

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

vs.

CECIL DAVIS,

Appellant.

No. 80209-2

STATEMENT OF  
ADDITIONAL  
AUTHORITY

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STATE COURT  
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Pursuant to RAP 10.8, petitioner cites to the following additional authority regarding the defense recusal motion:

Capperton v. A.T. Massey Coal Co., \_\_\_ U.S. \_\_\_, 129 S. Ct. 2252, 2266-2267, 173 L. Ed. 2d 1208 (2009) (common law and professional judicial standards are more rigorous than due process requirements for recusal and provide greatest measure of protection);

Chicago, Milwaukee, St. Paul and Pacific R.R. Co. v. Washington State Human Rights Commission, 87 Wn.2d 802, 808-811, 557 P.2d 307 (1976) (proceedings in violation of appearance of fairness doctrine, even in absence of any established prejudice, are invalid and cannot be sustained);

State v. Gamble, 168 Wn.2d 161, 187-188, 225 P.3d 973 (2010) (“a judicial proceeding is valid only if a reasonably prudent, disinterested observer would conclude that the parties received a fair, impartial and neutral hearing”; evidence of potential bias is sufficient);

State v. Romano, 34 Wn. App. 567, 569-570, 662 P.2d 406 (1983) (no evidence judge acted in anything but forthright manner, but ex parte inquiry clouded entire proceeding; reversed and remanded);

State v. Madry, 8 Wn. App. 61, 70-71, 504 P.2d 1156 (1972) (CJC calls for disqualification where impartiality might reasonably be questioned, even where no actual bias shown; judge should have recused himself based on appearance of bias; new trial ordered)

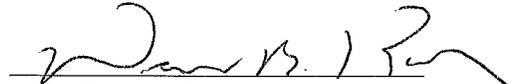
Petitioner cites to the following additional authority regarding the removal of prospective jurors:

State v. Irby, \_\_\_ Wn.2d \_\_\_ (Slip op. filed 1/20/11) (“It is no answer to say that the 12 jurors who ultimately comprised Irby’s jury were unobjectionable. Reasonable and dispassionate minds may look at the same evidence and reach a different result.”)

DATED this 3<sup>rd</sup> day of February, 2011.

Respectfully submitted,

NIELSEN, BROMAN & KOCH



DAVID B. KOCH, WSBA No. 23789

Office ID No. 91051

Attorneys for Petitioner

**IN THE SUPREME COURT OF THE STATE OF WASHINGTON**

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**DECLARATION OF SERVICE**

I, PATRICK MAYOVSKY, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOLLOWING IS TRUE AND CORRECT:

THAT ON THE 3<sup>RD</sup> DAY OF FEBRUARY, 2011, I CAUSED A TRUE AND CORRECT COPY OF THE **STATEMENT OF ADDITIONAL AUTHORITY** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

[X] KATHLEEN PROCTOR  
PIERCE COUNTY PROSECUTING ATTORNEY  
930 TACOMA AVENUE SOUTH  
ROOM 946  
TACOMA, WA 98402

**SIGNED** IN SEATTLE WASHINGTON, THIS 3<sup>RD</sup> DAY OF FEBRUARY, 2011.

x Patrick Mayovsky