued that the location of responsive records retained in one computer did not have to be searched because the computer had been moved, and replaced with a new computer, and the agency's search -- limited to the new computer that

did not contain the records -- was adequate. Neighborhood Alliance, 172 Wn.2d at 721-23.

The Supreme Court squarely rejected the agency's argument, stating, "[i]f the agency, after establishing the primary source of requested information, finds that the information is not there, it may not assert the information has been moved so as to avoid its duty to search." Id., at 723. "The agency must determine where the information has been moved and conduct a search there, where reasonable." Id.

The legal analysis in Neighborhood Alliance applies here: "Because the county produced nothing to show the old computer was wiped of all data before August 8, 2005, it should reasonably have searched that computer when the Alliance's PRA request was received in May." Id., at 723. Identically, the DOC here produced nothing to show the original (double-sided) paper grievance forms did not exist in the local paper file system at the time it conducted its search on April 19, 2011.

Neighborhood Alliance clearly controls here, where the DOC had taken both the front and back pages of each (double-sided) original paper grievance form and placed the documents into a secondary paper file system to await destruction. See Neighborhood Alliance, 172 Wn.2d at 723 (rejecting agency's argument that it should not be required to search the old computer for requested documents, comparing

the old computer to a trash can or recycle bin, because the County maintained control over the computer following its transfer to its Information Services Department, unlike trash or recycling that is hauled away.)

Because the 22 original forms existed, were prohibited from destruction pursuant to RCW 42.56.100, and were located in the paper file system, Defendant's complete failure to search the paper file system was an inadequate search as a matter of law.⁷

ii. Inadequate search terms

As directed by the Supreme Court, an agency's declaration evidence should establish the "search terms" it employed to locate the requested records. Neighborhood Alliance, 172 Wn.2d at 721. Here, the Defendant's evidence shows it only searched for what it termed "grievance packets." CP 743. The record is devoid of evidence that Defendant searched for each of the 22 requested original (double-sided) grievance/complaint forms.

Each of Plaintiff's 22 requests expressly requested the original complaint/grievance form. CP 256-77. Defendant confirmed that each original complaint form was requested. CP 282-302, 304-24, 330-71. Defendant admitted that each original complaint form is comprised of two pages. CP 501.

⁷ As presented below, inmates use the back of the original grievance form to complete the submission of their substantive grievance issue. Therefore, even operating, arguendo, under the DOC's theory, DOC still knew the back pages could certainly contain substantive content of filed grievances, and thus had a duty to search the paper file system.

The Defendant never tasked employee Lee Young to search for the original (double-sided) complaint/grievance forms requested, and instead only directed a search for "Any and all documents related to each of the following Grievances (22)." CP 447-48. Therefore, the Defendant's failure to search for each requested (two-page) original complaint/grievance form constitutes an inadequate search as a matter of law.

Because Defendant's arguments and declaration evidence state its searches were only for "documents related to grievances" (CP 621, 414), and that it only considers the first/front page of each filed original paper grievance form to be part of a "grievance record" (CP 743), the evidence on summary judgment can at most only go to establish that the agency's search for its interpretation of a "grievance record" may have been adequate.

However, because Defendant made the material distinction between its interpretation of what it compiles as a scanned "grievance record" -- which it may very well be allowed to do under the PRA -- and the (double-sided) original paper grievance form, this establishes that the (double-sided) original grievance form constitutes a distinct, different record. Because Plaintiff expressly requested, by separate sentence, this (by DOC's admission) distinctly different record, the failure to establish that this distinct record was searched for constitutes an inadequate search.

Because Defendant never searched for the original (double-sided) paper grievance forms specifically requested by Plaintiff, and never searched its paper file system, these inadequate searches resulted in Plaintiff not being provided the 22 original paper complaint/grievance forms in their entirety.

3. Defendant unlawfully destroyed responsive records violating the Public Records Act

Here, Defendant identified in sworn discovery answers that it destroyed 21 of the (double-sided) original grievance forms approximately 20 months after Plaintiff requested them. CP 389-91. This constitutes at least 21 violations of RCW 42.56.100.⁸ See COA No. 32596-2-III, Opening Brief of Appellant, at 14-20.

4. Under the Public Records Act an agency is not permitted to sua sponte modify a specific public records request to alleviate the statutory burden of searching for and identifying responsive records

There exists no statutory language in chapter 42.56 RCW, nor any judicial interpretation thereof, that allows an agency to modify, shorten, substantively change, or disregard a request for an identifiable record, without such direction or consent from the requestor.

⁸ The DOC failed to answer Plaintiff's discovery requests to identify the destruction date for the original (double-sided) offender complaint/grievance form in Grievance No. 1017109 (PDU-15229). Therefore, if this record still exists, it must be produced in its entirety.

"The PRA requires each relevant agency to facilitate the full disclosure of public records to interested parties." Resident Action Council, 177 Wn.2d at 431. (emphasis added). An agency must "provide for the fullest assistance to inquirers and the most timely possible action on requests for information." RCW 42.56.520 (emphasis added).

Here, Defendant's act of omitting the explicit request for each "original complaint form" when it instructed Lee Young to search for records constitutes violations of the PRA. CP 447-48.

Defendant never sought clarification of the requests. "If [an] agency was unclear about what was requested, it was required to seek clarification." Neighborhood Alliance, 172 Wn.2d at 727. Yet afterward, the agency repeatedly confirmed the clear requests for each "original complaint form." CP 282-302, 304-24, 330-71. Therefore, the improper modification of Plaintiff's requests violated the PRA.

5. Trial court erred in denying CR 56(f) continuance

Plaintiff moved for a CR 56(f) continuance in order to obtain evidence to rebut Defendant's argument that the second/back pages of filed grievance forms are never used by inmates or staff as part of the grievance process. CP 493-95.

Plaintiff filed supplemental evidence that the second/back page of grievance forms are used in the grievance

process, as shown by Defendant's prison mailroom having rejected incoming mail to Plaintiff from Defendant's Public Disclosure Unit on the basis that the "DOC 05-165 Back" page contained another offender's grievance paperwork. CP 539-49.

Usage of the second/back page of grievance forms is material because Defendant argued that it did not consider the back pages responsive to Plaintiff's 22 requests because the pages are never used in the grievance process. CP 414, 442. When viewed in the light most favorable to Plaintiff, his prima facie showing that the back pages are used, combined with his declaration that additional discovery is necessary (CP 498-99), required the CR 56(f) continuance to be granted. This is all the more important in light of the fact that there still remains six years' worth of original back pages to review. CP 546-48.

In reviewing the denial of CR 56(f) continuance de novo as part of summary judgment, the continuance was essential for Plaintiff to have the additional time to obtain evidence that the second/back pages of original (double-sided) grievance forms were used in the grievance process by both inmates and DOC staff.

Such evidence goes to the very heart of the Department's argument on summary judgment, that it did not have to produce the second/back pages because, according

to the lone, unsupported Declaration of Lee Young, these pages were never used by staff or inmates in any portion of the grievance process. CP 414, 442.

Plaintiff presented prima facie evidence that at least one second/back page of an original grievance form was used by an inmate and/or staff in processing a grievance. CP 548-49. Viewing this uncontroverted evidence in the light most favorable to Plaintiff, the Declaration of Lee Young cannot be true. In order to allow Plaintiff time to obtain additional evidence that the second/back pages are used in the grievance process, the CR 56(f) continuance should have been granted.

6. Genuine dispute of material fact
precluded summary judgment dismissal

For the same reasons above, when viewing Plaintiff's prima facie evidence and all reasonable inferences therefrom in the light most favorable to him on summary judgment, there existed a genuine dispute of material fact as to whether the second/back pages of original grievance forms were ever used by inmates or staff in the grievance process. Defendant's claim that the pages are never used was rebutted by Plaintiff's evidence. Summary judgment to Defendant was precluded as a matter of law.

7. Additional evidence upon which CR 56(f) continuance was sought can now establish the Declaration of Lee Young is false

In moving for CR 56(f) continuance, Plaintiff provided evidence that he had additional pending public records requests being responded to by Defendant. The three requests were assigned numbers PDU-28154, 28155, 28156. CP 504-14. Request number PDU-28154 specifically pertains to back/second pages of original grievances filed at the Washington State Penitentiary. CP 509-11.

After the trial court denied the motion for CR 56(f) continuance and dismissed the case with prejudice based almost exclusively upon the Declaration of Lee Young, the Plaintiff eventually obtained the responsive records in request number PDU-28154. Appendix A.⁹

Based upon this evidence, there is no question that the DOC and inmates use the second/back pages of original grievance forms in the grievance process at the Washington State Penitentiary. Use occurs in multiple categories. Inmates use the back of the form to state the substantive

⁹ The evidence in Appendix A is not yet part of the record, but Plaintiff has concurrently filed a motion under RAP 9.11. See Harbison v. Garden Valley Outfitters, Inc., 69 Wn.App. 590, 594-95, 849 P.2d 669 (1993)(materials should not be included in the appendix to opening brief if not in the record without indicating to the Court in the brief that those materials were not part of the record and that a motion was pending to allow their consideration.)

grievance issue continued from the front page of the form, to state the "suggested remedy" continued from the front page of the form, and to identify potential witnesses to the grieved action or issue. Appendix A, at Attachment 1.

Before filing the grievance, inmates carefully work through the worksheet/checklist on the second/back page to indicate what information was presented, and what remains to be presented to grievance staff. Id., at Attachment 2.

DOC staff use the back pages of original grievance forms by writing various processing information and codes, by identifying grievance issues, and numeric computation. Id., at Attachment 3.

Amazingly, the name "Lee Youn[g]", and "L. Young" appears on the back pages of several original grievance forms. Id., at Attachment 1 ("PDU-28154 Installment 1, 000035"); and Attachment 3. Lee Young is the person who declared under penalty of perjury before the Court that these very pages are never used by inmates or DOC staff in the grievance process.

