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SUPREME COURT  
STATE OF WASHINGTON  
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Court of Appeals  
Division I  
State of Washington  
9/30/2021 8:00 AM

No. 100260-2

SUPREME COURT OF THE STATE OF  
WASHINGTON

No. 81420-6-I

IN THE COURT OF APPEALS OF THE STATE OF  
WASHINGTON DIVISION ONE

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CHRISTY DIEMOND  
Petitioner/Plaintiff

v.

KING COUNTY,  
Respondent/Defendant.

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**APPELLANT CHRISTY DIEMOND'S PETITION FOR  
REVIEW BY THE WASHINGTON STATE SUPREME  
COURT**

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## **I. IDENTITY OF PETITIONER**

Petitioner Christy Diemond (“Christy”) was the Plaintiff in the trial court and the Appellant in the Court of Appeals in this Public Record Act (“PRA”) case.

## **II. CITATION TO COURT OF APPEALS DECISION**

Division One issued an opinion on 8/30/2021 in this PRA case filed herewith as **Appendix A**, upholding the underlying ruling of the trial court denying Christy’s CR 60 motion to vacate and refusing to hear Christy’s appeal of the trial court’s denial of a motion to continue King County’s motion for summary judgment, granting the motion for summary judgment, denying Christy’s motion for reconsideration solely on procedural ground based on the claim Christy’s motion for reconsideration was filed 3 days too late even though Christy was never told the orders had been issued or that a hearing had occurred and those orders were not listed or available on the docket to download until the very day she filed her motion for reconsideration. The Brief of Appellant, Brief of Respondent,

and Reply Brief, Amicus Briefs of Washington Coalition for Open Government and We The Governed, and King County's Answers to the Amicus Briefs are attached hereto as

**Appendices B-H.** The oral argument from 4/14/21 at 10 am can be heard at

<https://www.courts.wa.gov/content/OralArgAudio/a01/20210414/2.%20Diamond%20v.%20King%20County%20%20%20814206.mp3>

The Court is urged to listen to the oral argument where numerous concessions were made by King County and the actual position of the County is made clear.

### **III. ISSUES PRESENTED FOR REVIEW**

1. Whether the Court of Appeals erred in (a) upholding the trial court's order denying Petitioner's CR 60 Motion, and (b) finding that the trial court's summary judgment order and orders denying motions for reconsideration and to continue were not properly before the appellate court and could not and would not be addressed?
2. Whether the Court of Appeals erred in applying an abuse of discretion standard to the order given that it was challenging a grant of summary judgment to an agency in a PRA case entered by a judge who was on probation for a DUI conviction by the very County whose motion she was granting?

3. Whether the Court of Appeals erred in refusing to hear Petitioner's appeal of the grant of motion for summary judgment and denial of motion for reconsideration and motion for continuance when the sole "service" of the motion for summary judgment was it being dropped at a UPS Mailbox Store without note or mailbox and Petitioner was never notified of the alleged "service", that a hearing occurred and her motion to continue was denied and her Notice of Unavailability was ignored, and she was not provided a copy of the Order granting Summary Judgment until after the deadline to file a motion for reconsideration and was not listed on the docket or available for download until after such deadline?
4. Whether the Court of Appeals erred in concluding the record did not support the claims made by Petitioner as to service and the actions of the County even though such actions were admitted by the County during oral argument and cannot reasonably be disputed based on the actual record.

#### IV. STATEMENT OF THE CASE

In every lawyer's career, there is likely at least one case that leaves the lawyer incensed at the injustice, that reminds her why she went to law school, and that reminds her why lawyers are needed to defend the powerless against the overreach and abuse of government. **THIS** is that case for the undersigned.

Christy Diemond ("Christy") was prosecuted wrongfully in 2012 by King County Prosecutors for allegedly neglecting her elderly horses when she tried to find adoptive homes for them after she became the caregiver for her elderly terminally-ill mother. The County relied on the testimony and documents prepared by Regional Animal Service of King County ("RASKC") Officer Jenee Westberg who testified at Christy's trial, in that prosecution. Unbeknownst to Christy, Westberg was a convicted criminal who had been prosecuted by King County, **including the very prosecutor who presented her as a witness in Christy's trial and questioned her on the stand**, and Westberg had been caught lying on the job and disciplined for it

long before the County called her as a witness and was soon after fired for fabricating investigative records claiming to have performed site inspections and interviews she had not performed.

King County would ultimately convict Christy based on fabricated evidence and perjured testimony of Westberg. Christy and her attorney would be deprived of Westberg's criminal record and on-the-job discipline for dishonesty, which should have been disclosed to Christy under **Brady v. Maryland**, 373 U.S. 83, 87, 83 S. Ct. 1194, 10 L.Ed.2d 215 (1963). Christy would not be given the **Brady** List from the County until just before the Reply Brief in this PRA Appeal was due, years after Christy's conviction, and she would receive email strings of the prosecutors agreeing to withhold **Brady** notice and information from Christy during her criminal case appeals.<sup>1</sup> Because the County withheld the relevant evidence from Christy during her criminal appeals, Christy was denied the right to clear her name, to vacate her conviction, and she has lost her livelihood and

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<sup>1</sup> CP 171 at ¶19; CP 182-198.



means of supporting herself in the financial industry where she previously worked due to her conviction.

During Christy's criminal case she began making PRA requests to prove her innocence and to investigate those individuals who had testified against her because she knew they lied. She learned that Officer Westerberg had testified in several other horse cases at the same time as hers; cases where the County also hid Westberg's **Brady** materials from the defendants.

In February 2015 Christy made the PRA request at issue in this appeal to King County for Westberg and another witness in her case Sheriff Officer Robin Cleary for their personnel files and any **Brady** materials that may exist and related misconduct investigations and records (**CP 168-170 at ¶¶7-12**) King County silently withheld and failed to produce essential records that Christy should have been provided at the time of her criminal prosecution and appeal, forcing Christy to bring this PRA case. **CP 170 at ¶¶15-25.**

Christy learned on her own that Westberg was secretly made a **Brady** officer in 2012 right before Christy's first continued sentencing hearing, a fact hidden from Christy during her criminal case and appeal, and this PRA case; the unredacted **Brady** List proving Christy was never notified about Westberg was not given to Christy until just before the Reply Brief was due in this appeal. **CP 171-173 at ¶¶19, 21-24; CP 202-526; Reply Brief at App. D.** Christy learned on her own of Westberg's prosecution, by the very prosecutor who called her as a witness against Christy had prosecuted Westburg for illegal drug offenses that including lying to the arresting officers and possessing prescription medications taken from others, that Westberg had been arrested while an Animal Control officer of shoplifting and had tried to bribe the arresting officers, and had been disciplined, and eventually fired, for lying on the job about performing work and inspections and interviews she had not done. **CP 172 at ¶21; CP 202-245; CP 172 at ¶21; CP 236-245; Reply Brief at App. D.**

On 8/23/18 Christy became *pro se* in this PRA lawsuit due to the withdrawal of her attorney for medical reasons. **CP 173 at ¶26; CP 530-531.** Christy proceeded with a scheduled settlement conference with King County on 9/12/18, during which she provided King County with proof of numerous records that should have been disclosed to her that to this day have not been produced. **CP 173 at ¶27.** Christy and the County continued with settlement discussions for weeks afterward. **CP 174 at ¶28.** Unbeknownst to Christy, while engaging in such ongoing settlement discussions King County went ahead with plans to note a summary judgment motion in the case that was to be filed only “if we don’t settle this case” (**CP 533**), but failed to tell her or serve her by email as had been their agreement and practice, or provide the documents to her during their settlement conference or subsequent settlement emails. **CP 174-175 at ¶¶29-32; CP 533-537.** King County had stated it originally planned to note its motion for 10/12/18 if the case did not settle, then changed its mind selecting 10/18/18 instead. **CP 533-537.**

The communication to Christy was that the hearing would be noted only “if we don’t settle this case” (CP 533)—but as settlement discussions were continuing, Christy was not aware, and was not told, that King County went ahead and noted such Motion. CP 173 at ¶30. King County emailed Christy on 9/19/18, the day King County secretly noted and delivered the summary judgment motion to the UPS Mailbox Store as explained below, **and yet failed to mention the filing, noting, or the delivery.** CP 175 at ¶32. (Christy had advised opposing counsel during their settlement discussions in September 2018 that if the matter did not settle that she would be securing counsel to represent her in connection with any summary judgment motion and would need a few months to secure such counsel and for such counsel to become prepared. CP 175-176 at ¶34.)

When Christy became *pro se* in August 2018 and filed an appearance, she told opposing counsel the address listed on her Notice of Appearance was a UPS Mailbox Store that was not her registered agent and could not accept service on her behalf, but

she agreed to accept service by email and secured an agreement with opposing counsel that they would email her copies of anything they needed to serve on her rather than just dropping it off at the UPS Mailbox Store counter. **CP 174-175 at ¶31.**

On 9/19/18, while engaging in settlement discussions with Christy by email, opposing counsel—with no mention to Christy—sent a messenger to the UPS Mailbox Store who dropped off an unlabeled stack of documents without an envelope or note. **CP 175 at ¶32.** Opposing counsel did not mention this service, or the filing or noting, to Christy in their continuing settlement discussions and emails nor alert her to the drop off of documents at the UPS Mailbox Store counter, nor email her copies. **CP 174-175 at ¶¶30, 32.** The UPS Mailbox Store eventually figured out the delivery was for Christy, one of its mailbox customers, and placed the materials in her mailbox at the Store. **CP 175 at ¶32.** Christy did not learn of the filing or this delivery until 10/1/18, 11 days later, when she found the records in her mailbox at the UPS Mailbox Store, and she hastily

began searching for new counsel and on her own wrote, filed and served on 10/12/18 a Notice of Unavailability and a Motion to Continue the motion to January 2019 so she could secure counsel to represent her. **CP 175 at ¶33; CP 56-65, 707-715**. Christy filed the documents on 10/12/18, as the file stamp on the original shows—see **CP 56-65, 707**—but the Superior Court Clerk listed the file date of the Motion to Continue on the docket as 10/15/18. See **Docket and Index to Clerks Papers, Vol. 4 (dkt. 50)**. Christy in the Motion to Continue and included Declaration also explained as best she could in the short period of time that the County had not, in fact, produced **Brady** materials still owed to her illustrating why summary judgment for the County was inappropriate. **CP 56-65, 707-715**.

The Motion was noted before Judge Mary Elizabeth Dingley. King County’s lawyers were two current and long-time King County Prosecuting Attorneys, and the Judge these Prosecutors selected to note their motion before was charged, and convicted by the King County Prosecuting Attorney’s

Office of Driving Under the Influence (“DUI”) in late 2017 with a suspended sentence of 364 additional days in jail pending a three-year probation, **and on the date of the hearing this Judge remained in her second year of that three-year probation under the control of King County—the party whose motion she was being asked to decide.** CP 53 at ¶¶14-15; CP 125-165.

Opposing counsel did not inform Christy of these facts, nor did Judge Dingley disclose them or recuse herself from hearing the Motion. The Superior Court claims that no recording was made of that hearing but alleges that King County Prosecuting Attorney Mari Isaacson appeared in person for King County at the hearing. See **Court Docket** and **CP 73**. Judge Dingley made no findings in either Order and failed to mention having reviewed Christy’s Notice of Unavailability or her other filings. **CP 32-35**.

The 10/19/18 Orders were not emailed to Christy, or mentioned to Christy, and instead were mailed to Christy by the

Superior Court to the UPS Mailbox Store **17 days later**—as indicated by the envelope with a postage stamp date of 11/6/18. **CP 177 at ¶37; CP 539**. Christy, having heard nothing on her motion for continuance of the summary judgment motion, had been checking the docket daily since the hearing and finally saw the Orders on the docket on 11/1/18 (with an alleged file date of 10/19/18). **CP 177 at ¶38**. She downloaded a copy of the Orders that same day and drafted, filed and served a Motion for Reconsideration that same day 11/1/18. **CP 51-53 at ¶¶6, 11; CP 75-90; CP 177-178 at ¶¶39-40**. Her motion repeated her request from her motion for continuance that the summary judgment hearing be noted in January so she could retain new counsel and respond. **CP 177 at ¶38**.

