

No. 82288-3

SUPREME COURT FOR THE STATE OF WASHINGTON

CITY OF FEDERAL WAY,
Respondent,

v.

DAVID KOENIG,
Appellant.

FILED
COURT OF APPEALS DIV. #1
STATE OF WASHINGTON
2008 NOV 18 PM 3:15

CITY OF FEDERAL WAY'S ANSWER TO PETITION FOR
DIRECT REVIEW

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ANSWER OF RESPONDENT CITY OF FEDERAL WAY

The City of Federal Way does not oppose direct review by the Supreme Court. But the City files this answer to identify the shortcoming in Mr. Koenig's argument. Direct review may not be warranted under RAP 4.2.

The trial court entered its declaratory judgment regarding court records based on this Court's decision in *Nast v. Michaels*, 107 Wn.2d 300, 730 P.2d 54 (1986). *Nast* remains good law, directly controls in this case, and mandates the result reached by the trial court.

In *Nast*, this Court concluded that courts were not subject to the Public Records Act (PRA) because "courts" were not within the definition of "agency" and court records were therefore not "public records." While the factual issue in *Nast* – whether court filings are subject to the PRA – was limited, this Court determined and applied the meaning of the two broad definitional issues of "agency" and "public records." Since the *Nast* decision, the Legislature has amended the PRA innumerable times, but has never chosen to amend those two definitions to include courts (as agencies) and court records (as public records). As Koenig noted below, the Legislature's "failure to amend a statute following a judicial decision interpreting it indicates legislative acquiescence in that decision." Koenig Opening Br. at 9:10-11 (quoting *Soproni v. Polygon Apartment Partners*,

137 Wn.2d 319, 327, n.3, 971 P.2d 500 (1999)). Accordingly, courts have subsequently applied the holding in *Nast* to all court internal administrative records. See *Spokane & Eastern Lawyers v. Tompkins*, 136 Wn. App. 616, 150 P.3d 158 (2007); *Beuhler v. Small*, 115 Wn. App. 914, 64 P.3d 78 (2003).

From the Court's construction of the terms "agency" and "public records" in *Nast*, through the Legislature's acquiescence through silence to court's holding and to the consistent application of *Nast* by the courts of appeal, courts remain outside of the parameters of the PRA.

Under the only potential for direct review under RAP 4.2, this case does not appear to present a "fundamental and urgent issue of broad public import which requires prompt and ultimate determination." RAP 4.2(4). This Court has already decided the issue. There are no conflicts in the lower courts regarding application of the Court's holding. And, there is no "fundamental" or "urgent" need to address an issue the Legislature has ignored. Finally, there appears no dispute that the trial court applied *Nast* in concluding that the records of the Federal Way Municipal Court are not subject to the PRA.

The City does not oppose this Court's direct review of the trial court's declaratory judgment. But, the City does not believe this matter meets the standards of RAP 4.2.

RESPECTFULLY SUBMITTED this 18th day of November, 2008.

FOSTER PEPPER PLLC

A handwritten signature in cursive script that reads "P. Stephen DiJulio". The signature is written in black ink and is positioned above a horizontal line.

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of Federal Way