Thus, had the trial court granted a CR 56 (f) continuance, Mr. Kozol would have established a genuine dispute of material fact not only precluding summary judgment dismissal, but also supporting partial summary judgment in favor of Plaintiff. The "DOC 05-165 Back" pages are either

used, or, according to the DOC's sole piece of material evidence -- the Declaration of Lee Young -- they are never used. The overwhelming evidence now shows the second/back pages are used in the grievance process, and the DOC still has thousands of other similar pages to produce in PDU-28154 to 28156.

8. Defendant's declaration evidence is insufficient to support summary judgment dismissal

As argued to the trial court, the Declaration of Lee Young failed to establish the staff who actually processed and/or scanned these original grievances at the Washington State Penitentiary, and the declaration is not based on personal knowledge of the grievances in this case. CP 491-93. Such conclusory evidence cannot be considered when deciding a motion for summary judgment. Kenco Enterprise N.W. v. Wiese, 172 Wn.App. 607, 615, 291 P.3d 261 (2013).

E. Appellant Should Be Awarded All Reasonable Costs on Appeal

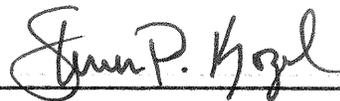
Pursuant to RAP 18.1 and Title 14, Appellant asks that he be awarded all costs/expenses/fees in litigating this appeal. RCW 42.56.550(4) allows prevailing requestors to be awarded all costs and fees. A party is entitled to attorney fees/costs on appeal if a contract, statute, or recognized ground of equity permits recovery of costs/fees

at trial, and the party is the substantially prevailing party.
Hwang v. McMahon, 103 Wn.App. 945, 954, 15 P.3d 172 (2000).
See O'Connor v. Wash. St. Dept. of Social & Health Services,
143 Wn.2d 895, 25 P.3d 426 (2001) (Party who successfully
appealed order in party's action against state agency that
quashed requests under the Public Records Act was entitled
to reasonable attorney fees and costs on appeal.) Should
Appellant prevail in this appeal, it is proper to award him
all costs and expenses, and attorney fees if counsel is
retained, to be enumerated in the Cost Bill.

CONCLUSION

For all the foregoing reasons, Appellant respectfully
submits that the trial court erred in denying Appellant's
motions to amend, to consolidate, to strike, for continuance,
and the amended motion for partial summary judgment. The
court also erred in granting summary judgment dismissal to
Respondent.

RESPECTFULLY submitted this 15th day of April 2015.



STEVEN P. KOZOL, DOC# 974691
Appellant/Plaintiff, Pro Per
191 Constantine Way
Aberdeen, WA 98520
Ph:(360)537-1800

www.FreeSteveKozol.com

APPENDIX – A

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IN THE COURT OF APPEALS FOR WASHINGTON STATE
DIVISION III

STEVEN P. KOZOL,)
Appellant,) COA No. 32596-2-III
) COA No. 32643-8-III
v.)
WASHINGTON STATE DEPT.) DECLARATION OF STEVEN KOZOL
OF CORRECTIONS,)
Respondent,)
_____)

STEVEN P. KOZOL, upon oath and affirmation, deposes and declares the following:

1. I am the Appellant/Plaintiff, pro per, in the above captioned consolidated cases. I am over the age of 18, am competent to testify to the following facts, and declare the following based upon my own first-hand knowledge.

2. Attached as Attachments 1-3 are true and correct copies of documents provided to me by the Washington State Department of Corrections in response to public record requests nos. PDU-28154 and PDU-28156. Records in PDU-28154 all originated from, and are maintained at the Washington State Penitentiary in Walla, Walla, Washington.

ATTACHMENT 1

suggested REMEDY: ON THE INITIAL GRIEVANCE, ~~IT~~ WAS FOR THE PENALTY OF THIS POLICY TO BE UP LIFTED AND TO DO AWAY WITH THE POLICY ALL TOGETHER AND NONE OF THOSE THINGS ^{HAVE} HAPPENED, SO THIS ISSUE AT HAND HAS NOT BEEN RESOLVED. NO MATTER WHAT CPM L. CLARK TRY'S TO SAY I COULD DO.

GRIEVABLE AND NONGRIEVABLE ITEM

GRIEVABLE ITEMS: Any offender may grieve the following, when applicable to their place of confinement or conditions of supervision and when the incident or issue affects them personally:

1. Policies.
2. Application of policies.
3. Lack of policies, rules, or procedures that directly affect the offender's own living conditions.
4. Actions of employees, contract staff, or volunteers over whom the facility or supervising office has jurisdiction, including retaliation against the offender for his/her good faith participation in the grievance program.
5. Actions of other offenders.

NONGRIEVABLE ITEMS: The following items are NOT grievable:

1. State and federal law, including Washington Administrative Code (WAC).
2. Court decisions.
3. Indeterminate Sentence Review Board (ISRB) decisions.
4. Court ordered Pre-sentence Investigation (PSI) reports.
5. Community Corrections Officer (CCO) recommendations/testimony to a Department Hearing Officer, court, and/or the ISRB.
6. Special conditions imposed by a CCO per Department policy.
7. Any Department approved procedure that has a formal appeal process. Procedures with a formal appeal process include:
 - a. Rejection of incoming or outgoing mail and packages (Prisons ONLY), as WAC 137-48 specifies a formal avenue of appeal.
 - b. Grievance and appeal responses. The contents of a grievance/appeal response, and the investigator/respondent, may not be grieved, as the grievant may address his/her concerns regarding a response in an appeal to the next level of review.
 - c. Determination by a Grievance Coordinator that a complaint is not grievable, as the decision is appealable to the Grievance Program Manager.
 - d. Employees, contract staff, and volunteers may not be grieved for writing an infraction or causing an infraction to be written, as the matter will be adjudicated through the disciplinary process in accordance with WAC.
 - e. A Superintendent, Community Corrections Supervisor, or Regional Administrator may not be grieved for his/her decision to designate an offender as an abuser of the Offender Grievance Program or restrict that offender's access to the grievance process. Those decisions are automatically reviewed by a designated administrator.
8. Department of Natural Resources (DNR) policies and procedures are not grievable, as the Department has no authority in such matters. Grievance Coordinators should refer complaints on such issues to the local DNR administrator. Formal conduct grievances may be pursued against DNR staff only in the most flagrant cases, such as physical or sexual abuse, or sexual harassment. Formal conduct grievances shall be investigated jointly by the Superintendent and the local DNR Administrator. Corrective actions against DNR staff are the responsibility of DNR Administrators. Grievance Coordinators will discuss the issue with the Grievance Program Manager prior to initiating any formal conduct grievance against DNR staff.

Department policy and written procedure governing these nongrievable issues may be challenged through the grievance process.

Note: Limit each complaint form to only one issue or incident.

Ask Yourself: Does my complaint/appeal contain this information?

INFORMATION		Yes	No
1.	Who or What is being grieved (A simple statement of concern regarding action policy, procedure, or practice)		
2.	How the issue or incident affects you personally		
3.	The name(s) of all individuals involved		
4.	When the incident occurred (date and time if relevant)		
5.	Where the incident occurred		
6.	What happened or was said		
7.	Informal resolution attempted		
8.	The name(s) of potential witness(es)		
9.	Suggested remedy (optional)		
10.	Form signed and dated		

the Senate house of Representative house of Brabery & Corruption going to get FROM ME All the corruption, that your Legal Liaison, SHARI HALL AND LORI SCAMHORN DOING FOR YEARS IN PLOT WITH JEFFREY UTECH AND CHRISTOPHER SINCLAIR, ASSO Supt Chris Bayman and cus Pease

GRIEVABLE AND NONGRIEVABLE ITEM SO THE FBI WILL OPEN A FILE AGAINST ALL OF YOU AND YOU GRIEVABLE ITEMS: Any offender may grieve the following, when applicable to their place of confinement or conditions of supervision and when the incident or issue affects them personally: **Head Quarte German Squad:**

1. Policies, rules, and procedures enforced within the facility, Field Office, or the Department of Corrections;
2. Application of policies, rules, and procedures; **BERNARD WARNER, SCOTT R. FRAKES, AND EARL WIGHT** so the
3. Lack of policy, rule, or procedure which directly affects the living conditions of the offender;
4. Actions of employees, contract staff, or volunteers over which the facility or supervising office has jurisdiction;
5. Actions of other offenders; and **INTERNAL AFFAIR CORRUPTION DEPARTMENT OF FBI** arrested/jailed
6. Retaliation against the grievant for his/her good faith participation in the grievance program.

NONGRIEVABLE ITEMS: The following items are NOT grievable: **All of you for secreting kidnap me, and**