Christy timely confirmed the Motion for Reconsideration and received a confirmation receipt. **CP 178 at ¶43; CP 541-543**. On the note date, Christy appeared for the hearing and was told by Superior Court Courtroom staff that the motion would not be heard as it allegedly had not been confirmed. **CP 178 at**



¶42. Christy immediately showed Judge Dingley the confirmation receipt as proof that the Motion HAD been timely confirmed. **Id. at ¶42; CP 541-543.** Judge Dingley still refused to hear it that day. Judge Dingley's clerk later instructed Christy to re-note the hearing to 1/11/19 before Judge Dingley on her personal calendar, which Christy promptly did. **CP 178 at ¶42; CP 119-121.**

On 1/11/19 Judge Dingley considered the matter without oral argument although Christy was present during the motion calendar and wishing to be heard. **CP 178 at ¶42.** On 1/17/19 Judge Dingley allegedly signed an Order denying the Motion for Reconsideration. **The Order was not given to the Superior Court Clerk for filing and entry until 1/22/19,** five days after it was allegedly signed. **CP 563.**

Christy thereafter successfully retained new counsel, the undersigned, to represent her in this matter. **CP 562.** On 2/21/19 her counsel filed a Notice of Appeal seeking direct review in the Washington State Supreme Court of the Order

denying the Motion to Continue, the Order granting Summary Judgment to King County, and the Order denying Christy's Motion for Reconsideration. **CP 30-36.**

On 2/8/19 Christy's new counsel discovered that Judge Dingley had been charged and convicted of a DUI by King County in late 2017 and that Judge Dingley remained on probation under the control of King County. **CP 53 at ¶¶14-15; CP 125-165.** On 2/14/19, six days after discovering this new information, Christy through her new counsel filed and served a CR 60 Motion to Vacate the Orders of Judge Dingley and for assignment of a non-conflicted judge to hear the summary judgment motion when re-noted. **CP 10, 51-165, 544-561.** The CR 60 Motion and motion for assignment of non-conflicted judge were noted before the Presiding Judge Bruce I. Weiss as one of the issues in the motion was the conflict of the originally assigned judge. **CP 10 at ¶2; CP 47-49.** Christy's counsel timely confirmed the Motion by telephone in the early morning

of 2/19/19 and online at 6:17 am on 2/20/19. **CP 10 at ¶2; CP 14.**

Judge Weiss refused to hear the Motion despite it including a motion for assignment of a non-conflicted judge, and instructed that it be noted before Judge Dingley through her law clerk. **CP 11-12 at ¶ 3; CP 20-23.** Christy's lawyer immediately contacted Judge Dingley's Clerk, and after several email exchanges was advised that the earliest date she would allow it to be noted was 3/5/19. **CP 11-12 at ¶3; CP 16-22.** A new Note for Motion was promptly filed and served, and the motion was confirmed as instructed with Judge Dingley's clerk. **CP 11 at ¶3; CP 7-9.**

Judge Dingley denied the Order on 3/18/19. **CP 1-2.** On 3/20/19 Christy filed an Amended Notice of Appeal adding the 3/18/19 Order to the existing appeal. **Brief of Appellant Appendix ("App.")** attached hereto as **App. B-57-77.** On 3/22/19, the Supreme Court ruled by letter "The amended notice is timely as to the addition of a request for review of the

order denying the CR 60 motion and review of that order is appropriately considered as part of this appeal. See RAP 5.3(h). Therefore, the Appellant is granted permission to amend the notice of appeal.” **App. B. at B-70**, attached hereto.

Following oral argument in this appeal at 10 am on 4/14/21 (available at <https://www.courts.wa.gov/content/OralArgAudio/a01/20210414/2.%20Diamond%20v.%20King%20County%20%20%20814206.mp3>) the Court of Appeals Division One issued an Opinion on 8/30/21 holding the appeal of the motion for summary judgment order, motion for continuance order, and motion for reconsideration order to be untimely finding a court has no obligation to provide or notify a party of an order. Opinion at 7 & fn. 6. Division One upheld the denial of the CR 60 motion finding no abuse of discretion. This Petition follows.

## **V. ARGUMENT**

Review should be granted pursuant to RAP 13.4(b)(1), (2), (3) and (4), as explained below. The Opinion conflicts with

decisions of the State Supreme Court and published decisions of the Courts of Appeal meriting acceptance pursuant to RAP 13.4(b)(1) and (2). It further involves a significant question of law under the Constitution of the State of Washington or of the United States meriting review under RAP 13.4(b)(3), and finally it involves an issue of substantial public interest that should be determined by the Supreme Court, meriting review under RAP 13.4(b)(4).

**A. Division One Wrongly Contends a Trial Court has Not Obligation to Provide a Party with an Order or Notify the Party of the Order.**

Division One holds that a trial court has no obligation to notify a party of an Order or to provide a copy of the Order. And yet Division One holds *pro se* litigants to the duty to move for reconsideration within 10 days of entry of an order about which they were never told, had not been provided a copy, and which was not listed on the Court's docket or in any way accessible to the public or party to obtain the order or learn it

existed. This holding alone requires this Court to accept review to correct this misstatement of the law.

Division One refers to Appellant's authorities—that show a court does not lose jurisdiction and power to rule when a court-rule imposed deadline or that require notice before a party's time to appeal begins—as “outdated” authority. Opinion at 7 & fn. 6. But the Constitutional requirement of due process is not an “outdated”, defunct, or overruled concept and is alive and well as mandatory law in the State of Washington and elsewhere. “The fundamental requirement of due process is the opportunity to be heard “at a meaningful time and in a meaningful manner.” **Mathews v. Eldridge**, 424 U.S. 319, 333 (1976). “[D]ue process is flexible and calls for such procedural protections as the particular situation demands.” **Morrissey v. Brewer**, 408 U. S. 471, 481, 92 S.Ct. 2593 (1972).

In **Yi Tu v. National Transp. Safety Bd.**, 470 F.3d 941 (2006), the Ninth Circuit Court of Appeals held that the Federal Aviation Administration (FAA) denied pilot due process by

failing to provide him adequate notice of the orders suspending his pilot's license, thereby denying him the opportunity to timely appeal the FAA's determination to the National Transportation Safety Board (NTSB); although the FAA knew that certified mail sent to pilot had been returned previously on two separate occasions as refused or unclaimed, and that sending correspondence by first class mail had been successful, the FAA sent the suspension orders by certified mail, the orders were returned unclaimed, and the FAA failed to take any additional reasonable steps to notify pilot of suspension orders, as it failed to send the orders by first class mail. It held that when notice is required as a matter of due process, the government must consider unique information about an intended recipient regardless of whether a statutory scheme is reasonably calculated to provide notice in the ordinary case. **Id.** And in **Gonzalez-Julio v. I.N.S.** 34 F.3d 820 (9<sup>th</sup> Cir.. 1994), the Ninth Circuit held regulations governing filing of notice of appeal denied an alien due process where the alien had only ten

days to appeal, notice had to be mailed from Hawaii to California, and the alien had no control over delivery of the mail or whether the appeal was filed upon receipt in the office of the immigration judge.

Christy was entitled to adequate notice of the orders granting summary judgment and denying her continuance before she was obligated to file her notice of appeal. She filed the motion for reconsideration the very day the orders appeared on the docket and were accessible, at all, to her, and days before the Court actually mailed them to her. Because she filed her motion for reconsideration within 10 days of any actual notice of the order, and because she filed her notice of appeal within 30 days of the denial of the motion for reconsideration, Division One should have heard her appeal of all the orders, and should have overturned the trial court. Division One's ruling and the actions of the trial court violates due process and its holding results in unconstitutional violations to Christy and all litigants that follow. This Court should accept review and



clarify the state of the law regarding providing notice to parties before the time to file a motion can begin.

Division One improperly ignore the numerous other authorities showing a court does not lose jurisdiction, and that a time to act can be tied to date of actual service. See, e.g., **Hamer v. Neighborhood Housing Services of Chicago**, 138 S. Ct. 13, 199 L.Ed.2d 249 (2017). In **Hamer**, (court rules were merely “claim-processing rules” which can be waived or forfeited and do not determine whether a court has jurisdiction to hear a matter). The authorities relied upon by Division One incorrectly rely on cases where the court rule was deemed jurisdictional, and those cases can no longer be valid law.

A Court is not precluded from accepting appeals, even absent extraordinary circumstances, and it does not lose jurisdiction to hear an appeal merely because an appellant does not meet court rule imposed deadlines.

Further, in a series of cases Washington appellate courts have recognized that parties must have **actual notice** of an order

before they can be expected to appeal it, automatically accepting appeals filed beyond the court rule deadline without any discussion of jurisdiction or power. In **State ex rel. L.L. Buchanan & Co. v. Washington Public Service Commission**, the Washington State Supreme Court held that a failure of a party to serve notice of entry of an order on its opponent did not start the clock for the deadline to file an appeal, making the appeal ultimately filed timely. **State ex rel. L.L. Buchanan & Co. v. Washington Public Service Commission**, 39 Wn.2d 706, 709-710, 237 P.2d 1024 (1951).

Division One, held in **Coleman v. Dennis**:

Defendant did not serve Plaintiff or his counsel with a copy of the order granting a new trial. The order was entered in the absence of counsel. Neither the plaintiff nor his counsel waived notice of presentation of the order. **Failure to serve the order or notice of its entry is fatal to defendant's motion to dismiss the appeal.**

**Coleman v. Dennis**, 1 Wn. App. 299, 301, 461 P.2d 552 (Div. 1, 1969) (emphasis added).

Division Two in the unpublished case of **Wright v. Washington State Department of Labor and Industries**, held that an administrative appeal was timely filed and should be reinstated when the Department conceded

that there were significant delays between when the Department issued its decision and when Wright received it, and between when Wright mailed his notice of appeal and when the trial court received it, both caused by the prison mail system.

**Wright v. Washington State Department of Labor and Industries** 197 Wn. App. 1017, \*1, No. 48829-9-II (Div. 2, Dec. 30, 2016).

The United States Supreme Court in **Rosenbloom v. United States**, ruled an appeal was timely when the District Court failed to timely send the party a notice of entry of an order and the record failed to show with sufficient clarity that the party and his attorney had actual notice of the entry of an order earlier. **Rosenbloom**, 355 U.S. 80, 80-81, 78 S. Ct. 202, 2 L.Ed.23d 110 (1957).

This Court in its recent decision in **Denney v. City of Richland**, 195 Wn.2d 649, 462 P.3d 842 (2020) implicitly recognized this point when it ruled that the PRA requestor was entitled to an extension of time to file his Notice of Appeal due to his confusion as to his deadline. This Court recognized that an “appellate court may waive or alter the provisions of any of these rules in order to serve the ends of justice in extraordinary circumstance and to prevent a miscarriage of justice.”

Even where there is a court rule, Washington’s appellate court rules recognize the Court’s power to alter its rules, and its procedures, to ensure justice is done. RAP 1.2(a) states

These rules will be liberally interpreted to promote justice and facilitate the decision of cases on the merits. Cases and issues will not be determined on the basis of compliance or noncompliance with these rules except in compelling circumstances where justice demands, subject to the restrictions in rule 18.8(b).

RAP 1.2(c) states “The appellate court may waive or alter the provisions of any of these rules in order to serve the ends of justice, subject to the restrictions in rule 18.8(b) and (c).” RAP

18.8(b) provides that the appellate court can extend the time to file a Notice of Appeal or Motion for Reconsideration “in extraordinary circumstances and to prevent a gross miscarriage of justice.”

These cases illustrate that court rule imposed deadlines do not control jurisdiction and further that—regardless of what a rule may say—it cannot trump or invalidate other necessary rights such as due process and notice and fundamental fairness. **And they reinforce that Christy’s clock to file her Motion for Reconsideration cannot be held to have started until she was actually afforded notice the Orders had been entered, which did not occur here until 11/1/18, the day she filed her Motion for Reconsideration.** Isaacson and King County and the Court all failed to notify Christy of the 10/19/18 orders until after the 10 day deadline had expired, and Christy filed her Motion the very day she learned of the Orders when they first appeared on the docket and were available for download. Even if the clock could have started on 10/19/18, which it could not, Christy

showed adequate grounds for alteration of any deadlines pursuant to RAP 1.2(a) and (c) and RAP 18.8(b) as Isaacson, the County and Court failed to serve Christy with the Orders until after the 10 day deadline.

**B. Denial of CR 60 Motion and Appearance of Fairness:**

Division one further applied an abuse of discretion standard to Judge Dingley's denial of the CR 60 motion and refusal to recuse and allow an unconflicted judge to heard the matter. Division One's holding shows it is out of touch with what "reasonable" people consider an appearance of fairness and consider relevant to whether a judge should hear a matter. While Division One may find it unimportant that the judge was on probation under the authority of the very County, and the very prosecuting attorney's office, whose attorney's filed the motion the Judge was being asked to consider, reasonable lay people would have considerable concern about such facts, and concern the judge did not think to recuse or notify the parties of

these facts before ruling. This Court should accept review to state the law required for judicial notice of connections and perceived conflicts with parties including when the judge was prosecuted by and is on probation with the government entity for whom she is ruling.

## **VI. CONCLUSION**

The Petition should be accepted so this Court can resolve the conflicts created by the Opinion and clarify the correct law for this State.

RESPECTFULLY SUBMITTED this 29th day of September, 2021.

I certify that this document contains 4772 words pursuant to RAP 18.17.

*s/Michele Earl-Hubbard*  
Michele Earl Hubbard, WSBA  
#26454

## CERTIFICATE OF SERVICE

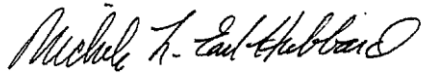
I certify under penalty of perjury under the laws of the State of Washington that on September 29, 2021, I filed this Petition for Review and Appendix thereto with the Division One Court of Appeals and Washington State Supreme Court by E-filing and I served the same by e-mail through the court's portal on the following:

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Dated this 29th day of September, 2021, at Shoreline,  
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FILED  
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STATE OF WASHINGTON  
9/30/2021 8:00 AM  
BY ERIN L. LENNON  
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Court of Appeals  
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No. \_\_\_\_\_

SUPREME COURT OF THE STATE OF WASHINGTON

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**APPENDICES TO  
APPELLANT CHRISTY DIEMOND'S PETITION FOR REVIEW  
BY THE WASHINGTON STATE SUPREME COURT**

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# Appendix A

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Case #: 81420-6  
Christy Diemond, Appellant v. King County, Respondent  
Snohomish County Superior Court No. 15-2-04073-0

Counsel:

Enclosed is a copy of the opinion filed in the above-referenced appeal which states in part:

"We affirm"

Counsel may file a motion for reconsideration within 20 days of filing this opinion pursuant to RAP 12.4(b). If counsel does not wish to file a motion for reconsideration but does wish to seek review by the Supreme Court, RAP 13.4(a) provides that if no motion for reconsideration is made, a petition for review must be filed in this court within 30 days.

In accordance with RAP 14.4(a), a claim for costs by the prevailing party must be supported by a cost bill filed and served within ten days after the filing of this opinion, or claim for costs will be deemed waived.