1. State and federal law (includes RCW and WAC); **TORTURE ME, MADE UP FALSE STATEMENT UNDER THE COLOR OF WA. LAW. IF I WAS IN PROTECTION ON MAY 2013**
2. Court actions and decisions;
3. Indeterminate Sentence Review Board actions and decisions;
4. Pre-sentence Investigation (PSI) reports; **WITHOUT FILE ANY CASE CIVIL CASE IN COURT, YOU WILL GIVE ME MY**
5. Community Corrections Officers' recommendations testimony to the court and/or the Indeterminate Sentence Review Board;
6. Application of special conditions imposed by a Community Corrections Officer per Department policy; **PROPERTY, BUT I AM NOT**
7. Actions of persons not under the jurisdiction of the facility or Field Office to which the offender is confined/assigned;
8. Administrative Segregation Hearings actions and decisions; **UNDER PC I AM UNDER ALL OF YOUR RETALIATORY AND**
9. Classification decisions and those issues requiring action through the classification process such as transfer, custody promotions/demotion, and so forth (Grievance Coordinators will refer such issues to the appropriate Counselor, unit team, etc.);
10. Infractions and disciplinary actions and decisions; **DISCRIMINATORY ARBITRARY CLASSIFICATION IN RACIAL -**
11. Department of Natural Resources (DNR) policies and procedures are not grievable, as the Department has no authority in such matters. Grievance Coordinators should refer complaints on such issues to the local DNR administrator. Formal conduct grievances may be pursued against DNR staff only in the most flagrant cases, such as physical or sexual abuse, or sexual harassment. Formal conduct grievances shall be investigated jointly by the Superintendent and the local DNR Administrator. Corrective actions against DNR staff are the responsibility of DNR Administrators. Grievance Coordinators will discuss the issue with the Grievance Program Manager prior to initiating any formal conduct grievance against DNR staff; and **SEGREGATION, IMU**
12. Any process that has a formalized appeal or review procedure built into it which has been approved by the Grievance Program Manager prior to its use to reject complaints as nongrievable. Items already approved include: **I SWEAR ON MY MEDICINE**
 - a. Rejection of incoming or outgoing mail and packages (Prisons ONLY), as WAC 187-48 provides a formalized avenue of appeal; **OF THE DEATH ON OWL. THAT WHEN I GET OUT, I CAME WITH FBI TO INDICTED**
 - b. Grievance and appeal responses. The contents of a grievance/appeal response, and the investigator/respondent, may NOT be grieved as the grievant may address his/her concerns regarding a response in an appeal to the next level of review;
 - c. Determination by a Grievance Coordinator that a complaint is not grievable as the decision is appealable to the Grievance Program Manager; **AND ARRESTED EACH ONE OF YOU INCLUDING LEE YOUNG, LT B. WILLIAMS**
 - d. Staff may not be grieved for writing an infraction or causing an infraction to be written, as the matter will be adjudicated through the disciplinary process in accordance with WAC; and **LORI SCAMHORN SHARI HALL.**
 - e. A Superintendent, facility Supervisor, or Community Corrections Administrator may not be grieved for his/her decision to designate an offender as an abuser of the Offender Grievance Program or restriction that offender's access to the grievance mechanism. Those decisions are automatically reviewed by designated administrator.

You tell Mc Kinney to come ASAP, TO RESIGN ANOTHER POSTAGE AND OUTGOING LEGAL MAIL slip Department policy and written procedure governing these nongrievable issues May be challenged through the grievance process.

TO SEND THIS LEGAL ENVELOPE MONDAY MORNING. FEDERAL MAIL HAS TO BE RESPECT.

Note: Limit each complaint form to only one issue or incident.

I served secret serve FBI US CUSTOMS, DEA ATF IRS, INS, INTERPOL. AFTER I GET OUT I'M going to bring justice against your corruption

INFORMATION		Yes	No
1.	Who or What is being grieved (A simple statement of concern regarding action policy, procedure, or practice)		
2.	How the issue or incident affects you personally		
3.	The name(s) of all individuals involved		
4.	When the incident occurred (date and time if relevant)		
5.	Where the incident occurred		
6.	What happened or was said		
7.	Informal resolution attempted		
8.	The name(s) of potential witness(es)		
9.	Suggested remedy (optional)		
10.	Form signed and dated		

I AM A 100% SUPER COMPETENT. I AM PROPERLY ADDRESS MY LEGAL MAIL PERFECT, Mc Kinney REFUSE TO DO MY LEGAL MAIL IN MY PRESENCE AS HE ARE SUPPOSED TO DO IT IN FRONT OF ME, BY FEDERAL LAW, CODE US. 450 (b) STATEMENT. HE MUST BRINGED TAPE TO SIGN AND AFTER SIGNED DATED AND PUD MILITARY TIME 13:00 HRS ETC. I AM THE ONE HAVE TO

DOC 05-165 Back (Rev. 03/02/12)

DOC 310.100, DOC 550.100

REVIEW MY LEGAL MAIL TO SEE IF ALL IS CORRECT. POSTAGE/OUTGOING LEGAL MAIL SLIP PUD INSIDE EACH ENVELOPE. WHAT I DECIDE TO SEND IT OUT. THIS IS NOT Mc Kinney JB. IS MY PERSONAL FEDERAL MAIL.

GRIEVABLE AND NONGRIEVABLE ITEM

GRIEVABLE ITEMS: Any offender may grieve the following, when applicable to their place of confinement or conditions of supervision and when the incident or issue affects them personally:

1. Policies.
2. Application of policies.
3. Lack of policies, rules, or procedures that directly affect the offender's own living conditions.
4. Actions of employees, contract staff, or volunteers over whom the facility or supervising office has jurisdiction, including retaliation against the offender for his/her good faith participation in the grievance program.
5. Actions of other offenders.

NONGRIEVABLE ITEMS: The following items are NOT grievable:

1. State and federal law, including Washington Administrative Code (WAC).
2. Court decisions.
3. Indeterminate Sentence Review Board (ISRB) decisions.
4. Court ordered Pre-sentence Investigation (PSI) reports.
5. Community Corrections Officer (CCO) recommendations/testimony to a Department Hearing Officer, court, and/or the ISRB.
6. Special conditions imposed by a CCO per Department policy.
7. Any Department approved procedure that has a formal appeal process. Procedures with a formal appeal process include:
 - a. Rejection of incoming or outgoing mail and packages (Prisons ONLY), as WAC 137-48 specifies a formal avenue of appeal.
 - b. Grievance and appeal responses. The contents of a grievance/appeal response, and the investigator/respondent, may not be grieved, as the grievant may address his/her concerns regarding a response in an appeal to the next level of review.
 - c. Determination by a Grievance Coordinator that a complaint is not grievable, as the decision is appealable to the Grievance Program Manager.
 - d. Employees, contract staff, and volunteers may not be grieved for writing an infraction or causing an infraction to be written, as the matter will be adjudicated through the disciplinary process in accordance with WAC.
 - e. A Superintendent, Community Corrections Supervisor, or Regional Administrator may not be grieved for his/her decision to designate an offender as an abuser of the Offender Grievance Program or restrict that offender's access to the grievance process. Those decisions are automatically reviewed by a designated administrator.
8. Department of Natural Resources (DNR) policies and procedures are not grievable, as the Department has no authority in such matters. Grievance Coordinators should refer complaints on such issues to the local DNR administrator. Formal conduct grievances may be pursued against DNR staff only in the most flagrant cases, such as physical or sexual abuse, or sexual harassment. Formal conduct grievances shall be investigated jointly by the Superintendent and the local DNR Administrator. Corrective actions against DNR staff are the responsibility of DNR Administrators. Grievance Coordinators will discuss the issue with the Grievance Program Manager prior to initiating any formal conduct grievance against DNR staff.

Department policy and written procedure governing these nongrievable issues may be challenged through the grievance process.

Note: Limit each complaint form to only one issue or incident.

Ask Yourself: Does my complaint/appeal contain this information?

INFORMATION		Yes	No
1.	Who or What is being grieved (A simple statement of concern regarding action policy, procedure ,or practice)	X	
2.	How the issue or incident affects you personally	X	
3.	The name(s) of all individuals involved	X	
4.	When the incident occurred(date and time if relevant)	X	
5.	Where the incident occurred	X	X
6.	What happened or was said	X	
7.	Informal resolution attempted	X	
8.	The name(s) of potential witness(es)	X	
9.	Suggested remedy(optional)	X	
10.	Form signed and dated	X	

GRIEVABLE AND NONGRIEVABLE ITEM

GRIEVABLE ITEMS: Any offender may grieve the following, when applicable to their place of confinement or conditions of supervision and when the incident or issue affects them personally:

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2. Application of policies.
3. Lack of policies, rules, or procedures that directly affect the offender's own living conditions.
4. Actions of employees, contract staff, or volunteers over whom the facility or supervising office has jurisdiction, including retaliation against the offender for his/her good faith participation in the grievance program.
5. Actions of other offenders.

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2. Court decisions.
3. Indeterminate Sentence Review Board (ISRB) decisions.
4. Court ordered Pre-sentence Investigation (PSI) reports.
5. Community Corrections Officer (CCO) recommendations/testimony to a Department Hearing Officer, court, and/or the ISRB.
6. Special conditions imposed by a CCO per Department policy.
7. Any Department approved procedure that has a formal appeal process. Procedures with a formal appeal process include:
 - a. Rejection of incoming or outgoing mail and packages (Prisons ONLY), as WAC 137-48 specifies a formal avenue of appeal.
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 - c. Determination by a Grievance Coordinator that a complaint is not grievable, as the decision is appealable to the Grievance Program Manager.
 - d. Employees, contract staff, and volunteers may not be grieved for writing an infraction or causing an infraction to be written, as the matter will be adjudicated through the disciplinary process in accordance with WAC.
 - e. A Superintendent, Community Corrections Supervisor, or Regional Administrator may not be grieved for his/her decision to designate an offender as an abuser of the Offender Grievance Program or restrict that offender's access to the grievance process. Those decisions are automatically reviewed by a designated administrator.
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OK-M

Department policy and written procedure governing these nongrievable issues may be challenged through the grievance process.

Note: Limit each complaint form to only one issue or incident.

Ask Yourself: Does my complaint/appeal contain this information?

INFORMATION		Yes	No
1.	Who or What is being grieved (A simple statement of concern regarding action policy, procedure, or practice)	X	
2.	How the issue or incident affects you personally	X	
3.	The name(s) of all individuals involved		
4.	When the incident occurred (date and time if relevant)	X	
5.	Where the incident occurred	X	
6.	What happened or was said	X	
7.	Informal resolution attempted		
8.	The name(s) of potential witness(es)	AD/SEG STAFF	
9.	Suggested remedy (optional)		
10.	Form signed and dated		

GRIEVABLE AND NONGRIEVABLE ITEM

GRIEVABLE ITEMS: Any offender may grieve the following, when applicable to their place of confinement or conditions of supervision and when the incident or issue affects them personally:

1. Policies, rules, and procedures enforced within the facility, Field Office, or the Department of Corrections;
2. Application of policies, rules, and procedures;
3. Lack of policy, rule, or procedure which directly affects the living conditions of the offender;
4. Actions of employees, contract staff, or volunteers over which the facility or supervising office has jurisdiction;
5. Actions of other offenders; and
6. Retaliation against the grievant for his/her good faith participation in the grievance program.