Page 2 of 2  
August 30, 2021  
Case #: 814206

Should counsel desire the opinion to be published by the Reporter of Decisions, a motion to publish should be served and filed within 20 days of the date of filing the opinion, as provided by RAP 12.3 (e).

c: The Honorable Marybeth E. Dingley

Sincerely,

A handwritten signature in black ink, appearing to read "Lea Ennis". The signature is fluid and cursive, with the first name "Lea" and last name "Ennis" clearly distinguishable.

Lea Ennis  
Court Administrator/Clerk

ssd

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION ONE

CHRISTY DIAMOND,	)	No. 81420-6-I
	)	
Appellant,	)	
	)	
v.	)	UNPUBLISHED OPINION
	)	
KING COUNTY,	)	
	)	
Respondent.	)	

---

BOWMAN, J. — Christy Diemond appeals the dismissal of her lawsuit against King County (County), alleging violations of the Public Records Act (PRA), chapter 42.56 RCW. She argues the trial court erred when it denied her motion to continue a summary judgment hearing, granted the County’s motion for summary judgment, and denied her motion to reconsider. We conclude Diemond’s appeal of these orders is untimely. Diemond also contends the trial court erred when it denied her CR 60 motion to vacate its order granting summary judgment. Because the court did not abuse its discretion in denying Diemond’s motion to vacate, we affirm.

FACTS

In 2012, a court convicted Diemond of animal cruelty after an investigation by the Regional Animal Services of King County and the King County Sheriff’s

Office (KCSO). Believing she was wrongfully accused of starving her horses, Diamond set out to obtain evidence of misconduct by the agencies. Since 2013, she has filed more than 25 PRA requests with the County,<sup>1</sup> seeking over 70,000 pages of documents. Though Diamond received thousands of pages of records in ongoing installments, she believed the County “silently withheld” disclosable records in violation of the PRA.

In 2015, Diamond filed a “Complaint for Violations of the [PRA]” in Snohomish County Superior Court against the County. At the time, Diamond was represented by an attorney. While her lawsuit was pending, the County continued to send Diamond installments in response to her records requests, and provided links to an online portal to access most of the records. Though Diamond did not access the online portal between December 2016 and March 2018, she continued to file new records requests. The County released at least 23 installments of records between 2015 and 2018.

In March 2018, the County moved for summary judgment, seeking dismissal of Diamond’s claims. The County served the motion and notice of the April hearing on Diamond’s attorney at his office address. The County later struck the hearing date so the parties could pursue settlement negotiations.

In August 2018, Diamond’s attorney filed a notice of withdrawal. The notice directed future service of legal process to Diamond’s mailbox at the UPS Store. Diamond then filed a notice of appearance, declaring that she was

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<sup>1</sup> Diamond requested records from the King County Department of Executive Services and the KCSO.

proceeding pro se and directing future service of legal process to the same UPS Store.

On September 7, 2018, in a series of e-mail exchanges, Diemond agreed to meet with prosecutors on September 12 to try to settle her case with the County. The County told Diemond it would renote its previously stricken summary judgment motion hearing for October 12 if they could not settle. Three days later on September 10, the County e-mailed Diemond to let her know that it would change its proposed summary judgment hearing date to October 19 due to a scheduling conflict. Diemond replied, "Thanks for letting me know." The parties met but did not settle.

On September 19, the County served Diemond with a summary judgment motion identical to the one it filed the previous March, along with a notice of hearing for October 19. A legal messenger served the documents at the UPS Store address Diemond provided in her notice of appearance. Diemond did not retrieve the documents from her mailbox until September 30.

Diemond did not file any responsive pleadings to the County's summary judgment motion.<sup>2</sup> Instead, on October 12, Diemond filed a notice of unavailability, claiming she would be unavailable "from October 12, 2018 to an undetermined time." She moved to continue the October 19 summary judgment hearing as well, citing "strict employment" obligations, an ongoing family emergency, and the need for more time to hire an attorney. Diemond asked for a

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<sup>2</sup> Diemond's response was due September 30, 2018. CR 56(c).



continuance of at least 90 days to late January 2019. Diemond did not note a hearing for the court to consider her motion to continue prior to the summary judgment motion date.

The County objected to the motion to continue. The County argued that it notified Diemond on September 7, 2018 that it would be setting a hearing for summary judgment on October 12 if the case did not settle, and that it followed up with Diemond on September 10 to let her know it would set the hearing for October 19 due to a scheduling conflict. The County also pointed out that its summary judgment pleadings were “identical” to those it filed in March.

On October 19, 2018, the County appeared for the summary judgment hearing. Diemond did not appear. The trial court denied Diemond’s motion to continue the hearing and granted the County’s motion for summary judgment, dismissing Diemond’s claims with prejudice.

Diemond learned of the trial court’s rulings on November 1, 2018 by checking the court’s online docket. The same day, Diemond moved to reconsider, and noted a hearing for November 30. In her motion, Diemond suggested “possible criminal prosecutorial misconduct” without further detail, and renewed her motion to continue summary judgment so she could hire an attorney.

The County opposed Diemond’s motion to reconsider. It asserted that Diemond’s motion was untimely because she did not file it within 10 days after the court’s October 19, 2018 orders, and did not allege any new facts or legal

argument to support her request. The trial court agreed with the County, and signed an order denying reconsideration on January 17, 2019.

On February 14, 2019, Diemond's new attorney filed a notice of appearance. That same day, Diemond moved the Snohomish County Superior Court presiding judge to vacate the trial court's order granting summary judgment under CR 60, and to assign the case to a new "non-conflicted" judge. The County opposed the motion. The presiding judge declined to consider the motion, and referred it to the same trial judge who heard the summary judgment motion. That judge denied the CR 60 motion without oral argument on March 18, 2019.

Meanwhile, on February 21, 2019, while her CR 60 motion was pending, Diemond filed a notice of direct appeal to the Washington Supreme Court, designating the orders denying her motion to continue summary judgment, granting the County's motion for summary judgment, and denying her motion to reconsider. On March 20, 2019, Diemond amended her notice of appeal to include the order denying her CR 60 motion to vacate the summary judgment dismissal order. The Supreme Court transferred the case to this court for consideration.

## ANALYSIS

### Timeliness of Appeal

The County alleges Diamond's appeal is untimely as to the orders on summary judgment, motion to continue, and motion to reconsider. We agree.<sup>3</sup>

Under RAP 5.2, a notice of appeal must be filed "within the longer of" either 30 days after entry of the decision to be reviewed, or 30 days after entry of an order on reconsideration of the decision to be reviewed. RAP 5.2(a), (e).

"Although a timely motion for reconsideration will extend the time for appeal, an untimely motion for reconsideration does not toll the 30-day deadline" to appeal.

Sue Jin Yi v. Kroger Co., 2 Wn. App. 2d 395, 409, 409 P.3d 1191 (2018); RAP 5.2.

Under CR 59(b), a motion to reconsider must "be filed not later than 10 days after the entry of the judgment, order, or other decision." A trial court has no authority to enlarge the time for filing a motion to reconsider. Metz v. Sarandos, 91 Wn. App. 357, 360, 957 P.2d 795 (1998); see CR 6(b).<sup>4</sup> Here, the trial court denied Diamond's motion to continue and granted summary judgment dismissal on October 19, 2018. Diamond moved to reconsider the court's

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<sup>3</sup> Several interested entities filed amici briefs. Amicus Washington Coalition for Open Government argues the County's local ordinance dividing its departments into separate divisions is unlawful. Because that issue is not properly before us, we do not address it. Amicus We the Governed LLC argues that we should not penalize Diamond by rigid rule interpretations, that we should forgive her "excusable neglect," and that it is "unreasonable" for pro se litigants to conduct daily inquiries when necessary to confirm the status of a pending motion. But it is well settled in the state of Washington that courts hold pro se litigants to the same standards as attorneys. Patterson v. Superintendent of Pub. Instruction, 76 Wn. App. 666, 671, 887 P.2d 411 (1994), review denied, 126 Wn.2d 1018, 894 P.2d 564 (1995).

<sup>4</sup> CR 6(b)(2) provides that a trial court may extend time for cause shown, "but it may not extend the time for taking any action under rule[ ] . . . 59(b)."

decisions on November 1—13 days after entry of the court’s orders. Under CR 59(b), the motion was not timely. As a result, Diamond’s appeal of the underlying orders is also untimely.<sup>5</sup>

Diamond argues that the deadline in CR 59(b) should not apply here because the court did not notify her of its orders, so she was unaware the court had ruled on the motions until November 1. She cites Rosenbloom v. United States, 355 U.S. 80, 78 S. Ct. 202, 2 L. Ed. 2d 110 (1957) (per curiam), and State ex rel. L. L. Buchanan & Co. v. Washington Public Service Commission, 39 Wn.2d 706, 237 P.2d 1024 (1951), in support of her argument. In Rosenblum, a federal rule required the trial court to mail its original order to the petitioner or his attorney. Rosenbloom, 355 U.S. at 80. Similarly, a court rule in Buchanan required both filing and service of an order before the clock for filing an appeal began to run. Buchanan, 39 Wn.2d at 709-10. Unlike Rosenbloom or Buchanan, neither CR 59(b) nor RAP 5.2 require the trial court to serve an appealable order on any party.<sup>6</sup> Instead, CR 58(b) provides, “Judgments shall be deemed entered for all procedural purposes from the time of delivery to the clerk for filing.” Here, the trial court properly filed its orders with the clerk on October 19, and it was under no obligation to serve the orders on Diamond.

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<sup>5</sup> Diamond’s 30-day deadline to appeal the October 19, 2018 orders denying continuance and granting summary judgment was November 18, 2018. RAP 5.2(a). Diamond filed her notice of direct appeal on February 21, 2019.

<sup>6</sup> Diamond cites several other cases interpreting similarly outdated Washington court rules requiring service of an order before the time to appeal begins to run. But as stated, CR 59(b) and RAP 5.2 do not require such service.

In the alternative, Diemond argues we should exercise our discretion to enlarge the time to file her notice of appeal under RAP 18.8(b), which provides, in relevant part:

The appellate court will only in extraordinary circumstances and to prevent a gross miscarriage of justice extend the time within which a party must file a notice of appeal, a notice for discretionary review, a motion for discretionary review of a decision of the Court of Appeals, a petition for review, or a motion for reconsideration.

Ordinarily, the benefit of finality “outweighs” a litigant’s privilege to obtain an extension of time, absent extraordinary circumstances or a gross miscarriage of justice. RAP 18.8(b); State v. Moon, 130 Wn. App. 256, 260, 122 P.3d 192 (2005). The burden falls on the appellant to provide “sufficient excuse for [her] failure to file a timely notice of appeal,” and to demonstrate “sound reasons to abandon the [judicial] preference for finality.” Schaefco, Inc. v. Columbia River Gorge Comm’n, 121 Wn.2d 366, 368, 849 P.2d 1225 (1993).

In Bostwick v. Ballard Marine, Inc., 127 Wn. App. 762, 775-76, 112 P.3d 571 (2005), we denied review where a litigant sought to excuse an untimely cross appeal because it did not receive a copy of the trial court’s order. As here, the court rules did not require the court to notify the parties that it had entered an order. Bostwick, 127 Wn. App. at 775. We determined that the litigant’s “lack of diligence in monitoring entry of an order on a pending motion does not amount to ‘extraordinary circumstances’ ” under RAP 18.8(b). Bostwick, 127 Wn. App. at 776.

The record here shows the County warned Diemond about noting the hearing for summary judgment in an e-mail, and then properly served Diemond

with notice of the summary judgment hearing. Diamond did not timely respond to the motion, chose not to attend the hearing,<sup>7</sup> and made no attempt to contact the court or opposing counsel to find out the status of her motion to continue or whether the court had ruled on the County's summary judgment motion.

Diamond fails to establish extraordinary circumstances or a gross miscarriage of justice that warrants enlarging the time to file her notice of appeal.

We dismiss as untimely Diamond's appeal of the trial court orders denying her motion to continue, granting summary judgment for the County, and denying her motion to reconsider.

#### CR 60 Motion To Vacate

Diamond argues the trial court should have granted her motion to vacate the order dismissing her lawsuit under CR 60(b)(11)<sup>8</sup> because the judge created "an appearance of impropriety and an appearance of a lack of impartiality and fairness" in ruling on the County's summary judgment motion. We disagree.<sup>9</sup>

We review a trial court's decision on a motion to vacate for an abuse of discretion. In re Marriage of Knutson, 114 Wn. App. 866, 871, 60 P.3d 681 (2003) (citing DeYoung v. Cenex Ltd., 100 Wn. App. 885, 894, 1 P.3d 587 (2000), review denied, 146 Wn.2d 1016, 51 P.3d 87 (2002)). A trial court abuses

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<sup>7</sup> Snohomish County Local Civil Rule 7(b)(2)(d)(10)(b) provides, "If no one appears in opposition to a motion at the time set for hearing, the court may enter the order sought, unless the court deems it inappropriate to do so."

<sup>8</sup> Diamond argued below that the court should vacate its order under CR 60(a) and (b)(1), (3), (4), (5), (9), and (11). On appeal, Diamond argues for relief under only CR 60(b)(11).

<sup>9</sup> Diamond also suggests the court should have vacated the order because the County misled her into believing it would not move for summary judgment, and deliberately failed to e-mail her notice of the summary judgment hearing date. The record does not support her argument.

its discretion by exercising it on untenable grounds or for untenable reasons.

Knutson, 114 Wn. App. at 871. Under CR 60(b)(11), a court may vacate a judgment for “any . . . reason justifying relief from the operation of the judgment.” Courts should apply CR 60(b)(11) sparingly to situations “ ‘involving extraordinary circumstances not covered by any other section of the rules.’ ” Knutson, 114 Wn. App. at 872-73<sup>10</sup> (quoting In re Marriage of Irwin, 64 Wn. App. 38, 63, 822 P.2d 797 (1992)).

A violation of the appearance of fairness doctrine amounts to an extraordinary circumstance under CR 60(b)(11). Tatham v. Rogers, 170 Wn. App. 76, 81, 283 P.3d 583 (2012). A party asserting a violation of the appearance of fairness doctrine must show evidence of actual or potential bias. State v. Chamberlin, 161 Wn.2d 30, 37, 162 P.3d 389 (2007) (citing State v. Post, 118 Wn.2d 596, 619, 826 P.2d 172, 837 P.2d 599 (1992)); see also In re Pers. Restraint of Haynes, 100 Wn. App. 366, 377 n.23, 996 P.2d 637 (2000) (A party “must produce sufficient evidence demonstrating bias, such as personal or pecuniary interest on the part of the decision maker; mere speculation is not enough.”). We use an objective test to determine whether a judge should disqualify herself “where the judge’s impartiality might reasonably be questioned.” In re Pers. Restraint of Swenson, 158 Wn. App. 812, 818, 244 P.3d 959 (2010) (citing State v. Leon, 133 Wn. App. 810, 812, 138 P.3d 159 (2006)). We presume judges perform their functions without bias or prejudice. Jones v. Halvorson-Berg, 69 Wn. App. 117, 127, 847 P.2d 945 (1993). The critical

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<sup>10</sup> Internal quotation marks omitted.

analysis for the appearance of fairness doctrine is how the proceedings would appear to a reasonably prudent and disinterested person. Chi., Milwaukee, St. Paul, & Pac. R.R. v. Wash. State Human Rights Comm'n, 87 Wn.2d 802, 810, 557 P.2d 307 (1976).

Pointing to the trial judge's September 2017 conviction for driving while under the influence of alcohol, Diemond contends the judge created an appearance of unfairness by failing to recuse herself because "at the time she ruled on these motions," the judge was "on probation under the supervision and control of the very County and prosecuting attorney's office whose motion she was being asked to grant." According to Diemond, the judge could not be fair because she was "ruling on a motion brought by the County that has the power to seek revocation of her probation and reinstatement of her full 364 additional days of jail of her sentence." But the judge's conditions of probation required her to maintain law abiding behavior, abstain from alcohol or nonprescribed drugs at least eight hours before driving, comply with the Department of Licensing ignition interlock, and pay her legal financial obligations. Diemond fails to explain how ruling against the County as part of her judicial duties could put the judge at risk of violating her conditions of sentence.

Even so, Diemond argues the trial court's rulings themselves show the judge was biased. But judicial rulings alone " 'almost never constitute a valid showing of bias.' " West v. Wash. State Dist. & Mun. Court Judges' Ass'n, 190 Wn. App. 931, 943, 361 P.3d 210 (2015) (quoting In re Pers. Restraint of Davis,



152 Wn.2d 647, 692, 101 P.3d 1 (2004)). And here, the record supports the trial court's decisions throughout the proceedings.

For example, as discussed above, the trial court properly exercised its discretion in denying Diamond's motion to continue. See Bavand v. OneWest Bank, FSB, 196 Wn. App. 813, 821-22, 385 P.3d 233 (2016) (abuse of discretion is proper standard for review of trial court ruling on motion to continue summary judgment). In her notice of unavailability, Diamond moved to continue the County's summary judgment motion, but did not note her motion for a hearing before the summary judgment hearing date. And she failed to support her motion to continue with facts and evidence. Diamond also claimed she was the "principal contact" for a "family medical emergency," but did not disclose the nature of the emergency or why it prevented her from responding to the County's summary judgment motion. Similarly, Diamond asserted she had "not had time to secure new counsel," even though it had been more than a month since the settlement negotiations failed. Finally, Diamond claimed she would incur "a disproportionate legal consequence" if she appeared for the October 19 hearing because she could not fulfill a "pre committed employment contract." Again, Diamond did not explain whether she entered the contract after she learned of the hearing date or inform the court as to what the "disproportionate legal consequence" might be. The court's order denying the motion to continue does not evidence bias.

Similarly, the record supports the trial court's decision to dismiss Diamond's lawsuit on summary judgment. Summary judgment is appropriate

where there is “no genuine issue as to any material fact and . . . the moving party is entitled to a judgment as a matter of law.” CR 56(c). After the moving party submits adequate affidavits, the nonmoving party must set forth facts sufficient to rebut the moving party’s contentions and show that a genuine issue of material fact exists. Seven Gables Corp. v. MGM/UA Entm’t Co., 106 Wn.2d 1, 12-13, 721 P.2d 1 (1986). CR 56(c) requires that a party opposing a summary judgment motion respond no later than 11 days before the motion hearing. But Diamond never responded to the County’s motion for summary judgment. As a result, the trial court relied on the County’s declarations with supporting exhibits from five County public records officers, documenting their ongoing efforts to fulfill Diamond’s PRA requests. The court showed no bias when it determined that Diamond failed to raise an issue of material fact and that the County was entitled to judgment as a matter of law.

Finally, Diamond contends the Snohomish County Superior Court presiding judge should have ruled on her appearance of fairness issue, rather than referring the matter back to the trial judge for consideration. But absent an allegation of unconstitutional bias, recusal decisions lie within the sound discretion of the trial court. See State v. Bilal, 77 Wn. App. 720, 722, 893 P.2d 674 (1995); Tatham, 170 Wn. App. at 88-89. Unconstitutional judicial bias exists when (1) a judge has a financial interest in the outcome of a case, (2) a judge previously participated in a case in an investigative or prosecutorial capacity, or (3) an individual with a stake in a case had a significant and disproportionate role in placing a judge on the case through the campaign process. State v. Blizzard,

195 Wn. App. 717, 727-28, 381 P.3d 1241 (2016). None of Diamond's allegations amount to unconstitutional bias.

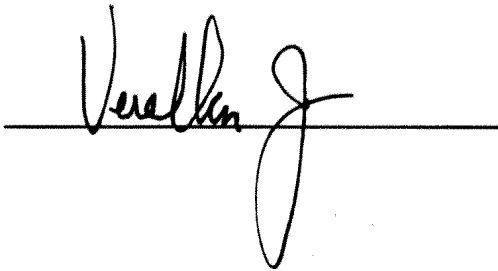
Attorney Fees

Diamond requests attorney fees, costs, and statutory penalty fees under RCW 42.56.550(4) as "a public records requestor who prevails" in a PRA action. Because Diamond did not prevail below or on appeal, we deny her request.

We affirm.

  
\_\_\_\_\_

WE CONCUR:

  
\_\_\_\_\_

  
\_\_\_\_\_

# Appendix B

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No. 96890-0

IN THE WASHINGTON STATE SUPREME COURT

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CHRISTY R. DIAMOND,

Plaintiff/Appellant

v.

KING COUNTY,

Defendant/Respondent

---

**BRIEF OF APPELLANT**

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## I. ASSIGNMENTS OF ERROR AND ISSUES PRESENTED

### A. Assignments of Error

1. The trial court erred in ignoring Diemond's Notice of Unavailability for 10/19/18, and holding a dispositive motion hearing on a date the Court knew the Plaintiff was unavailable.

2. The trial court erred in denying Diemond's Motion to Continue the Defendant's summary judgment motion for three months to January 2019 to allow Diemond, who was recently involuntarily *pro se* due to the withdrawal of her attorney for medical reasons, to obtain new counsel to respond.

3. The trial court erred in granting King County's Motion for Summary Judgment.

4. The trial court erred in failing to promptly provide Diemond notice of the orders signed 10/19/18, mailing them to her 17 days after their signing, and in failing to even list them on the docket or make them publicly available for 12 days after signature.

5. The trial court erred in (a) denying Diemond's Motion for Reconsideration of the order granting King County summary judgment and the order denying Diemond's motion to continue, (b) refusing to hear the reconsideration motion when it was originally noted before her, and

proof of its confirmation was provided, and (c) delaying a decision on the motion for reconsideration for nearly three months after its filing.

6. The trial court erred in denying Diamond's CR 60 Motion to vacate and for assignment of non-conflicted judge, and in delaying hearing, held without oral argument despite Diamond's request, and a decision on such motion for more than a month after its filing.

7. The Presiding Judge erred in refusing to hear Diamond's CR 60 Motion and motion to assign non-conflicted judge when it was noted before him revealing that Judge Dingley had been convicted by King County of a crime and was on probation under the supervision and control of King County at the time she was being asked to rule in favor of King County in this case.

8. Judge Dingley erred in not disclosing her connection with King County and in not recusing herself from hearing this case.

9. The Presiding Judge erred in allowing Judge Dingley to be assigned to hear motions in this case when the Court was aware of Judge Dingley's conviction and current probation with King County as a convicted person.

#### **B. Issues Pertaining to Assignments of Error**

1. Whether the Supreme Court should reverse and vacate the Orders entered in this case in favor of King County and against Plaintiff by

Judge Mary Elizabeth Dingley when (a) King County failed to properly notify Diemond of the filing and service of the summary judgment motion and led Diemond to believe the motion would only be filed if settlement efforts still underway were unsuccessful, (b) Judge Dingley ignored a promptly filed Notice of Unavailability and denied a Motion for a Continuance asking for a brief continuance to secure counsel once Diemond discovered a summary judgment had been noted and filed, and (c) Judge Dingley who signed the Orders in question was prosecuted by King County for a DUI in late 2017 and is currently in her second year of a three-year probation under King County with 364 days of her 365 jail sentence suspended pending completion of her three-year probationary term and neither King County nor Judge Dingley disclosed the Judge's connection or this conflict of interest prior to or after the Judge ruled on the motions?

2. Whether the Supreme Court should Order assignment by the Presiding Judge of a judge other than Judge Dingley to hear any future motions in this case, including any re-note of King County's Motion for Summary Judgment?

## **II. STATEMENT OF THE CASE**

This is a Public Record Act ("PRA") case stemming from King County's continued failure to provide Appellant Christy Diemond with

responsive records including specifically **Brady**<sup>1</sup> material of King County agents involved in an alleged animal abuse prosecution of Diemond in 2012 and sentencing in 2013, a conviction that remains on appeal.<sup>2</sup> In early 2015, Diemond learned that two specific King County employees—Robin Cleary and Jenee Westberg—both of whose testimony was crucial to the prosecution at her criminal trial—had been fired for dishonesty, turpitude and misconduct, including specifically events documented in **Brady** materials. **CP 167-168 at ¶7**. In February 2015 Diemond made a PRA request to King County for these two employees’ personnel files and any

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<sup>1</sup> **Brady v. Maryland**, 373 U.S. 83, 83 S. Ct. 1194, 10 L.Ed.2d 215 (1963).

<sup>2</sup> Diemond agreed to give her two elderly horses Brandy, age 39 and Bud age 35, to Regional Animal Services of King County (“RASKC”) King County Animal Control to find them a new home when her dying 92-year-old-mother needed her full time attention and resources. See **CP 166-167 at ¶2**. RASKC contracted Save a Forgotten Equine (“SAFE”), an alleged horse rescue operation with whom RASKC then conspired to prosecute Diemond for alleged animal cruelty. SAFE systematically starved Brandy and Bud over the first three months they had them and then RASKC employee Jenee Westberg and King County Sheriff Detective Renee Cleary took pictures of the horses alleging the pictures had been taken when Diemond still cared for them. **Id.** Brandy and Bud were in mid-shed in the picture, something that only occurs in mid-May and not in the dead of winter of February when SAFE, Westberg and Cleary alleged the pictures had been taken, and the metadata of the digital images showed the camera temperature when the pictures were taken was 61 degrees, rather than the below freezing temperatures of the alleged photo date. **Id.** Ten months after SAFE took custody of Brandy and Bud, and mere weeks after SAFE was notified that Diemond had retained an equine veterinarian to examine the horses as part of her criminal defense, and before such veterinarian could examine the horses, SAFE shot Brandy in the head claiming she had colic, a condition that is treatable, and not typically treated with summary execution. **CP 168 at ¶4**. Six months later, sixteen months after taking the horses, SAFE shot Bud. in the head, also before he was examined by Diemond’s veterinarian, this time alleging Bud had a penile infection. **Id.** Diemond was prosecuted and convicted based on perjured testimony of Cleary and Westberg and was sentenced to a suspended sentence of 365 days with one day in jail. Diemond was denied access to the metadata of the photographs during her trial, and crucial impeachment evidence and **Brady** material King County withheld from her that forms the basis of this PRA case. Diemond’s conviction remains on appeal as Ms. Diemond continues to fight to clear her name. **CP 168 at ¶5**.

**Brady** materials that may exist and related misconduct investigations and records (CP 168-170 at ¶¶7-12) focusing her requests on these two employees because Diemond knew their trial testimony was perjured. CP 169 at ¶8. King County silently withheld and failed to produce essential records that Diemond should have been provided at the time of her criminal prosecution and appeal, forcing Diemond to bring this PRA case. CP 170 at ¶¶15-25.

Diemond has discovered responsive records on her own that King County possessed and still has never disclosed. For example, Diemond has uncovered an email thread of King County Prosecuting Attorneys discussing whether they should disclose Cleary's **Brady** status or Cleary's **Brady** materials to Diemond in August to September 2014 while Diemond's criminal case was on appeal, ultimately concluding that they need not, and would not disclose Cleary's *Brady* status or materials to Diemond although contrary to binding Ninth Circuit precedent. CP 171 at ¶19; CP 182-198. It was not until March 2016 that King County revealed that Cleary had been listed as a **Brady** officer in 2014 while Diemond's case was on appeal. The list provided was heavily redacted hiding why Cleary was on the list. CP 171 at ¶20; CP 200.