NONGRIEVABLE ITEMS: The following items are NOT grievable:

1. State and federal law (includes RCW and WAC);
2. Court actions and decisions;
3. Indeterminate Sentence Review Board actions and decisions;
4. Pre-sentence Investigation (PSI) reports;
5. Community Corrections Officers' recommendations testimony to the court and/or the Indeterminate Sentence Review Board;
6. Application of special conditions imposed by a Community Corrections Officer per Department policy;
7. Actions of persons not under the jurisdiction of the facility or Field Office to which the offender is confined/assigned;
8. Administrative Segregation Hearings actions and decisions;
9. Classification decisions and those issues requiring action through the classification process such as transfer, custody promotions/demotion, and so forth (Grievance Coordinators will refer such issues to the appropriate Counselor, unit team, etc.);
10. Infractions and disciplinary actions and decisions;
11. Department of Natural Resources (DNR) policies and procedures are not grievable, as the Department has no authority in such matters. Grievance Coordinators should refer complaints on such issues to the local DNR administrator. Formal conduct grievances may be pursued against DNR staff only in the most flagrant cases, such as physical or sexual abuse, or sexual harassment. Formal conduct grievances shall be investigated jointly by the Superintendent and the local DNR Administrator. Corrective actions against DNR staff are the responsibility of DNR Administrators. Grievance Coordinators will discuss the issue with the Grievance Program Manager prior to initiating any formal conduct grievance against DNR staff; and
12. Any process that has a formalized appeal or review procedure built into it which has been approved by the Grievance Program Manager prior to its use to reject complaints as nongrievable. Items already approved include:
 - a. Rejection of incoming or outgoing mail and packages (Prisons ONLY), as WAC 137-48 provides a formalized avenue of appeal;
 - b. Grievance and appeal responses. The contents of a grievance/appeal response, and the investigator/respondent, may NOT be grieved as the grievant may address his/her concerns regarding a response in an appeal to the next level of review;
 - c. Determination by a Grievance Coordinator that a complaint is not grievable as the decision is appealable to the Grievance Program Manager;
 - d. Staff may not be grieved for writing an infraction or causing an infraction to be written, as the matter will be adjudicated through the disciplinary process in accordance with WAC; and
 - e. A Superintendent, facility Supervisor, or Community Corrections Administrator may not be grieved for his/her decision to designate an offender as an abuser of the Offender Grievance Program or restriction that offender's access to the grievance mechanism. Those decisions are automatically reviewed by designated administrator.

Department policy and written procedure governing these nongrievable issues **May** be challenged through the grievance process.

Note: Limit each complaint form to only one issue or incident.

Ask Yourself: Does my complaint/appeal contain this information?

#3 WCC, Shelton!

INFORMATION		Yes	No
1.	Who or What is being grieved (A simple statement of concern regarding action policy, procedure, or practice)	<input checked="" type="checkbox"/>	<input type="checkbox"/>
2.	How the issue or incident affects you personally <i>DiJestion SYSTEM - Stool -</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
3.	The name(s) of all individuals involved <i>Island Correctional Facility - HSR - AND Medical Issues followed</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/> WCC
4.	When the incident occurred (date and time if relevant) <i>8-17-13 - 8-12-13 / 8-20-13 intake 82513</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/> 9/30/13
5.	Where the incident occurred <i>Well incarcerated Jail - Intake R-1 / R2 WCC - R1-R2</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
6.	What happened or was said <i>I ASKED for A mechanical Diet - Reserving SATD Your HSR w/f -</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/> WolfSR!
7.	Informal resolution attempted <i>Request Kite SGT - Dental exam - NOW ON 10-10-13</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
8.	The name(s) of potential witness(es) <i>TARAD - Medical - Dental -</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
9.	Suggested remedy (optional) <i>for Pain AND suffering - BAD Body movement if I would</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
10.	Form signed and dated	<input checked="" type="checkbox"/>	<input type="checkbox"/>

AND I'll fill "JUST" like A impretion TAKEN for my Denture's I need NO medical "JUST" impretion

A PD# 28154 Installment # 2700466 " IN JUST 820 UNTIL 10-10-13.

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3. Indeterminate Sentence Review Board (ISRB) decisions.
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5. Community Corrections Officer (CCO) recommendations/testimony to a Department Hearing Officer, court, and/or the ISRB.
6. Special conditions imposed by a CCO per Department policy.
7. Any Department approved procedure that has a formal appeal process. Procedures with a formal appeal process include:
 - a. Rejection of incoming or outgoing mail and packages (Prisons ONLY), as WAC 137-48 specifies a formal avenue of appeal.
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 - d. Employees, contract staff, and volunteers may not be grieved for writing an infraction or causing an infraction to be written, as the matter will be adjudicated through the disciplinary process in accordance with WAC.
 - e. A Superintendent, Community Corrections Supervisor, or Regional Administrator may not be grieved for his/her decision to designate an offender as an abuser of the Offender Grievance Program or restrict that offender's access to the grievance process. Those decisions are automatically reviewed by a designated administrator.
8. Department of Natural Resources (DNR) policies and procedures are not grievable, as the Department has no authority in such matters. Grievance Coordinators should refer complaints on such issues to the local DNR administrator. Formal conduct grievances **may** be pursued against DNR staff only in the most flagrant cases, such as physical or sexual abuse, or sexual harassment. Formal conduct grievances shall be investigated jointly by the Superintendent and the local DNR Administrator. Corrective actions against DNR staff are the responsibility of DNR Administrators. Grievance Coordinators will discuss the issue with the Grievance Program Manager **prior** to initiating any formal conduct grievance against DNR staff.

Department policy and written procedure governing these nongrievable issues **may** be challenged through the grievance process.

Note: Limit each complaint form to only **one** issue or incident.

Ask Yourself: Does my complaint/appeal contain this information?

INFORMATION		Yes	No
1.	Who or What is being grieved (A simple statement of concern regarding action policy, procedure, or practice)	✓	
2.	How the issue or incident affects you personally	✓	
3.	The name(s) of all individuals involved	✓	
4.	When the incident occurred (date and time if relevant)	✓	
5.	Where the incident occurred	✓	
6.	What happened or was said	✓	
7.	Informal resolution attempted	✓	
8.	The name(s) of potential witness(es)	✓	
9.	Suggested remedy (optional)	✓	
10.	Form signed and dated	✓	

GRIEVABLE AND NONGRIEVABLE ITEM

GRIEVABLE ITEMS: Any offender may grieve the following, when applicable to their place of confinement or conditions of supervision and when the incident or issue affects them personally:

1. Policies, rules, and procedures enforced within the facility, Field Office, or the Department of Corrections;
2. Application of policies, rules, and procedures;
3. Lack of policy, rule, or procedure which directly affects the living conditions of the offender;
4. Actions of employees, contract staff, or volunteers over which the facility or supervising office has jurisdiction;
5. Actions of other offenders; and
6. Retaliation against the grievant for his/her good faith participation in the grievance program.

NONGRIEVABLE ITEMS: The following items are NOT grievable:

1. State and federal law (includes RCW and WAC);
2. Court actions and decisions;
3. Indeterminate Sentence Review Board actions and decisions;
4. Pre-sentence Investigation (PSI) reports;
5. Community Corrections Officers' recommendations testimony to the court and/or the Indeterminate Sentence Review Board;
6. Application of special conditions imposed by a Community Corrections Officer per Department policy;
7. Actions of persons not under the jurisdiction of the facility or Field Office to which the offender is confined/assigned;
8. Administrative Segregation Hearings actions and decisions;
9. Classification decisions and those issues requiring action through the classification process such as transfer, custody promotions/demotion, and so forth (Grievance Coordinators will refer such issues to the appropriate Counselor, unit team, etc.);
10. Infractions and disciplinary actions and decisions;
11. Department of Natural Resources (DNR) policies and procedures are not grievable, as the Department has no authority in such matters. Grievance Coordinators should refer complaints on such issues to the local DNR administrator. Formal conduct grievances may be pursued against DNR staff only in the most flagrant cases, such as physical or sexual abuse, or sexual harassment. Formal conduct grievances shall be investigated jointly by the Superintendent and the local DNR Administrator. Corrective actions against DNR staff are the responsibility of DNR Administrators. Grievance Coordinators will discuss the issue with the Grievance Program Manager prior to initiating any formal conduct grievance against DNR staff; and
12. Any process that has a formalized appeal or review procedure built into it which has been approved by the Grievance Program Manager prior to its use to reject complaints as nongrievable. Items already approved include:
 - a. Rejection of incoming or outgoing mail and packages (Prisons ONLY), as WAC 137-48 provides a formalized avenue of appeal;
 - b. Grievance and appeal responses. The contents of a grievance/appeal response, and the investigator/respondent, may NOT be grieved as the grievant may address his/her concerns regarding a response in an appeal to the next level of review;
 - c. Determination by a Grievance Coordinator that a complaint is not grievable as the decision is appealable to the Grievance Program Manager;
 - d. Staff may not be grieved for writing an infraction or causing an infraction to be written, as the matter will be adjudicated through the disciplinary process in accordance with WAC; and
 - e. A Superintendent, facility Supervisor, or Community Corrections Administrator may not be grieved for his/her decision to designate an offender as an abuser of the Offender Grievance Program or restriction that offender's access to the grievance mechanism. Those decisions are automatically reviewed by designated administrator.

Department policy and written procedure governing these nongrievable issues **May** be challenged through the grievance process.

Note: Limit each complaint form to only one issue or incident.

Ask Yourself: Does my complaint/appeal contain this information?

INFORMATION		Yes	No
1.	Who or What is being grieved (A simple statement of concern regarding action policy, procedure, or practice)	✓	
2.	How the issue or incident affects you personally <i>Physically and Mentally</i>	✓	
3.	The name(s) of all individuals involved <i>Me and Medical</i>	✓	
4.	When the incident occurred (date and time if relevant) <i>The whole time in Prison</i>	✓	
5.	Where the incident occurred <i>SICC</i>	✓	
6.	What happened or was said <i>Nothing</i>	✓	
7.	Informal resolution attempted <i>None</i>	✓	
8.	The name(s) of potential witness(es) <i>Me and Medical</i>	✓	
9.	Suggested remedy (optional) <i>Stop calling me out to medical</i>	✓	
10.	Form signed and dated	✓	

PRELIMINARY

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L. YOUNG

Handwritten notes at the top of the page, including the word "Notes" and some illegible scribbles.