Diemond has also learned on her own that Westberg was secretly made a **Brady** officer in 2012 right before Diemond's first continued

sentencing hearing, a fact hidden from Diemond during her criminal case and appeal, and such materials have still not been fully produced by King County to Diemond. CP 171-173 at ¶¶19, 21-24; CP 202-526. Diemond learned on her own that Westberg, while a King County animal control officer, was arrested and prosecuted by King County in 2008 for 19 counts after she was pulled over in her car and caught on illegal drugs and surrounded by a glass pipe and several full bottles of narcotic prescription pill bottles none of which were prescribed for her. CP 172 at ¶21; CP 202-245. Diemond also learned on her own that Westberg was arrested and prosecuted by Kent Municipal Court for shoplifting from a Kent Kmart in 2006-2007. CP 172 at ¶21; CP 236-245.

In March 2016, after being sued in this PRA case, King County produced a heavily redacted **Brady** list showing Westberg had been on the list since October 2012, but redacting the reason she was on the list. CP 172 at ¶22; CP 247. King County has still failed to produce records explaining why Westberg is on the **Brady** list. CP 172-173 at ¶23.

On 8/23/18 Diemond became *pro se* in this PRA lawsuit due to the withdrawal of her attorney for medical reasons. CP 173 at ¶26; CP 530-531. Diemond proceeded with a scheduled settlement conference with King County on 9/12/18, during which she provided King County with proof of numerous records that should have been disclosed to her that to this day

have not been produced. **CP 173 at ¶27.** Diamond and the County continued with settlement discussions for weeks afterward. **CP 174 at ¶28.** Unbeknownst to Diamond, while engaging in such ongoing settlement discussions King County went ahead with plans to note a summary judgment motion in the case that was to be filed only “if we don’t settle this case” (**CP 533**), but failed to tell her or serve her by email as had been their agreement and practice, or provide the documents to her during their settlement conference or subsequent settlement emails. **CP 174-175 at ¶¶29-32; CP 533-537.** King County had stated it originally planned to note its motion for 10/12/18 if the case did not settle, then changed its mind selecting 10/18/18 instead. **CP 533-537.** Again, the communication to Diamond was that the hearing would be noted only “if we don’t settle this case” (**CP 533**)—but as settlement discussions were continuing, Diamond was not aware, and was not told, that King County went ahead and noted such Motion. **CP 173 at ¶30.** King County emailed Diamond on 9/19/18, the day King County secretly noted and delivered the summary judgment motion to the UPS Mailbox Store as explained below, and yet failed to mention the filing, noting, or the delivery. **CP 175 at ¶32.** (Diamond had advised opposing counsel during their settlement discussions in September 2018 that if the matter did not settle that she would be securing counsel to represent her in connection with any summary judgment motion and would



need a few months to secure such counsel and for such counsel to become prepared. **CP 175-176 at ¶34.**)

When Diemond became *pro se* in August 2018 and filed an appearance, she explained to opposing counsel that the address listed on her Notice of Appearance was a UPS Mailbox Store that was not her registered agent and could not accept service on her behalf, but she agreed to accept service by email and secured an agreement with opposing counsel that they would email her copies of anything they needed to serve on her rather than just dropping it off at the UPS Mailbox Store counter. **CP 174-175 at ¶31.**

On 9/19/18, while engaging in settlement discussions with Diemond by email, opposing counsel—with no mention to Diemond—sent a messenger to the UPS Mailbox Store who dropped off an unlabeled stack of documents without an envelope or note. **CP 175 at ¶32.** It was several hundred pages of declarations and briefing including a Note for Hearing for a summary judgment motion noted for 10/19/18. **Id.** Opposing counsel did not mention this service, or the filing or noting, to Diemond in their continuing settlement discussions and emails nor alert her to the drop off of documents at the UPS Mailbox Store counter, nor email her copies. **CP 174-175 at ¶¶30, 32.** The UPS Mailbox Store eventually figured out the delivery was for Diemond, one of its mailbox customers, and placed the materials in her mailbox at the Store. **CP 175 at ¶32.** Diemond did not

learn of the filing or this delivery until 10/1/18, 11 days later, when she found the records in her mailbox at the UPS Mailbox Store, and she hastily began searching for new counsel and on her own wrote, filed and served on 10/12/18 a Notice of Unavailability and a Motion to Continue the motion to January 2019 so she could secure counsel to represent her. **CP 175 at ¶33; CP 56-65, 707-715**. Diomond filed the documents on 10/12/18, as the file stamp on the original shows—see **CP 56-65, 707**—but the Superior Court Clerk listed the file date of the Motion to Continue on the docket as 10/15/18. See **Docket and Index to Clerks Papers, Vol. 4 (dkt. 50)**. Diomond in the Motion to Continue and included Declaration also explained as best she could in the short period of time that the County had not, in fact, produced **Brady** materials still owed to her illustrating why summary judgment for the County was inappropriate. **CP 56-65, 707-715**.

By selecting 10/19/18, King County was explicitly and knowingly selecting Judge Mary Elizabeth Dingley to hear its motion. Snohomish Superior Court hears such motions on its civil motions calendar, and assigns each of its judges to that calendar on specified days of the year. A link to such calendar is listed on the Note for Motion.<sup>3</sup>

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<sup>3</sup> See, e.g., <https://www.snohomishcountywa.gov/DocumentCenter/View/60234/Criminal-HearingsMotions-and-Civil-Motions-Schedule-2019-PDF-> and <https://www.snohomishcountywa.gov/DocumentCenter/View/16316/Judges-weekly-calendar-assignments-and-courtroom-locations-PDF> (last visited 7/7/19).

In this case the Judge assigned to hear the motion is key as the movant was King County, and its lawyers were two current and long-time King County Prosecuting Attorneys, and the Judge these Prosecutors selected to note their motion before was charged, and convicted by the King County Prosecuting Attorney's Office of Driving Under the Influence ("DUI") in late 2017 with a suspended sentence of 364 additional days in jail pending a three-year probation, **and this Judge remains in her second year of that three-year probation under the control of King County—the party whose motion she was being asked to decide.** CP 53 at ¶¶14-15; CP 125-165.

Opposing counsel did not inform Diamond of these facts, nor did Judge Dingley disclose them or recuse herself from hearing the Motion. Instead, opposing counsel and the Superior Court claim that Judge Dingley took the bench at 9:30 a.m. on 10/19/18, held a summary judgment hearing in this matter without Diamond's presence, signed the orders granting the motion for summary judgment and denying the motion for a continuance, and that such orders were delivered to the Court Clerk's Office and stamped as filed just 16 minutes after the hearing allegedly started. See CP 67-71. The Superior Court claims that no recording was made of that hearing but alleges that King County Prosecuting Attorney Mari Isaacson appeared in person for King County at the hearing. See **Court Docket** and CP 73. The

initials on the 10/19/18 Orders further bear the initials “MBD” when Judge Dingley’s legal middle name is Elizabeth and thus her legal initials would be “MED”, and she signed her criminal case records with simply “MD” as her initials. **Compare CP 67-71 and CP 123 with CP 153-160.** Judge Dingley made no findings in either Order and failed to mention having reviewed Diemond’s Notice of Unavailability or her other filings. **CP 32-35.**

The 10/19/18 Orders were not emailed to Diemond, or mentioned to Diemond, and instead were mailed to Diemond by the Superior Court to the UPS Mailbox Store **17 days later**—as indicated by the envelope with a postage stamp date of 11/6/18. **CP 177 at ¶37; CP 539.** Diemond, having heard nothing on her motion for continuance of the summary judgment motion, checked the docket several times and finally saw the Orders on the docket on 11/1/18 (with an alleged file date of 10/19/18). **CP 177 at ¶38.** She downloaded a copy of the Orders that same day and drafted, filed and served a Motion for Reconsideration that same day 11/1/18. **CP 51-53 at ¶¶6, 11; CP 75-90; CP 177-178 at ¶¶39-40.** Her motion repeated her request from her motion for continuance that the summary judgment hearing be noted in January so she could retain new counsel and respond. **CP 177 at ¶38.**

Diemond timely confirmed the Motion for Reconsideration and received a confirmation receipt. **CP 178 at ¶43; CP 541-543.** On the note date, Diemond appeared for the hearing and was told by Superior Court Courtroom staff that the motion would not be heard as it allegedly had not been confirmed. **CP 178 at ¶42.** Diemond immediately showed Judge Dingley the confirmation receipt as proof that the Motion HAD been timely confirmed. **Id. at ¶42; CP 541-543.** Judge Dingley still refused to hear it that day. Judge Dingley's clerk later instructed Diemond to re-note the hearing to 1/11/19 before Judge Dingley on her personal calendar, which Diemond promptly did. **CP 178 at ¶42; CP 119-121.**

On 1/11/19 Judge Dingley considered the matter without oral argument although Diemond was present during the motion calendar and wishing to be heard. **CP 178 at ¶42.** On 1/17/19 Judge Dingley allegedly signed an Order denying the Motion for Reconsideration. **The Order was not given to the Superior Court Clerk for filing and entry until 1/22/19,** five days after it was allegedly signed. **CP 563.**

Diemond thereafter successfully retained new counsel to represent her in this matter. **CP 562.** On 2/21/19 her counsel filed a Notice of Appeal seeking direct review in the Washington State Supreme Court of the Order denying the Motion to Continue, the Order granting Summary

Judgment to King County, and the Order denying Diemond's Motion for Reconsideration. **CP 30-36.**

On 2/8/19 Diemond's new counsel discovered that Judge Dingley had been charged and convicted of a DUI by King County in late 2017 and that Judge Dingley remains to this day on probation under the control of King County. **CP 53 at ¶¶14-15; CP 125-165.** On 2/14/19, six days after discovering this new information, Diemond through her new counsel filed and served a CR 60 Motion to Vacate the Orders of Judge Dingley and for assignment of a non-conflicted judge to hear the summary judgment motion when re-noted. **CP 10, 51-165, 544-561.** The CR 60 Motion and motion for assignment of non-conflicted judge were noted before the Presiding Judge Bruce I. Weiss as one of the issues in the motion was the conflict of the originally assigned judge. **CP 10 at ¶2; CP 47-49.** Diemond's counsel timely confirmed the Motion by telephone in the early morning of 2/19/19 and online at 6:17 am on 2/20/19. **CP 10 at ¶2; CP 14.**

On 2/21/19, one day before the note date, at 9:41 am, the County's attorneys emailed the Court and Diemond's attorney claiming to be unavailable on the note date of 2/22/19 and expecting the Court and opposing counsel to honor that emailed notice indicating unavailability. **CP 11 at ¶3; CP 25-26.** Diemond's attorney responded noting the irony

that the County's attorneys were asking her and the Court to honor their belated emailed alleged unavailability, the day before the hearing, for which they had not filed a Notice of Unavailability even though they had had the Motion since 2/14/19, when they did not honor Diamond's Notice of Unavailability filed 10/12/18 for the summary judgment motion the County had secretly noted and filed for hearing 10/19/18. **CP 25.**

On 2/20/19, two days before the note date of the CR 60 motion, Judge Weiss's law clerk contacted the parties indicating that Judge Weiss would not hear the Motion despite it including a motion for assignment of a non-conflicted judge, and instructing that it was to be noted before Judge Dingley through her law clerk. **CP 11-12 at ¶ 3; CP 20-23.** Diamond's lawyer immediately contacted Judge Dingley's Clerk, and after several email exchanges was advised that (a) Judge Dingley would hear the matter but without oral argument, (b) the earliest date she would allow it to be noted was 3/5/19, and (c) that a re-note of the hearing should be filed for that date. **CP 11-12 at ¶3; CP 16-22.** A new Note for Motion was promptly filed and served, and the motion was confirmed as instructed with Judge Dingley's clerk. **CP 11 at ¶3; CP 7-9.**

Judge Dingley declined to grant oral argument on the CR 60 motion and motion for re-assignment. **CP 17-18.** She denied the Order on 3/18/19. **CP 1-2.** On 3/20/19 Diamond filed an Amended Notice of

Appeal adding the 3/18/19 Order to the existing appeal. **Brief of Appellant Appendix (“App.”) A1-A10** attached hereto. On 3/22/19, the Supreme Court ruled by letter “The amended notice is timely as to the addition of a request for review of the order denying the CR 60 motion and review of that order is appropriately considered as part of this appeal. See RAP 5.3(h). Therefore, the Appellant is granted permission to amend the notice of appeal.” **App. B1**, attached hereto.

On 3/8/19 Diamond timely filed a Statement of Grounds for Direct Review in the Washington Supreme Court. On 3/22/19 King County filed an Answer to the Statement of Grounds for this appeal arguing that the Notice of Appeal of 2/21/19 was untimely as it was filed more than 30 days after the Order denying the Motion for Reconsideration was signed (although within 30 days of its being filed), but also that the 2/21/19 Notice of Appeal was premature as it was filed before the Order denying the CR 60 Motion had been entered. Answ. to Statement of Grounds at 6.

### **III. ARGUMENT**

#### **A. The Orders at Issue are Defective on their Face and Should be Vacated.**

CR 56(h) requires that the order granting or denying summary judgment “designate the documents and other evidence called to the attention of the trial court before the order on summary judgment was entered.” Judge Dingley’s Order granting summary judgment to King



County fails to list any materials filed by Diemond as material the judge reviewed even though Diemond filed a number of declarations and several pages of briefing illustrating that the records Diemond sought had been silently withheld by the County and were still being withheld.

CR 56(c) requires that summary judgment may only be granted “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” CR 56(d) requires that the trial court

at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall if practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the trial of the action, the facts so specified shall be deemed established, and the trial shall be conducted accordingly.

Further, CR 56(f) authorizes that

Should it appear from the affidavits of a party opposing the motion that for reasons stated, the party cannot present by affidavit facts essential to justify the party's opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

On 10/12/18, Diemond, acting as a new *pro se*, filed a Notice of Unavailability, declarations, a motion to continue, and numerous attachments in opposition to the summary judgment motion explaining specifically that she was not notified of the summary judgment filing, was unavailable on the date set for its hearing, needed a three month continuance to obtain counsel who could respond, and further showing that contrary to King County's claims numerous facts were in dispute and that numerous responsive records had not yet been provided to her in this case. The trial court did not examine the parties to determine if there were questions of fact, and according to her summary judgment order did not even consider the material filed by Diemond when deciding there were no questions of fact and that summary judgment should be granted to King County. Judge Dingley further did not explain why Diemond was not afforded a brief continuance to secure counsel and to be able to file more complete opposition materials when Diemond was ambushed with a surprise summary judgment motion that was deliberately not properly served upon her, and that Diemond had been intentionally misled by King County into believing that the settlement discussions underway meant the motion for summary judgment had not been filed and would not be filed unless the case did not settle. Diemond sufficiently set forth specific facts showing there was a genuine issue for trial (CR 56(e)), but Judge

Dingledy, according to the Order, again did not even consider Diamond's filings in connection with the summary judgment motion.

Judge Dingledy did not explain in her Order denying the Continuance what she reviewed or why Diamond should be denied her brief continuance. Judge Dingledy did not make any findings or explain in her Orders denying the Motion for Reconsideration or the CR 60 Motion and motion for assignment of non-conflicted judge why those motions were denied. Judge Dingledy did not address, at all, the conflict of interest alleged and her connection to King County, only stating that she had been the assigned judge for both of the October 2018 dates King County had selected as possible hearing dates.

The Orders show that Judge Dingledy did not consider the material and declarations filed by Diamond before granting summary judgment against her, denying her request for a continuance, or denying her motion for reconsideration and CR 60 motion and motion for assignment to a non-conflicted judge. As explained below, the Orders further show Judge Dingledy did not properly apply PRA law and requirements when choosing to toss Diamond's case out as she did.

**B. PRA Cases Place the Burden Squarely on the Agency, and that Burden was Not Appropriately Applied Here.**

The PRA is to be “liberally construed and its exemptions narrowly construed” to ensure the public’s interest in “full access” to government information is protected. RCW 42.56.030. As the Washington State Supreme Court stated:

We interpret the [PRA] liberally to promote full disclosure of government activity that the people might know how their representatives have executed the public trust placed in them and so hold them accountable.

**Spokane Research & Defense Fund v. City of Spokane**, 155 Wn.2d 89, 100, 117 P.3d 1117 (2005).

The PRA itself further states its intended purpose, to be effectuated by the court’s enforcement and adjudications. In 1992, the Legislature amended the Act to add the following mandate, now found at RCW 42.56.030, and in 1992 found at RCW 42.17.251:

The people of this state do not yield their sovereignty to the agencies that serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may maintain control over the instruments that they have created. The public records subdivision of this chapter shall be liberally construed and

its exemptions narrowly construed to promote this public policy.

Agencies are required to provide a sufficient explanation of any portion of a record redacted or withheld as exempt, and failure to provide such an explanation is itself a violation of the PRA. **City of Lakewood v. Koenig**, 182 Wn.2d 87, 343 P.3d 335 (2014).

Agencies that claim no more responsive records exist further bear the burden of proving its search was reasonable to make such a determination. **Neighborhood Alliance of Spokane County v. Spokane County**, 172 Wn.2d 702, 261 P.3d 119 (2011).

We do not allow agencies to decide what records it must produce or when its administrative inconvenience or difficulty can relieve it of the obligation to produce records. **Hearst v. Hoppe**, 90 Wn.2d 123, 131, 580 P.2d 246 (1978).

[W]hen courts review de novo the action of public officials, they “shall take into account the policy of this chapter that free and open examination of public records is in the public interest, even though such examination may cause inconvenience . . . to public officials . . .” [RCW 42.17.340\(2\)](#). The act's provisions would appear to have specifically addressed appellant's arguments and declared them to be of insignificant impact compared with the stated public purpose of the act. The fact that the material may be available in other records is not a reason stated in the act for failure to disclose.

**Hearst**, 90 Wn.2d at 132. “[L]eaving interpretation of the act to those at whom it was aimed would be the most direct course to its devitalization.”

**Id.** at 131.

Diemond established both in her motion to continue and opposition to the summary judgment motion as well as in her Motion for Reconsideration and CR 60 Motion to Vacate that King County had not produced all responsive records to her, had redacted records without a sufficient explanation, and that the redactions were improper. For example, King County produced blacked out **Brady** lists listing the names of officers named as **Brady** officers, but hiding the dishonest or illegal act that put the individual on the list. See, e.g., **CP 200, 247-250**. In its summary judgment motion King County contended it had done a good enough job producing records to Diemond and that its production should be deemed to be enough so no further records were required. It also argued that even though it missed its deadlines to give Diemond the records she requested in 2015 by a date that could have helped her in her criminal appeal, that on its own it had chosen to continue to keep trickling out records during the lawsuit in connection with discovery, and so its response was not done by the time she sued in 2015 and so in 2018—three years after suit, when all records had still not been provided, King County argued the trial court should hold since it chose to produce more records to

Diemond after she sued in 2015, that the court should hold she lacked standing to sue in 2015 and her suit should be dismissed. King County further argued that since it contended Diemond was not visiting an online portal to access records from the Sheriff's Office, based on its surveillance of her downloads, as often or as recently as the County thought she should have, that the court should rule the County could stop producing records to her and deem the request abandoned.

None of these arguments were a basis, even if true, of granting summary judgment to King County.

King County's motion for summary judgment was based on the Division Two Court of Appeals decision in **Hobbs v. State** which held that final action on a PRA request is "some agency action, or inaction, *indicating that the agency will not be providing responsive records.*" **Hobbs v. State**, 183 Wn. App 925, 935-936, 335 P.3d 1004, 1009 (Div. II 2014). The **Hobbs** decision is in direct conflict with cases from other Divisions, including **Cedar Grove Composting, Inc. v. Marysville**, 188 Wn. App. 695, 354 P.3d 249 (Div. I, 2015); **Hikel v. Lynnwood**, 197 Wn. App. 366, 389 P.3d 677 (Div. I, 2016).

It is further in conflict with the Washington State Supreme Court's decision in **Belenski v. Jefferson County**, 186, Wn.2d 452, 460-61, 378 P.3d 176 (2016), which held that the one-year statute of limitations for

PRA cases begins upon the “agency’s final, definitive response to a public records request”. The Court held the clock started when the agency responded with words indicating there were no responsive records or no further responsive records that “[r]egardless of whether this answer was truthful or correct ... was sufficient to put him on notice that the County did not intend to disclose [more] records or further address this request.” 186 Wn.2d at 460-61; see also RCW 42.56.550(6). In Belenski, the Supreme Court held “If Belenski was unsatisfied with this answer, he could sue to hold the County in compliance with the PRA as soon as it gave this response—there was no need for him to wait an additional 25 months before bringing his cause of action.” Id. at 461.

Here, King County agreed to produce records to Diamond by April 2015. It did not produce the records she sought, redacted non-exempt records without sufficient explanation or justification and failed to provide a reasonable estimate of when records would be produced. Diamond waited but was forced to sue. Three years passed, with records still not provided, less redacted records not produced, no commitment that everything was coming, and in fact the County alleged exactly the opposite—that it had found all it could or would and would not be producing more. And then in October 2018, with no notice to Diamond, it moved for summary judgment on the basis it was not done producing



when Diemond sued in 2015 arguing it should be let off the hook for its years of denial of records and delay of access.

And despite the record, despite Diemond's submission, and in direct contradiction of binding caselaw regarding the PRA, Judge Dingley did not look beyond the materials filed by King County, did not even consider Diemond's submission, and granted summary judgment for the County. The decision must be vacated and Diemond afforded a fair hearing, with the opportunity to respond, before King County's liability is determined.

**C. No Court Has Ever Ruled that the Materials Denied Diemond were Not "Brady" Material or Non-Responsive.**

King County, in a continued practice of misrepresenting the facts and the law to this Court, argued in its Answer to the Statement of Grounds that an appellate court already determined that the Westberg and Cleary records that were not produced to Diemond were not "Brady" material and that their failure to produce them was somehow harmless. No Court has ever so held. The fact that Diemond was denied the **Brady** evidence in time to prepare her appellate briefing, and remains deprived on the material to this day, does not excuse King County's deliberate, dishonest, decision to withhold the information from her during her criminal trial, sentencing, and appeals. The email string between

Prosecutors working on her criminal appeal questioning whether or not they had to disclose the Cleary addition to Diamond or her counsel during the appeal is akin to a smoking gun. It should send ripples of disgust and distrust down the backs of the Court, and illustrates exactly why the withholding under the PRA was so egregious and King County should not have been let off the hook for its actions. See email string among prosecutors at **CP 182-195**.

A prosecutor has a constitutional duty to disclose both exculpatory evidence and impeachment evidence favorable to a criminal defendant. *Brady*, 373 U.S. at 87, 83 S.Ct. 1194 (prosecutor's failure to disclose evidence favorable to an accused violates due process); see also *United States v. Bagley*, 473 U.S. 667, 678-84, 105 S.Ct. 3375, 87 L.Ed.2d 481 (1985) (Failure to disclose evidence that could have been used to impeach a government witness violates due process.). This constitutional duty to disclose exists even if the governmental record is exempt from disclosure under a state statute. See *Pennsylvania v. Ritchie*, 480 U.S. 39, 57, 107 S.Ct. 989, 94 L.Ed.2d 40 (1987).

**Sheats v. City of East Wenatchee**, 6 Wn. App. 2d 523, 538, 431 P.3d 489 (Div. III, 2018).

In fact, these prosecutors themselves were aware of their duties and obligations to disclose, and discussed this in their email string which stated in relevant part as follows:

**You will recall that the case law suggesting that we provide notice of pending matters comes from the 9<sup>th</sup> Cir. Case where the State failed to disclose information**

**about an expert they planned to call at trial whom they knew was about to be discredited in an investigation. In that case, the court noted that the State could not simply wait for a finding to be made and should have ultimately affirmed the disclosure pending trial. US v. Olson, 704 F.3d 1172, 1182 (2013). (The court ultimately affirmed the conviction finding that there was no reasonable possibility the verdict would have been different if the favorable evidence had been disclosed because of the overwhelming evidence against the defendant.)**

**CP 184 (emphasis added).** Despite being fully aware of this binding precedent, the King County prosecutors, including the attorneys involved in this PRA litigation, chose not to provide to Diamond the evidence that the officers who had testified against her and who created the documentation used against her were discredited in another investigation. Diamond cannot know what impact having this information could have had on her trial or her appeal, and what impact it could still have today in her continued effort to clear her name.

#### **D. Judge Dingley Should Not Have Heard the Motions.**

Diamond filed a Notice of Unavailability and a Motion for Continuance explaining why she needed the summary judgment hearing re-noted, and she provided ample proof to create a question of fact precluding summary judgment to King County including proof that King County was not producing records to her but had not identified or disclosed relevant

responsive records about the two now-fired employees—the opposite of what King County alleged in its motion. Judge Dingley’s grant of the summary judgment motion, and rejection of Diamond’s Notice of Unavailability and her Motion for a Continuance contradict decades of case law from the State Supreme Court and the Courts of Appeal as Diamond at a minimum raised a question of fact about whether King County had violated the PRA. The Orders do not state the reason summary judgment was granted or the continuance was denied, which itself shows their invalidity. But more importantly, the judge who King County knowingly selected, who the Presiding Judge allowed to be assigned to hear the motions, and which assigned judge in fact choose to hear and decide the motions, is a judge who was at the time she ruled on these motions on probation under the supervision and control of the very County and prosecuting attorney’s office whose motion she was being asked to grant. King County should not have placed Judge Dingley in the untenable position of having to rule on a motion brought by the entity which holds her freedom in its hands or recuse herself. The Snohomish County Superior Court, at the same time, should not have assigned a case involving King County to Judge Dingley with whom Judge Dingley remains on criminal probation. Judge Dingley was required to notify Snohomish County Superior Court of her conviction and the terms of her sentence, including

her probation under the control and supervision of King County. King County argues in its Answer to the Statement of Grounds that it would be a King County District Court judge to ultimately jail Judge Dingley if she violated the terms of her probation during her remaining two years of her three years of probation under the supervision and control of King County, but this ignores the reality that the King County Prosecutor's Office, and Probation Department, are empowered to bring such alleged violations before the District Court Judge to seek to have her full suspended sentence re-instated. Finally, Judge Dingley had a duty to recuse herself and not rule in a case where King County was a party while there remains even the appearance that she cannot be impartial.

Code of Judicial Conduct ("CJC") Canon 1 states: "A judge shall uphold and promote the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety." CJC Rule 1.2 requires that "A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety." Comment 2 to CJC Rule 1.2 states: "A judge should expect to be the subject of public scrutiny that might be viewed as burdensome if applied to other citizens, and must accept the restrictions imposed by the Code." Comment 3 to CJC Rule 1.2 states: "Conduct that compromises the

independence, integrity, and impartiality of a judge undermines public confidence in the judiciary.” Comment 5 to CJC Rule 1.2 states: “The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge violated this Code or engaged in other conduct that reflects adversely on the judge's honesty, impartiality, temperament, or fitness to serve as a judge.”