Main body of handwritten text, appearing as a list or series of notes, though the content is mostly illegible due to fading and bleed-through.

(149)

Lower section of handwritten text, continuing the notes or list, with some lines appearing to be underlined.

Handwritten signatures or initials at the bottom left of the page.

L. YOUNG

CONFIDENTIAL

Thank You!

"Sorry I don't
Put Thank You ~~on~~
~~on~~ Some of the
Other Forms!"

"Thank You Very Much!"

[Faint, illegible handwritten text, possibly bleed-through from the reverse side of the page]

1001
D

Mark
T

10/1/80
10/1/80

10/1/80
10/1/80

10/1/80
10/1/80

Thank You!

10/1/80

[Faint, illegible text, possibly bleed-through from the reverse side of the page]

*1 copy
Mentor*

Thank You
Have a Nice Day!


ATTACHMENT 2

GRIEVABLE AND NONGRIEVABLE ITEM

GRIEVABLE ITEMS: Any offender may grieve the following, when applicable to their place of confinement or conditions of supervision and when the incident or issue affects them personally:

1. Policies, rules, and procedures enforced within the facility, Field Office, or the Department of Corrections;
2. Application of policies, rules, and procedures;
3. Lack of policy, rule, or procedure which directly affects the living conditions of the offender;
4. Actions of employees, contract staff, or volunteers over which the facility or supervising office has jurisdiction;
5. Actions of other offenders; and
6. Retaliation against the grievant for his/her good faith participation in the grievance program.

NONGRIEVABLE ITEMS: The following items are NOT grievable:

1. State and federal law (includes RCW and WAC);
2. Court actions and decisions;
3. Indeterminate Sentence Review Board actions and decisions;
4. Pre-sentence Investigation (PSI) reports;
5. Community Corrections Officers' recommendations testimony to the court and/or the Indeterminate Sentence Review Board;
6. Application of special conditions imposed by a Community Corrections Officer per Department policy;
7. Actions of persons not under the jurisdiction of the facility or Field Office to which the offender is confined/assigned;
8. Administrative Segregation Hearings actions and decisions;
9. Classification decisions and those issues requiring action through the classification process such as transfer, custody promotions/demotion, and so forth (Grievance Coordinators will refer such issues to the appropriate Counselor, unit team, etc.);
10. Infractions and disciplinary actions and decisions;
11. Department of Natural Resources (DNR) policies and procedures are not grievable, as the Department has no authority in such matters. Grievance Coordinators should refer complaints on such issues to the local DNR administrator. Formal conduct grievances may be pursued against DNR staff only in the most flagrant cases, such as physical or sexual abuse, or sexual harassment. Formal conduct grievances shall be investigated jointly by the Superintendent and the local DNR Administrator. Corrective actions against DNR staff are the responsibility of DNR Administrators. Grievance Coordinators will discuss the issue with the Grievance Program Manager prior to initiating any formal conduct grievance against DNR staff; and
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Department policy and written procedure governing these nongrievable issues **May** be challenged through the grievance process.

Note: Limit each complaint form to only one issue or incident.

Ask Yourself: Does my complaint/appeal contain this information?

INFORMATION		Yes	No
1.	Who or What is being grieved (A simple statement of concern regarding action policy, procedure or practice)	X	
2.	How the issue or incident affects you personally	X	
3.	The name(s) of all individuals involved		X
4.	When the incident occurred(date and time if relevant)		X
5.	Where the incident occurred	X	
6.	What happened or was said	X	
7.	Informal resolution attempted	X	
8.	The name(s) of potential witness(es)		X
9.	Suggested remedy(optional)	X	
10.	Form signed and dated	X	

WAC 137-48

GRIEVABLE AND NONGRIEVABLE ITEM

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Department policy and written procedure governing these nongrievable issues **May** be challenged through the grievance process.

Note: Limit each complaint form to only one issue or incident.

Ask Yourself: Does my complaint/appeal contain this information?

INFORMATION		YES	NO
1.	Who or What is being grieved (A simple statement of concern regarding action policy, procedure, or practice)	X	
2.	How the issue or incident affects you personally	X	
3.	The name(s) of all individuals involved	X	
4.	When the incident occurred (date and time if relevant)	X	
5.	Where the incident occurred	X	
6.	What happened or was said	X	
7.	Informal resolution attempted		X
8.	The name(s) of potential witness(es)		
9.	Suggested remedy (optional)		
10.	Form signed and dated	X	

GRIEVABLE AND NONGRIEVABLE ITEM

GRIEVABLE ITEMS: Any offender may grieve the following, when applicable to their place of confinement or conditions of supervision and when the incident or issue affects them personally:

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INFORMATION		Yes	No
1.	Who or What is being grieved (A simple statement of concern regarding action policy, procedure, or practice)	✓	
2.	How the issue or incident affects you personally	✓	
3.	The name(s) of all individuals involved	✓	
4.	When the incident occurred (date and time if relevant)	✓	
5.	Where the incident occurred	✓	
6.	What happened or was said	✓	
7.	Informal resolution attempted	?	
8.	The name(s) of potential witness(es)	✓	
9.	Suggested remedy (optional)	✓	
10.	Form signed and dated	✓	

J. YONG

GRIEVABLE AND NONGRIEVABLE ITEM

GRIEVABLE ITEMS: Any offender may grieve the following, when applicable to their place of confinement or conditions of supervision and when the incident or issue affects them personally:

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2. Application of policies.
3. Lack of policies, rules, or procedures that directly affect the offender's own living conditions.
4. Actions of employees, contract staff, or volunteers over whom the facility or supervising office has jurisdiction, including retaliation against the offender for his/her good faith participation in the grievance program.
5. Actions of other offenders.

NONGRIEVABLE ITEMS: The following items are **NOT** grievable:

1. State and federal law, including Washington Administrative Code (WAC).
2. Court decisions.
3. Indeterminate Sentence Review Board (ISRB) decisions.
4. Court ordered Pre-sentence Investigation (PSI) reports.
5. Community Corrections Officer (CCO) recommendations/testimony to a Department Hearing Officer, court, and/or the ISRB.
6. Special conditions imposed by a CCO per Department policy.
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5.	Where the incident occurred	✓	
6.	What happened or was said	✓	
7.	Informal resolution attempted		✓
8.	The name(s) of potential witness(es)		✓
9.	Suggested remedy (optional)	✓	
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Ask Yourself: Does my complaint/appeal contain this information?

	INFORMATION	Yes	No
1.	Who or What is being grieved (A simple statement of concern regarding action, policy, procedure, or practice)	<input checked="" type="checkbox"/>	
2.	How the issue or incident affects you personally	<input checked="" type="checkbox"/>	
3.	The name(s) of all individuals involved		<input checked="" type="checkbox"/>
4.	When the incident occurred (date and time if relevant)		<input checked="" type="checkbox"/>
5.	Where the incident occurred		<input checked="" type="checkbox"/>
6.	What happened or was said	<input checked="" type="checkbox"/>	
7.	Informal resolution attempted	<input checked="" type="checkbox"/>	
8.	The name(s) of potential witness(es)	<input checked="" type="checkbox"/>	
9.	Suggested remedy (optional)	<input checked="" type="checkbox"/>	
10.	Form signed and dated	<input checked="" type="checkbox"/>	

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	INFORMATION	Yes	No
1.	Who or What is being grieved (A simple statement of concern regarding action policy, procedure, or practice)	✓	
2.	How the issue or incident affects you personally	✓	
3.	The name(s) of all individuals involved	✓	
4.	When the incident occurred (date and time if relevant)	✓	
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4. Court ordered Pre-sentence Investigation (PSI) reports.
5. Community Corrections Officer (CCO) recommendations/testimony to a Department Hearing Officer, court, and/or the ISRB.
6. Special conditions imposed by a CCO per Department policy.
7. Any Department approved procedure that has a formal appeal process. Procedures with a formal appeal process include:
 - a. Rejection of incoming or outgoing mail and packages (Prisons ONLY), as WAC 137-48 specifies a formal avenue of appeal.
 - b. Grievance and appeal responses. The contents of a grievance/appeal response, and the investigator/respondent, may not be grieved, as the grievant may address his/her concerns regarding a response in an appeal to the next level of review.
 - c. Determination by a Grievance Coordinator that a complaint is not grievable, as the decision is appealable to the Grievance Program Manager.
 - d. Employees, contract staff, and volunteers may not be grieved for writing an infraction or causing an infraction to be written, as the matter will be adjudicated through the disciplinary process in accordance with WAC.
 - e. A Superintendent, Community Corrections Supervisor, or Regional Administrator may not be grieved for his/her decision to designate an offender as an abuser of the Offender Grievance Program or restrict that offender's access to the grievance process. Those decisions are automatically reviewed by a designated administrator.
8. Department of Natural Resources (DNR) policies and procedures are not grievable, as the Department has no authority in such matters. Grievance Coordinators should refer complaints on such issues to the local DNR administrator. Formal conduct grievances may be pursued against DNR staff only in the most flagrant cases, such as physical or sexual abuse, or sexual harassment. Formal conduct grievances shall be investigated jointly by the Superintendent and the local DNR Administrator. Corrective actions against DNR staff are the responsibility of DNR Administrators. Grievance Coordinators will discuss the issue with the Grievance Program Manager prior to initiating any formal conduct grievance against DNR staff.

Department policy and written procedure governing these nongrievable issues may be challenged through the grievance process.

Note: Limit each complaint form to only one issue or incident.

Ask Yourself: Does my complaint/appeal contain this information?

INFORMATION		Yes	No
1.	Who or What is being grieved (A simple statement of concern regarding action policy, procedure, or practice)		
2.	How the issue or incident affects you personally		
3.	The name(s) of all individuals involved		
4.	When the incident occurred (date and time if relevant)		
5.	Where the incident occurred		
6.	What happened or was said		
7.	Informal resolution attempted		
8.	The name(s) of potential witness(es)		
9.	Suggested remedy (optional)		
10.	Form signed and dated		

GRIEVABLE AND NONGRIEVABLE ITEM

GRIEVABLE ITEMS: Any offender may grieve the following, when applicable to their place of confinement or conditions of supervision and when the incident or issue affects them personally:

1. Policies, rules, and procedures enforced within the facility, Field Office, or the Department of Corrections;
2. Application of policies, rules, and procedures;
3. Lack of policy, rule, or procedure which directly affects the living conditions of the offender;
4. Actions of employees, contract staff, or volunteers over which the facility or supervising office has jurisdiction;
5. Actions of other offenders; and
6. Retaliation against the grievant for his/her good faith participation in the grievance program.

NONGRIEVABLE ITEMS: The following items are NOT grievable:

1. State and federal law (includes RCW and WAC);
2. Court actions and decisions;
3. Indeterminate Sentence Review Board actions and decisions;
4. Pre-sentence Investigation (PSI) reports;
5. Community Corrections Officers' recommendations testimony to the court and/or the Indeterminate Sentence Review Board;
6. Application of special conditions imposed by a Community Corrections Officer per Department policy;
7. Actions of persons not under the jurisdiction of the facility or Field Office to which the offender is confined/assigned;
8. Administrative Segregation Hearings actions and decisions;
9. Classification decisions and those issues requiring action through the classification process such as transfer, custody promotions/demotion, and so forth (Grievance Coordinators will refer such issues to the appropriate Counselor, unit team, etc.);
10. Infractions and disciplinary actions and decisions;
11. Department of Natural Resources (DNR) policies and procedures are not grievable, as the Department has no authority in such matters. Grievance Coordinators should refer complaints on such issues to the local DNR administrator. Formal conduct grievances may be pursued against DNR staff only in the most flagrant cases, such as physical or sexual abuse, or sexual harassment. Formal conduct grievances shall be investigated jointly by the Superintendent and the local DNR Administrator. Corrective actions against DNR staff are the responsibility of DNR Administrators. Grievance Coordinators will discuss the issue with the Grievance Program Manager prior to initiating any formal conduct grievance against DNR staff; and
12. Any process that has a formalized appeal or review procedure built into it which has been approved by the Grievance Program Manager prior to its use to reject complaints as nongrievable. Items already approved include:
 - a. Rejection of incoming or outgoing mail and packages (Prisons ONLY), as WAC 137-48 provides a formalized avenue of appeal;
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 - d. Staff may not be grieved for writing an infraction or causing an infraction to be written, as the matter will be adjudicated through the disciplinary process in accordance with WAC; and
 - e. A Superintendent, facility Supervisor, or Community Corrections Administrator may not be grieved for his/her decision to designate an offender as an abuser of the Offender Grievance Program or restriction that offender's access to the grievance mechanism. Those decisions are automatically reviewed by designated administrator.

Department policy and written procedure governing these nongrievable issues May be challenged through the grievance process.

Note: Limit each complaint form to only one issue or incident.

Ask Yourself: Does my complaint/appeal contain this information?

INFORMATION		Yes	No
1.	Who or What is being grieved (A simple statement of concern regarding action policy, procedure, or practice)	✓	
2.	How the issue or incident affects you personally	✓	
3.	The name(s) of all individuals involved	✓	
4.	When the incident occurred (date and time if relevant)	✓	
5.	Where the incident occurred	✓	
6.	What happened or was said	✓	
7.	Informal resolution attempted	N/A	
8.	The name(s) of potential witness(es)	✓	
9.	Suggested remedy (optional)	✓	
10.	Form signed and dated	✓	

L. YOUNG

GRIEVABLE AND NONGRIEVABLE ITEMS

GRIEVABLE ITEMS: Any offender may grieve the following, when applicable to their place of confinement or conditions of supervision and when the incident or issue affects them personally:

1. Policies, rules, and procedures enforced within the facility, Field Office, or the Department of Corrections;
2. Application of policies, rules, and procedures;
3. Lack of a policy, rule, or procedure which directly affects the living conditions of the offender;
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5. Community Corrections Officers' recommendations to the court and/or the Indeterminate Sentence Review Board;
6. Application of special conditions imposed by a Community Corrections Officer per Department policy;
7. Actions of persons not under the jurisdiction of the facility or Field Office to which the offender is confined/assigned;
8. Administrative Segregation Hearings actions and decisions;
9. Classification decisions and those issues requiring action through the classification process such as transfer, custody promotion/demotion, and so forth (Grievance Coordinators will refer such issues to the appropriate Counselor, unit team, etc.);
10. Infractions and disciplinary actions and decisions;
11. Department of Natural Resources (DNR) policies and procedures are not grievable, as the Department has no authority in such matters. Grievance Coordinators should refer complaints on such issues to the local DNR administrator. Formal conduct grievances may be pursued against DNR staff only in the most flagrant cases, such as physical or sexual abuse, or sexual harassment. Formal conduct grievances shall be investigated jointly by the Superintendent and the local DNR Administrator. Corrective actions against DNR staff are the responsibility of DNR Administrators. Grievance Coordinators will discuss the issue with the Grievance Program Manager prior to initiating any formal conduct grievance against DNR staff; and
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 - e. A Superintendent, facility Supervisor, or Community Corrections Administrator may not be grieved for his/her decision to designate an offender as an abuser of the Offender Grievance Program or restricting that offender's access to the grievance mechanism. Those decisions are automatically reviewed by designated administrators.

Department policy and written procedure governing these nongrievable issues MAY be challenged through the grievance process.

Note: Limit each complaint form to only one issue or incident.

Ask Yourself: Does my complaint/appeal contain this information?

	INFORMATION	YES	NO
1.	Who or What is being grieved (A simple statement of concern regarding action, policy, procedure, or practice)		
2.	How the issue or incident affects you personally		
3.	The name(s) of all individuals involved	✓	
4.	When the incident occurred (date and time if relevant)	✓	
5.	Where the incident occurred	✓	
6.	What happened or was said	✓	
7.	Informal resolution attempted	✓	
8.	The name(s) of potential witness(es)	✓	
9.	Suggested remedy (optional)	✓	
10.	Form signed and dated	✓	

GRIEVABLE AND NONGRIEVABLE ITEM

GRIEVABLE ITEMS: Any offender may grieve the following, when applicable to their place of confinement or conditions of supervision and when the incident or issue affects them personally:

1. Policies.
2. Application of policies.
3. Lack of policies, rules, or procedures that directly affect the offender's own living conditions.
4. Actions of employees, contract staff, or volunteers over whom the facility or supervising office has jurisdiction, including retaliation against the offender for his/her good faith participation in the grievance program.
5. Actions of other offenders.

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1. State and federal law, including Washington Administrative Code (WAC).
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Ask Yourself: Does my complaint/appeal contain this information?

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INFORMATION		Yes	No
1.	Who or What is being grieved (A simple statement of concern regarding action policy, procedure, or practice)	<input checked="" type="checkbox"/>	<input type="checkbox"/>
2.	How the issue or incident affects you personally	<input checked="" type="checkbox"/>	<input type="checkbox"/>
3.	The name(s) of all individuals involved	<input checked="" type="checkbox"/>	<input type="checkbox"/>
4.	When the incident occurred (date and time if relevant)	<input checked="" type="checkbox"/>	<input type="checkbox"/>
5.	Where the incident occurred	<input checked="" type="checkbox"/>	<input type="checkbox"/>
6.	What happened or was said	<input checked="" type="checkbox"/>	<input type="checkbox"/>
7.	Informal resolution attempted	<input checked="" type="checkbox"/>	<input type="checkbox"/>
8.	The name(s) of potential witness(es)	<input checked="" type="checkbox"/>	<input type="checkbox"/>
9.	Suggested remedy (optional)	<input checked="" type="checkbox"/>	<input type="checkbox"/>
10.	Form signed and dated	<input checked="" type="checkbox"/>	<input type="checkbox"/>

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GRIEVABLE AND NONGRIEVABLE ITEM

GRIEVABLE ITEMS: Any offender may grieve the following, when applicable to their place of confinement or conditions of supervision and when the incident or issue affects them personally:

1. Policies.
2. Application of policies.
3. Lack of policies, rules, or procedures that directly affect the offender's own living conditions.
4. Actions of employees, contract staff, or volunteers over whom the facility or supervising office has jurisdiction, including retaliation against the offender for his/her good faith participation in the grievance program.
5. Actions of other offenders.

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Department policy and written procedure governing these nongrievable issues **may** be challenged through the grievance process.

Note: Limit each complaint form to only one issue or incident.

Ask Yourself: Does my complaint/appeal contain this information?

INFORMATION		Yes	No
1.	Who or What is being grieved (A simple statement of concern regarding action policy, procedure, or practice)	X	
2.	How the issue or incident affects you personally	X	
3.	The name(s) of all individuals involved	X	
4.	When the incident occurred (date and time if relevant)	X	
5.	Where the incident occurred	X	
6.	What happened or was said	X	
7.	Informal resolution attempted		
8.	The name(s) of potential witness(es)	X	
9.	Suggested remedy (optional)	X	
10.	Form signed and dated	X	

GRIEVABLE AND NONGRIEVABLE ITEM

GRIEVABLE ITEMS: Any offender may grieve the following, when applicable to their place of confinement or conditions of supervision and when the incident or issue affects them personally:

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Department policy and written procedure governing these nongrievable issues may be challenged through the grievance process.

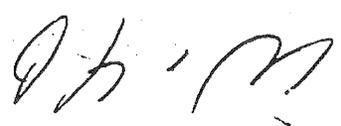
Note: Limit each complaint form to only one issue or incident.

Ask Yourself: Does my complaint/appeal contain this information?