By ruling on a motion brought by the County that has the power to seek revocation of her probation and reinstatement of her full 364 additional days of jail of her sentence, Judge Dingley created at a minimum an appearance of impropriety and an appearance of a lack of impartiality and fairness. Had she disclosed the full events and given the parties the time to decide whether to ask her to recuse, she could have perhaps overcome such an appearance, but neither King County, the Snohomish Superior Court, or the Judge provided that notice to Diamond. Had she been notified, Diamond would not have consented to the conflict and agreed to allow Judge Dingley to hear the matter. **CP 178-179 at ¶ 43.**

The appearance of impropriety is magnified by the bizarre events surrounding the handling of the Orders and Diamond’s filings as explained herein. A truly impartial and full consideration of the several hundred of pages of materials filed by King County as part of its summary judgment motion and Diamond’s sizable response including her Motion for

Continuance and Notice of Unavailability and her subsequent related filings could not have occurred with all such materials fully considered, the matters ruled upon, and orders signed, delivered to the Clerk's Office and file stamped—all within the 16 minutes from the hearing start time the Clerk stamp indicates was afforded here. (By comparison, Judge Dingley's Order denying the Motion for Reconsideration, signed on 1/17/19, was not delivered to the Clerk's Office and file stamped as received for five entire days, to 1/22/19.) The appearance of impartiality and unfairness is further magnified by the delay then caused by the Clerk's Office, and the movant King County, in failing to notify Diemond a decision had been issued on 10/19/18, and the Clerk's delay in mailing Diemond the Orders for 17 days—past the normal date for a motion for reconsideration. Additionally, Diemond's Motion for Reconsideration, filed the very day she discovered the Orders had been entered, was duly confirmed, but Superior Court staff nonetheless struck the hearing claiming it had not been confirmed. When Diemond provided the confirmation email to Judge Dingley, the matter was still not heard and was not allowed to be re-noted for more than a month later. When Diemond appeared at that re-noted hearing, she was still prevented from providing oral argument on the hearing date, and the Order denying the Motion was not signed until a week after the hearing, and not filed for five days after signing.

All of the above facts provide an appearance of impartiality and unfairness that demands a do-over, with a non-conflicted Judge, adequate notice and an opportunity to respond. Diemond provided King County and the trial court proof that King County has violated, and continues to violate the PRA in its handling of her PRA requests that are the subject of this civil lawsuit. Diemond deserved to have a fair hearing, and proper notice and a time to respond to the summary judgment motion before her case was summarily dismissed.

CJC Rule 2.6(1) requires that “A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law.” CJC Rule 2.2 states that “A judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially”. Comment 4 to CJC Rule 2.2 states “It is not a violation of this Rule for a judge to make reasonable accommodations to ensure pro se litigants the opportunity to have their matters fairly heard.” Here, on 10/12/18 Diemond filed her Motion for Continuance and Notice of Unavailability alerting Judge Dingley that she was not afforded proper notice of the 9/19/18 filings and could not appear at the 10/19/18 hearing. Diemond further noticed her Motion for Reconsideration, confirmed that Motion, and appeared at the hearing on two separate occasions wishing to be heard, and both times was denied. Judge Dingley should have provided



Diemond time to respond to the County's secretly-filed summary judgment motion and allowed Diemond to be heard before her case was summarily dismissed on a day she had informed the Superior Court she was unavailable.

Every litigant deserves her day in Court, and on an even playing field. Diemond was denied both, and her rights were sacrificed. This Court owes it to the public to speak clearly and decisively regarding the duties of judges to recuse themselves, the duty of presiding judges not to assign judges to motions when the judge is on probation before the entity for whom she is being asked to rule, and the expectation and requirement of fairness for all litigants, including those with the nerve to challenge the government and expose corruption.

**E. Judge Dingley Abused Her Discretion in Denying the Continuance.**

Judge Dingley received Diemond's Motion to Continue the Summary Judgment hearing on 10/12/18, as well as Diemond's Notice of Unavailability. In her filings, Diemond explained that King County had told her it would be filing a summary judgment motion only if the parties did not settle the case, but the parties remained in active settlement discussions misleading Diemond into understanding the motion had not been filed. Diemond also explained that she had recently become

involuntarily *pro se* as her attorney had withdrawn for medical reasons with the understanding no new hearings were on the horizon. Diemond explained that she wanted just a three-month continuance to secure counsel and for such counsel to file a response. King County did not dispute that it deliberately failed to email Diemond the motion or to advise her it had been filed even though the County was in contact with her in settlement discussions both before, during, and after the filing. King County further did not dispute that its previous communications with Diemond had all been by email and that the secret summary judgment service was the first documents it had merely dumped at the UPS Mailbox Store counter with no note or envelope or notice to Diemond.

Whether the ruling of a court on a motion for a continuance is within the proper exercise of its sound discretion usually depends on the facts of the particular case, the chief test being whether the grant or denial of the motion operates in the furtherance of justice. \* \* \* **a continuance should be granted if a denial thereof would operate to delay or defeat justice; and courts have been said to be liberal in continuing a cause when to do otherwise would deny applicant his day in court.**’ (Italics ours.) 17 C.J.S., Continuances, § 6, p. 194.

**Chamberlin v. Chamberlin**, 44 Wn.2d 689, 703, 270 P.2d 464 (1954)

(emphasis added). “In exercising discretion to grant or deny a continuance, trial courts may consider many factors, including surprise, diligence, redundancy, due process, materiality, and maintenance of

orderly procedure.” **State v. Downing**, 151 Wn.2d 265, 87 P.3d 1169 (2004).

Diemond was entitled to her day in court to respond to King County’s dispositive motion. She was further entitled, and should have been afforded, the brief continuance she requested to secure counsel to respond to the motion as she had been misled by King County into understanding that the motion would not be pursued until the settlement negotiations then pending had concluded. Justice was not accomplished by forcing Diemond to respond to a secretly-noted summary judgment, on a day she was unavailable, and unrepresented. The order denying the continuance should be vacated.

**F. This Appeal is Timely and Not Premature**

In its Answer to the Statement of Grounds, King County argues the appeal is not timely, misrepresenting the date of the Order denying the Motion for Reconsideration. The Order denying the Motion for Reconsideration was filed with the Superior Court on 1/22/19. **CP 563**. Diemond filed her Notice of Appeal on 2/21/19 (**CP 30-36**), within 30 days of the Order being filed.

Diemond filed her Amended Notice of Appeal on 3/20/19 to add the 3/18/19 Order denying her CR 60 Motion and Motion for assignment of a non-conflicted judge, filing this Amended Notice just two days after

the new order was entered. **App. A1-A10, attached hereto.** On 3/22/19 the Supreme Court held that “The amended notice is timely as to the addition of a request for review of the order denying the CR 60 motion and review of that order is appropriately considered as part of this appeal. See RAP 5.3(h). Therefore, the Appellant is granted permission to amend the notice of appeal.” **App. B1, attached hereto.**

The Orders granting summary judgment to King County and the Order denying Diamond’s Motion to Continue were not sent to Diamond by email and instead were mailed by the Court in an envelope postmarked 11/6/18, **17 days after the Orders were allegedly signed.** CP 177 at ¶37; CP 539. King County never alerted Diamond that there had even been a hearing on 10/19/18—a date for which she had filed a Notice of Unavailability and a Motion to Continue more than a week before, or that there had been any Orders issued on her Motion to Continue or the County’s Summary Judgment Motion. Diamond, having heard nothing regarding her motion for continuance of the summary judgment motion or the status of the motion for summary judgment she had asked to be continued due to her unavailability and lack of counsel, checked the docket several times after 10/19/18 and finally saw the Orders on the docket on 11/1/18 (with an alleged file date of 10/19/18). CP 177 at ¶38. She downloaded a copy of the Orders that same day 11/1/18 and drafted, filed and served a Motion for

Reconsideration that same day 11/1/18. **CP 51-53 at ¶¶6, 11; CP 75-90; CP 177-178 at ¶¶39-40.** Thus the Orders were not listed on the docket or available for Diamond to download until 11/1/18—the very day she filed her motion for reconsideration.

To the extent King County alleges Diamond should have known to file a Motion for Reconsideration by 10/29/18 for Orders (a) she had no notice even existed or that the hearing for them had even been held, (b) that the County never told her had been issued, and (c) which the Court had not advised her had been entered, (d) which the Court did not send to her until it mailed them to her in an envelope postmarked 11/6/18, and (e) which Orders were not reflected on a docket available to the public until 11/1/18, **such argument should be rejected.**

Diamond filed her Notice of Appeal within 30 days of the 1/22/19 filing with the Clerk of the Order denying her motion for reconsideration.

For purposes of determining when the 30 days to appeal begins to run, the Court typically looks to the date of “entry” of a trial court decision. RAP 5.2(c) states “The date of entry of a trial court decision is determined by CR 5(e) and 58.” CR 5(e) states “The filing of pleadings and other papers with the court as required by these rules shall be made by filing them with the clerk of the court...”

CR 58(b) states “Judgments shall be deemed entered for all procedural purposes from the time of delivery to the clerk for filing....”

Here, the record indicates the Order denying reconsideration was delivered to the clerk for filing on 1/22/19. That is the date it was “entered” for purposes of starting the 30-day clock to appeal. Diamond appealed within that time period.

Diamond also filed her Amended Notice of Appeal two days after the 3/18/19 Order was entered adding that Order to this appeal, and that notice was deemed timely and has been accepted by this Court as a proper part of this appeal.

Thus the only argument the County could conceivably be making is that Diamond was two days late with her motion for reconsideration – filed on 11/1/18, **(a) the first day she learned a hearing had been held on 10/19/18 despite her Notice of Unavailability, (b) the very day she learned that Orders granting summary judgment and denying her motion to continue had been issued, (c) the first day those Orders had been listed on the Court’s docket and the first day such Orders were accessible to Diamond or the public.** As was true with the 3/18/19 Order, the Snohomish County Superior Court does not docket all filings immediately upon receipt or promptly make them available to the public, although it stamps them as “filed”. It takes several days for filings typically

to be reflected on the court's docket or to be available to the public or parties. See, e.g., 3/25/19 Designation of Clerk's Papers filed in this appeal noting that the 3/18/19 Order signed 7 days prior did not yet appear on the docket and thus was not available to view, order or download. This Designation of CPs is attached hereto as **App.-C3**.

Diemond was not told by anyone that the Order granting summary judgment and the Order denying her motion to continue had been entered, or that any orders had been issued on either motion. She was not told a hearing was held on 10/19/18 despite her Notice of Unavailability. She was not sent a copy of the Orders by the opposing party or alerted to their entry. She was not mailed a copy by the Court until 17 days after the Orders were signed. She checked the docket diligently to see if there had been any activity in the case every day after 10/19/18, and the Orders were not listed on the docket until 11/1/18, the day she downloaded them and filed her Motion for Reconsideration.

Diemond was not in court on 10/19/18 and was unaware the hearing had gone forward without her in rejection of her filed Notice of Unavailability. She was afforded no notice that a hearing had occurred or that any orders had been entered until more than 12 days after their signing because for those 12 days King County, the Judge, Judicial staff, and the Superior Court Clerk all failed to notify her and further failed to list the

orders as existing on the Court's docket. The first day they were listed on the docket, and their existence was known, she downloaded them and promptly wrote, filed and served a Motion for Reconsideration that same day. She was thus given zero days to file a Motion for Reconsideration, when CR 59(b) contemplates that she be afforded 10 days. The trial court delayed ruling on Diamond's Motion for Reconsideration, which she filed on 11/1/18, for nearly three months until 1/22/19, lulling her into not appealing while the trial court delayed its decision.

While a litigant may not be allowed to extend the time to file a Motion for Reconsideration if she was present in Court and learned of the ruling but failed to exercise reasonable diligence to obtain a copy, a litigant who is actively denied knowledge of and access to an Order cannot be held obligated to file a Motion for Reconsideration before the Order's existence is even disclosed or the Order is accessible to her. Even were the Court to accept such a harsh and impractical reading of its Court rules, such a reading would be unconstitutional as it would deprive litigants of notice and the opportunity to be heard and thus due process of law. But this Court's rules afford it permission to alter such timelines in this case even if they did exist.

RAP 1.2(a) states "These rules will be liberally interpreted to promote justice and facilitate the decision of cases on the merits. Cases and issues will not be determined on the basis of compliance or noncompliance



with these rules except in compelling circumstances where justice demands, subject to the restrictions in rule 18.8(b).”

RAP 1.2(c) states “The appellate court may waive or alter the provisions of any of these rules in order to serve the ends of justice, subject to the restrictions in rule 18.8(b) and (c).”

RAP 18.8(b) provides that the appellate court can extend the time to file a Notice of Appeal or Motion for Reconsideration “in extraordinary circumstances and to prevent a gross miscarriage of justice.”

Diemond had just become involuntarily *pro se* due to the withdrawal of her attorney for medical reasons, and had not been informed a summary judgment motion was being filed. She was told by opposing counsel that the motion would only be filed if the case they were in active settlement discussions to resolve did not settle, and as those discussions continued, she was deliberately misled into believing the motion was not being pursued. King County “served” her with the summary judgment motion solely by dropping an unlabeled thick stack of paper at a counter at a UPS Mailbox Store leaving the counter staff to figure out what it was and to whom it belonged. King County deliberately failed to email the records to Diemond or tell her a motion had been filed even though King County remained in active settlement discussions with her both before, during, and after the filing.

Diemond was denied notice of the Orders signed 10/19/18 and notice that a hearing had even occurred. The trial court ignored her timely filed and served Notice of Unavailability advising that she was unavailable on the date of the hearing, and rejected her motion to continue the hearing to January so she could retain new counsel to respond. Diemond was deprived notice of the Orders by the Court for more than 17 days after the orders were signed, and sent them solely by mail, and the Clerk failed to identify them on the docket for 12 days so Diemond could learn of their existence. Diemond filed her Motion for Reconsideration on that 12<sup>th</sup> day, the first day the orders appeared on the docket and thus their existence was revealed and they could be obtained.