INFORMATION		Yes	No
1.	Who or What is being grieved (A simple statement of concern regarding action policy, procedure, or practice)	X	
2.	How the issue or incident affects you personally	X	
3.	The name(s) of all individuals involved	X	
4.	When the incident occurred (date and time if relevant)	X	
5.	Where the incident occurred	X	
6.	What happened or was said	X	
7.	Informal resolution attempted	X	
8.	The name(s) of potential witness(es)	X	
9.	Suggested remedy (optional)	X	
10.	Form signed and dated	X	

4-2

J. SCAMAHORN



ATTACHMENT 2

L. YOUNG
GRIEVANCE COORDINATOR

GRIEVABLE AND NONGRIEVABLE ITEM

GRIEVABLE ITEMS: Any offender may grieve the following, when applicable to their place of confinement or conditions of supervision and when the incident or issue affects them personally:

1. Policies.
2. Application of policies. G.W.
3. Lack of policies, rules, or procedures that directly affect the offender's own living conditions.
4. Actions of employees, contract staff, or volunteers over whom the facility or supervising office has jurisdiction, including retaliation against the offender for his/her good faith participation in the grievance program.
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Note: Limit each complaint form to only one issue or incident.

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INFORMATION		Yes	No
1.	Who or What is being grieved (A simple statement of concern regarding action policy, procedure, or practice)		
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6.	What happened or was said		
7.	Informal resolution attempted		
8.	The name(s) of potential witness(es)		
9.	Suggested remedy (optional)		
10.	Form signed and dated		

LUNG
GRIEVANCE COORDINATOR

GRIEVABLE AND NONGRIEVABLE ITEM

GRIEVABLE ITEMS: Any offender may grieve the following, when applicable to their place of confinement or conditions of supervision and when the incident or issue affects them personally:

1. Policies. [2ND] GRIEVABLE AND APPEAL SUBJECT
2. Application of policies.
3. Lack of policies, rules, or procedures that directly affect the offender's own living conditions.
4. Actions of employees, contract staff, or volunteers over whom the facility or supervising office has jurisdiction, including retaliation against the offender for his/her good faith participation in the grievance program.
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INFORMATION		Yes	No
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5.	Where the incident occurred		
6.	What happened or was said		
7.	Informal resolution attempted		
8.	The name(s) of potential witness(es)		
9.	Suggested remedy (optional)		
10.	Form signed and dated		

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GRIEVABLE AND NONGRIEVABLE ITEM

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GRIEVABLE ITEMS: Any offender may grieve the following, when applicable to their place of confinement or conditions of supervision and when the incident or issue affects them personally:

1. Policies, rules, and procedures enforced within the facility, Field Office, or the Department of Corrections;
2. Application of policies, rules, and procedures;
3. Lack of policy, rule, or procedure which directly affects the living conditions of the offender; 27 AUG 2013
4. Actions of employees, contract staff, or volunteers over which the facility or supervising office has jurisdiction;
5. Actions of other offenders; and
6. Retaliation against the grievant for his/her good faith participation in the grievance program.

NONGRIEVABLE ITEMS: The following items are NOT grievable:

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1. State and federal law (includes RCW and WAC);
2. Court actions and decisions;
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4. Pre-sentence Investigation (PSI) reports;
5. Community Corrections Officers' recommendations testimony to the court and/or the Indeterminate Sentence Review Board;
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8. Administrative Segregation Hearings actions and decisions;
9. Classification decisions and those issues requiring action through the classification process such as transfer, custody promotions/demotion, and so forth (Grievance Coordinators will refer such issues to the appropriate Counselor, unit team, etc.);
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 - b. Grievance and appeal responses. The contents of a grievance/appeal response, and the investigator/respondent, may NOT be grieved as the grievant may address his/her concerns regarding a response in an appeal to the next level of review;
 - c. Determination by a Grievance Coordinator that a complaint is not grievable as the decision is appealable to the Grievance Program Manager;
 - d. Staff may not be grieved for writing an infraction or causing an infraction to be written, as the matter will be adjudicated through the disciplinary process in accordance with WAC; and
 - e. A Superintendent, facility Supervisor, or Community Corrections Administrator may not be grieved for his/her decision to designate an offender as an abuser of the Offender Grievance Program or restriction that offender's access to the grievance mechanism. Those decisions are automatically reviewed by designated administrator.

Department policy and written procedure governing these grievable issues May be challenged through the grievance process.

Note: Limit each complaint form to only one issue or incident.

Ask Yourself: Does my complaint/appeal contain this information?

INFORMATION		Yes	No
1.	Who or What is being grieved (A simple statement of concern regarding action policy, procedure, or practice)		
2.	How the issue or incident affects you personally		
3.	The name(s) of all individuals involved		
4.	When the incident occurred (date and time if relevant)		
5.	Where the incident occurred		
6.	What happened or was said		
7.	Informal resolution attempted		
8.	The name(s) of potential witness(es)		
9.	Suggested remedy (optional)		
10.	Form signed and dated		

TKR

L. YOUNG

GRIEVABLE Item

GRIEVABLE AND NONGRIEVABLE ITEM

GRIEVABLE ITEMS: Any offender may grieve the following, when applicable to their place of confinement or conditions of supervision and when the incident or issue affects them personally:

1. Policies, rules, and procedures enforced within the facility, Field Office, or the Department of Corrections;
2. Application of policies, rules, and procedures;
3. Lack of policy, rule, or procedure which directly affects the living conditions of the offender;
4. Actions of employees, contract staff, or volunteers over which the facility or supervising office has jurisdiction;
5. Actions of other offenders; and
6. Retaliation against the grievant for his/her good faith participation in the grievance program.

NONGRIEVABLE ITEMS: The following items are NOT grievable:

1. State and federal law (includes RCW and WAC);
2. Court actions and decisions;
3. Indeterminate Sentence Review Board actions and decisions;
4. Pre-sentence Investigation (PSI) reports;
5. Community Corrections Officers' recommendations testimony to the court and/or the Indeterminate Sentence Review Board;
6. Application of special conditions imposed by a Community Corrections Officer per Department policy;
7. Actions of persons not under the jurisdiction of the facility or Field Office to which the offender is confined/assigned;
8. Administrative Segregation Hearings actions and decisions;
9. Classification decisions and those issues requiring action through the classification process such as transfer, custody promotions/demotion, and so forth (Grievance Coordinators will refer such issues to the appropriate Counselor, unit team, etc.);
10. Infractions and disciplinary actions and decisions;
11. Department of Natural Resources (DNR) policies and procedures are not grievable, as the Department has no authority in such matters. Grievance Coordinators should refer complaints on such issues to the local DNR administrator. Formal conduct grievances may be pursued against DNR staff only in the most flagrant cases, such as physical or sexual abuse, or sexual harassment. Formal conduct grievances shall be investigated jointly by the Superintendent and the local DNR Administrator. Corrective actions against DNR staff are the responsibility of DNR Administrators. Grievance Coordinators will discuss the issue with the Grievance Program Manager prior to initiating any formal conduct grievance against DNR staff; and
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Department policy and written procedure governing these nongrievable issues **May** be challenged through the grievance process.

Note: Limit each complaint form to only one issue or incident.

Ask Yourself: Does my complaint/appeal contain this information?

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1.	Who or What is being grieved (A simple statement of concern regarding action policy, procedure, or practice)		
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7.	Informal resolution attempted		
8.	The name(s) of potential witness(es)		
9.	Suggested remedy (optional)		
10.	Form signed and dated		

TKR

L. YOUNG

GRIEVANCE COORDINATOR

W.S.P.

GRIEVABLE AND NONGRIEVABLE ITEM

GRIEVABLE ITEMS: Any offender may grieve the following, when applicable to their place of confinement or conditions of supervision and when the incident or issue affects them personally:

1. Policies.
2. Application of policies.
3. Lack of policies, rules, or procedures that directly affect the offender's own living conditions.
4. Actions of employees, contract staff, or volunteers over whom the facility or supervising office has jurisdiction, including retaliation against the offender for his/her good faith participation in the grievance program.
5. Actions of other offenders.

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NONGRIEVABLE ITEMS: The following items are NOT grievable:

1. State and federal law, including Washington Administrative Code (WAC).
2. Court decisions.
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4. Court ordered Pre-sentence Investigation (PSI) reports.
5. Community Corrections Officer (CCO) recommendations/testimony to a Department Hearing Officer, court, and/or the ISRB.
6. Special conditions imposed by a CCO per Department policy.
7. Any Department approved procedure that has a formal appeal process. Procedures with a formal appeal process include:
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L. YOUNG

GRIEVANCE COORDINATOR

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J. YOUNG

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9.	Suggested remedy (optional)		
10.	Form signed and dated		

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GRIEVABLE AND NONGRIEVABLE ITEM

GRIEVABLE ITEMS: Any offender may grieve the following, when applicable to their place of confinement or conditions of supervision and when the incident or issue affects them personally:

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L. SCAMAHORN

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L. SOVANAORN

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 - a. Rejection of incoming or outgoing mail and packages (Prisons ONLY), as WAC 137-48 specifies a formal avenue of appeal.
 - b. Grievance and appeal responses. The contents of a grievance/appeal response, and the investigator/respondent, may not be grieved, as the grievant may address his/her concerns regarding a response in an appeal to the next level of review.
 - c. Determination by a Grievance Coordinator that a complaint is not grievable, as the decision is appealable to the Grievance Program Manager.
 - d. Employees, contract staff, and volunteers may not be grieved for writing an infraction or causing an infraction to be written, as the matter will be adjudicated through the disciplinary process in accordance with WAC.
 - e. A Superintendent, Community Corrections Supervisor, or Regional Administrator may not be grieved for his/her decision to designate an offender as an abuser of the Offender Grievance Program or restrict that offender's access to the grievance process. Those decisions are automatically reviewed by a designated administrator.
8. Department of Natural Resources (DNR) policies and procedures are not grievable, as the Department has no authority in such matters. Grievance Coordinators should refer complaints on such issues to the local DNR administrator. Formal conduct grievances may be pursued against DNR staff only in the most flagrant cases, such as physical or sexual abuse, or sexual harassment. Formal conduct grievances shall be investigated jointly by the Superintendent and the local DNR Administrator. Corrective actions against DNR staff are the responsibility of DNR Administrators. Grievance Coordinators will discuss the issue with the Grievance Program Manager prior to initiating any formal conduct grievance against DNR staff.

Department policy and written procedure governing these nongrievable issues may be challenged through the grievance process.

Note: Limit each complaint form to only one issue or incident.

Ask Yourself: Does my complaint/appeal contain this information?

07-40

INFORMATION		Yes	No
1.	Who or What is being grieved (A simple statement of concern regarding action policy, procedure, or practice)		
2.	How the issue or incident affects you personally		
3.	The name(s) of all individuals involved		
4.	When the incident occurred (date and time if relevant)		
5.	Where the incident occurred		
6.	What happened or was said		
7.	Informal resolution attempted		
8.	The name(s) of potential witness(es)		
9.	Suggested remedy (optional)		
10.	Form signed and dated		

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GRIEVABLE AND NONGRIEVABLE ITEM

GRIEVABLE ITEMS: Any offender may grieve the following, when applicable to their place of confinement or conditions of supervision and when the incident or issue affects them personally:

1. Policies.
2. Application of policies.
3. Lack of policies, rules, or procedures that directly affect the offender's own living conditions.
4. Actions of employees, contract staff, or volunteers over whom the facility or supervising office has jurisdiction, including retaliation against the offender for his/her good faith participation in the grievance program.
5. Actions of other offenders.

NONGRIEVABLE ITEMS: The following items are **NOT** grievable:

1. State and federal law, including Washington Administrative Code (WAC).
2. Court decisions.
3. Indeterminate Sentence Review Board (ISRB) decisions.
4. Court ordered Pre-sentence Investigation (PSI) reports.
5. Community Corrections Officer (CCO) recommendations/testimony to a Department Hearing Officer, court, and/or the ISRB.
6. Special conditions imposed by a CCO per Department policy.
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5.	Where the incident occurred		
6.	What happened or was said		
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8.	The name(s) of potential witness(es)		
9.	Suggested remedy (optional)		
10.	Form signed and dated		

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WAC 137-48

GRIEVABLE AND NONGRIEVABLE ITEM

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9.	Suggested remedy (optional)		
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W-60

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5. Actions of other offenders.

NONGRIEVABLE ITEMS: The following items are NOT grievable:

1. State and federal law, including Washington Administrative Code (WAC).
2. Court decisions.
3. Indeterminate Sentence Review Board (ISRB) decisions.
4. Court ordered Pre-sentence Investigation (PSI) reports.
5. Community Corrections Officer (CCO) recommendations/testimony to a Department Hearing Officer, court, and/or the ISRB.
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 - d. Employees, contract staff, and volunteers may not be grieved for writing an infraction or causing an infraction to be written, as the matter will be adjudicated through the disciplinary process in accordance with WAC.
 - e. A Superintendent, Community Corrections Supervisor, or Regional Administrator may not be grieved for his/her decision to designate an offender as an abuser of the Offender Grievance Program or restrict that offender's access to the grievance process. Those decisions are automatically reviewed by a designated administrator.
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Note: Limit each complaint form to only one issue or incident.

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2.	How the issue or incident affects you personally		
3.	The name(s) of all individuals involved		
4.	When the incident occurred (date and time if relevant)		
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6.	What happened or was said		
7.	Informal resolution attempted		
8.	The name(s) of potential witness(es)		
9.	Suggested remedy (optional)		
10.	Form signed and dated		

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GRIEVABLE AND NONGRIEVABLE ITEM

GRIEVABLE ITEMS: Any offender may grieve the following, when applicable to their place of confinement or conditions of supervision and when the incident or issue affects them personally:

1. Policies, rules, and procedures enforced within the facility, Field Office, or the Department of Corrections;
2. Application of policies, rules, and procedures;
3. Lack of policy, rule, or procedure which directly affects the living conditions of the offender;
4. Actions of employees, contract staff, or volunteers over which the facility or supervising office has jurisdiction;
5. Actions of other offenders; and
6. Retaliation against the grievant for his/her good faith participation in the grievance program.

NONGRIEVABLE ITEMS: The following items are NOT grievable:

1. State and federal law (includes RCW and WAC);
2. Court actions and decisions;
3. Indeterminate Sentence Review Board actions and decisions;
4. Pre-sentence Investigation (PSI) reports;
5. Community Corrections Officers' recommendations testimony to the court and/or the Indeterminate Sentence Review Board;
6. Application of special conditions imposed by a Community Corrections Officer per Department policy;
7. Actions of persons not under the jurisdiction of the facility or Field Office to which the offender is confined/assigned;
8. Administrative Segregation Hearings actions and decisions;
9. Classification decisions and those issues requiring action through the classification process such as transfer, custody promotions/demotions, and so forth (Grievance Coordinators will refer such issues to the appropriate Counselor, unit team, etc.);
10. Infractions and disciplinary actions and decisions;
11. Department of Natural Resources (DNR) policies and procedures are not grievable, as the Department has no authority in such matters. Grievance Coordinators should refer complaints on such issues to the local DNR administrator. Formal conduct grievances may be pursued against DNR staff only in the most flagrant cases, such as physical or sexual abuse, or sexual harassment. Formal conduct grievances shall be investigated jointly by the Superintendent and the local DNR Administrator. Corrective actions against DNR staff are the responsibility of DNR Administrators. Grievance Coordinators will discuss the issue with the Grievance Program Manager prior to initiating any formal conduct grievance against DNR staff; and
12. Any process that has a formalized appeal or review procedure built into it which has been approved by the Grievance Program Manager prior to its use to reject complaints as nongrievable. Items already approved include:
 - a. Rejection of incoming or outgoing mail and packages (Prisons ONLY), as WAC 137-48 provides a formalized avenue of appeal;
 - b. Grievance and appeal responses. The contents of a grievance/appeal response, and the investigator/respondent, may NOT be grieved as the grievant may address his/her concerns regarding a response in an appeal to the next level of review;
 - c. Determination by a Grievance Coordinator that a complaint is not grievable as the decision is appealable to the Grievance Program Manager;
 - d. Staff may not be grieved for writing an infraction or causing an infraction to be written, as the matter will be adjudicated through the disciplinary process in accordance with WAC; and
 - e. A Superintendent, facility Supervisor, or Community Corrections Administrator may not be grieved for his/her decision to designate an offender as an abuser of the Offender Grievance Program or restriction that offender's access to the grievance mechanism. Those decisions are automatically reviewed by designated administrator.

Department policy and written procedure governing these nongrievable issues may be challenged through the grievance process.

Note: Limit each complaint form to only one issue or incident.

Ask Yourself: Does my complaint/appeal contain this information?

	INFORMATION	YES	NO
1.	Who or What is being grieved (A simple statement of concern regarding action policy, procedure, or practice)		
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9.	Suggested remedy(optional)		
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4-2

GRIEVABLE AND NONGRIEVABLE ITEM

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 - c. Determination by a Grievance Coordinator that a complaint is not grievable, as the decision is appealable to the Grievance Program Manager.
 - d. Employees, contract staff, and volunteers may not be grieved for writing an infraction or causing an infraction to be written, as the matter will be adjudicated through the disciplinary process in accordance with WAC.
 - e. A Superintendent, Community Corrections Supervisor, or Regional Administrator may not be grieved for his/her decision to designate an offender as an abuser of the Offender Grievance Program or restrict that offender's access to the grievance process. Those decisions are automatically reviewed by a designated administrator.
8. Department of Natural Resources (DNR) policies and procedures are not grievable, as the Department has no authority in such matters. Grievance Coordinators should refer complaints on such issues to the local DNR administrator. Formal conduct grievances may be pursued against DNR staff only in the most flagrant cases, such as physical or sexual abuse, or sexual harassment. Formal conduct grievances shall be investigated jointly by the Superintendent and the local DNR Administrator. Corrective actions against DNR staff are the responsibility of DNR Administrators. Grievance Coordinators will discuss the issue with the Grievance Program Manager prior to initiating any formal conduct grievance against DNR staff.

Department policy and written procedure governing these nongrievable issues may be challenged through the grievance process.

Note: Limit each complaint form to only one issue or incident.

Ask Yourself: Does my complaint/appeal contain this information?

INFORMATION		Yes	No
1.	Who or What is being grieved (A simple statement of concern regarding action policy, procedure, or practice)		
2.	How the issue or incident affects you personally		
3.	The name(s) of all individuals involved		
4.	When the incident occurred (date and time if relevant)		
5.	Where the incident occurred		
6.	What happened or was said		
7.	Informal resolution attempted		
8.	The name(s) of potential witness(es)		
9.	Suggested remedy (optional)		
10.	Form signed and dated		

4-2

WASH STATE

GRIEVABLE AND NONGRIEVABLE ITEM

GRIEVABLE ITEMS: Any offender may grieve the following, when applicable to their place of confinement or conditions of supervision and when the incident or issue affects them personally:

1. Policies.
2. Application of policies.
3. Lack of policies, rules, or procedures that directly affect the offender's own living conditions.
4. Actions of employees, contract staff, or volunteers over whom the facility or supervising office has jurisdiction, including retaliation against the offender for his/her good faith participation in the grievance program.
5. Actions of other offenders.

NONGRIEVABLE ITEMS: The following items are NOT grievable:

1. State and federal law, including Washington Administrative Code (WAC).
2. Court decisions.
3. Indeterminate Sentence Review Board (ISRB) decisions.
4. Court ordered Pre-sentence Investigation (PSI) reports.
5. Community Corrections Officer (CCO) recommendations/testimony to a Department Hearing Officer, court, and/or the ISRB.
6. Special conditions imposed by a CCO per Department policy.
7. Any Department approved procedure that has a formal appeal process. Procedures with a formal appeal process include:
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