Furthermore, the motion being decided was a summary judgment motion, and Diemond had just proven to King County in a settlement conference that King County had not produced all the responsive records to her, including specifically **Brady** materials of two law enforcement officers who testified against her and were instrumental in securing her conviction. The officers were both fired by King County for acts of dishonesty, and one had an extensive criminal record, all facts King County had failed to disclose to Diemond throughout the criminal trial and appeal. The lead investigator and creator of the documentary evidence used against Diemond was found to have lied about performing animal and site inspections she

had not performed in other cases, and manufacturing evidence in those inspection files to cover up her lies.

Diemond was merely asking for a continuance of a few months so she could have a lawyer represent her again and respond to the surprise summary judgment motion the County had filed without notice. The Judge who ruled on the matter, and rejected Diemond’s Notice of Unavailability and denied her Motion to Continue—unbeknownst to Diemond—was on probation under the supervision and control of King County, the entity whose motion the Judge was being asked to decide.

All of the above are more than sufficient to establish “extraordinary circumstances” “to prevent a gross miscarriage of justice” to allow Diemond’s filing of a Motion for Reconsideration 12 days after orders were signed but the very day she received notice such orders existed and was able to obtain a copy. RAP 18.8(b).

**G. The Records that have Not Been Produced are Implicitly “Reasonably Locatable” and King County’s Search was not “Reasonable”.**

King County is the most populated County in the State of Washington and controls a more than **eleven billion dollar biennial budget provided by taxpayers**. See, for example,

<https://www.kingcounty.gov/depts/executive/performance-strategy-budget/budget/2019-2020-Proposed-Budget.aspx> (last visited 5/10/19).

More than a decade ago, in the **Yousoufian v. King County** cases,<sup>4</sup> King County had been held liable for PRA violations and ordered to pay one of the largest PRA penalties at the time due to its failure to locate and produce payment documents related to a study regarding the King Dome and new stadium to replace it. One should expect that having cost the taxpayers hundreds of thousands of dollars in penalties and legal fees in that case that King County would have improved its practices and recognized its duty to maintain records in a locatable, and accountable, manner. If more than a decade later King County has truly failed to correct its procedural flaws, the Courts should not allow that to become its excuse for not producing records and give the County a free pass to withhold as was done in this case.

When it came time for summary judgment, King County's excuse for why it should be given summary judgment was that it chose to produce more records after it was sued in 2015, and so it claimed its production

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<sup>4</sup>**Yousoufian v. King County**, 114 Wn. App. 836, 60 P.3d 667 (2003) ("**Yousoufian I**"), *reversed on other grounds*, **Yousoufian v. King County**, 152 Wn.2d 421, 98 P.3d 463 (2004) ("**Yousoufian II**"); **Yousoufian v. King County**, 137 Wn. App. 69, 151 P.3d 243 (2007) ("**Yousoufian III**"); **Yousoufian v. King County**, 165 Wn.2d 439, 200 P.3d 232 (2009) ("**Yousoufian IV**"); **Yousoufian V**, 168 Wn.2d 444 ("**Yousoufian V**").

was not “final” at the time Diemond chose to sue, but also that it had produced a lot of records, the work was time consuming, and its production to date should be deemed good enough.

The State Supreme Court has held that agencies must do “more than a perfunctory search and follow obvious leads as they are uncovered.” **Neighborhood Alliance of Spokane County v. County of Spokane**, 172 Wn.2d 702, 720, 261 P.3d 119 (2011). An agency must search for a record in “those places where it is reasonably likely to be found.” **Id.**

Agencies must make a sincere and adequate search for records. When an agency denies a public records request on the grounds that no responsive records exist, its response should show at least some evidence that it sincerely attempted to be helpful.

**Fisher Broadcasting-Seattle TV LLC v. City of Seattle**, 180 Wn.2d 515, 522, 326 P.3d 688, 692 (2014).

The Prosecutors email string, debating whether they could withhold from Diemond during her appeal the records related to Cleary being added to the **Brady** list show King County already knew where to find the records; it merely chose not to gather and produce them. Westberg’s criminal prosecutions Diemond since discovered on her own were all in court actions within King County’s borders. Westberg and Cleary were fired by King County for behavior that led to their addition to

the **Brady** list, so King County possessed the records Diamond wanted, it just chose not to gather and produce them. And when it did produce records, it redacted non-exempt information or silently withheld records without providing a sufficient explanation for the withholding or redaction.

Judge Dingley should not have granted summary judgment to King County on the record presented here. The Order must be vacated and remanded for new proceedings before a new non-conflicted judge. This Court cannot let King County, a serial PRA violator, off the hook from providing these important records to Diamond and the public.

The Defendant here is the same King County discussed in **Yousoufian I-V**. It is the most populous County in the State with a biennial budget of \$11.6 billion dollars. It is a repeat abuser of the public's rights under the PRA and the subject of several expensive judgments for its PRA violations. But King County still has not gotten the message and has not fixed its behavior or its procedures. It ignored Diamond, blew off her concerns and requests, and made her sue the County before it made any real effort to locate the records she had requested. She told the PRA Officers about her pending criminal case and the need for the records to help her prove her innocence and seek a new trial. She made sure they knew what she wanted, and gave them examples

she had obtained herself from court files to aid them in their search. But she was denied the records she needed for years after her request, and after the time to use them in her criminal case appeals had passed. What's more, King County's delay let the name and reputation of this 66-year old well-respected community advocate, working single mother, loving caregiver for her elderly mother be destroyed with no regard to who it harmed. Diamond had no criminal record, had never set foot in a jail cell, and had a more than perfect and well liked community reputation, but she was deprived of needed records to defend herself against the travesty King County brought against her. The trial court needed to hold King County accountable. King County has demonstrated that its past penalties of hundreds of thousands of dollars in the past was not sufficient to alter its behavior or deter PRA violations in the future. Letting it off the hook entirely as the trial court did here does not serve the goal and purpose of the PRA or the interests of the public.

**H. The Trial Court Erred in Granting the County's Summary Judgment Motion and in Denying the Motion for Reconsideration and the CR 60 Motion to Vacate.**

The purpose of the Public Records Act is to preserve 'the most central tenets of representative government, namely the sovereignty of the people and the accountability to the people of public officials and institutions.

**O'Connor v. Department of Social & Health Servs.**, 143 Wn.2d 895, 25 P.3d 426 (2001). Appellate review of trial court decisions in PRA cases must be **de novo**. **O'Connor**, 143 Wn.2d at 904; **Progressive Animal Welfare Society v. University of Washington**, 125 Wn.2d 243, 252, 884 P.2d 592 (1995) (“**PAWS II**”). Even if the Court were to apply an abuse of discretion standard, the errors here are so clearly contrary to binding precedent an abuse of discretion would be shown as explained above.

**I. Diamond Should be Awarded Fees and Costs on Appeal and Below on Remand.**

RCW 42.56.550(4) of the PRA provides:

Any person who prevails against an agency in any action in the courts seeking the right to inspect or copy any public record or the right to receive a response to a public record request within a reasonable amount of time shall be awarded all costs, including reasonable attorney fees, incurred in connection with such legal action [.]

Washington courts recognize that “[s]trict enforcement of this provision discourages improper denial of access to public records.” **Spokane Research & Defense Fund v. City of Spokane**, 155 Wn.2d 89, 101, 117 P.3d 1117 (2005); **see also Am. Civil Liberties Union of Washington (“ACLU”) v. Blaine Sch. Dist. No. 503**, 95 Wn. App. 106, 115, 975 P.2d 536 (1999). The PRA does not allow for court discretion in deciding **whether** to award attorney fees to a prevailing party. **Progressive Animal Welfare Society v. University of Washington (“PAWS I”)**, 114



Wn.2d 677, 687-88, 790 P.2d 604 (1990); **Amren v. City of Kalama**, 131 Wn.2d 25, 35, 929 P.2d 389 (1997). The only discretion the court has is in determining the **amount** of reasonable attorney’s fees. **Amren**, 131 Wn.2d at 36-37.

The State Supreme Court in **Limstrom v. Ladenburg**, 136 Wn.2d 595, 616, 963 P.2d 869 (1998), remanded back to the trial court to determine whether a violation of the PRA occurred, but awarded attorney fees—“[including] fees on appeal”—to the requester. Should Diemond prevail on appeal in any respect, she should be awarded her fees and costs on appeal pursuant to the PRA and RAP 18.1.

Under RCW 42.56.550(4), a public records requestor who prevails against an agency in a PRA claim is entitled to mandatory reasonable attorney’s fees, all costs, and a daily penalty of up to \$100 per day which can be imposed per page. **Wade’s Eastside Gun Shop**, 185 Wn.2d 270, 372 P.3d 97 (2016). Defendant has failed to perform an adequate search for records in violation of the PRA and silently withheld numerous records in violation of the PRA. Should Diemond prevail in any respect in the appeal, she should be awarded an award of reasonable attorney’s fees and all costs on appeal and on remand all fees, costs and statutory penalties in amounts to be determined by the trial court after subsequent briefing and

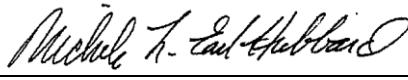
hearing by the trial court once all remaining responsive records have been produced.

#### IV. CONCLUSION

For all of the reasons described above, Ms. Diemond asks the Court to vacate the trial court's orders granting summary judgment to King County, denying her motion to continue, denying Diemond's Motion for Reconsideration, and denying Diemond's CR 60 Motion to Vacate and motion for assignment of non-conflicted judge. Diemond further asks that the Court order the Presiding Judge to assign a judge other than Judge Dingley to hear any future motions in this case or preside over any further proceedings in this case, and that she be awarded her fees and costs on appeal and on remand fees, costs, and statutory penalties.

Respectfully submitted this 8th day of July, 2019.

ALLIED LAW GROUP LLC

By 

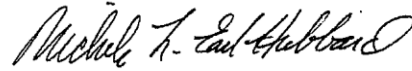
Michele Earl-Hubbard, WSBA No. 26454

## CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that on July 8, 2019, I filed with the Supreme Court and delivered a copy of the foregoing Brief of Appellant and attached Appendix to Brief of Appellant by email pursuant to agreement to the following through the appellate court's e-filing portal:

Mari Isaacson and Monique Cohen  
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Dated this 8th day of July, 2019, at Shoreline, Washington.



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Michele Earl-Hubbard

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**July 08, 2019 - 4:52 PM**

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**Appellate Court Case Title:** Christy Diemond v. King County  
**Superior Court Case Number:** 15-2-04073-0

**The following documents have been uploaded:**

- 968900\_Briefs\_20190708165048SC980994\_6211.pdf  
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Briefs - Appellants  
*The Original File Name was 2019-07-08 Brief of Appellant with Appendixes A-C.pdf*
- 968900\_Other\_20190708165048SC980994\_1064.pdf  
This File Contains:  
Other - Appendix to Brief of Appellant  
*The Original File Name was 2019-07-08 Appendix to Brief of Appellant.pdf*

**A copy of the uploaded files will be sent to:**

- Natalie.brown@kingcounty.gov
- mari.isaacson@kingcounty.gov
- monique.cohen@kingcounty.gov

**Comments:**

---

Sender Name: Michele Earl-Hubbard - Email: michele@alliedlawgroup.com  
Address:  
PO BOX 33744  
SEATTLE, WA, 98133-0744  
Phone: 206-443-0200

**Note: The Filing Id is 20190708165048SC980994**

FILED  
SUPREME COURT  
STATE OF WASHINGTON  
7/8/2019 4:52 PM  
BY SUSAN L. CARLSON  
CLERK

No. 96890-0

IN THE WASHINGTON STATE SUPREME COURT

---

CHRISTY DIEMOND,

Appellant,

v.

KING COUNTY,

Respondent.

---

APPENDIX TO  
DIEMOND'S BRIEF OF APPELLANT

---

Michele Earl-Hubbard  
WSBA #26454  
ALLIED LAW GROUP  
P.O. Box 33744, Seattle, WA 98133  
Phone (206) 801-7510  
Fax: (206) 428-7169  
Email: michele@alliedlawgroup.com

*Attorneys for Appellant  
Christy Diemond*

# **Appendix A to Brief of Appellant**

**3/20/19 Amended Notice of Appeal**

**SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR SNOHOMISH COUNTY**

CHRISTY DIAMOND,

Plaintiff,

vs.

KING COUNTY,

Defendant.

NO. 15-2-04073-0

**AMENDED**

NOTICE OF APPEAL TO THE  
SUPREME COURT OF THE  
STATE OF WASHINGTON  
(Washington Supreme Court  
Cause No. 96890-0)

**CLERKS ACTION REQUIRED**

On February 21, 2019, Plaintiff Christy Diamond timely sought review by the Supreme Court of the State of Washington of the following Court Orders, attached thereto, and re-attached hereto.

- (1) Order Granting King County’s Motion for Summary Judgment, filed October 19, 2018;
- (2) Order Denying Motion for Continuance, filed October 19, 2018; and
- (3) Order Denying Motion for Reconsideration, filed January 22, 2019.

On February 14, 2019, Plaintiff timely filed and noted before the Presiding Judge of Snohomish Superior Court a “CR 60 Motion to Vacate Orders of Judge Mary Elizabeth Dingley and for Assignment of Non-Conflicted Judge to Hear a Re-Noted Summary Judgment Motion”. The Presiding Judge refused to hear the properly-confirmed Motion and demanded it

be re-noted before Judge Dingley. It was. Judge Dingley would not hear the motion until March 5, 2019, and without oral argument. Judge Dingley issued her decision on March 18, 2019.

Plaintiff Christy Diamond hereby timely seeks review by the Supreme Court of the State of Washington of the following additional Court Order, attached hereto:

(4) Order Denying Plaintiff's CR 60 Motion, signed March 18, 2019, filing date not yet known.

The March 18, 2019, Order attached hereto should be reviewed along with the previously-appealed Orders referenced herein. Such review is specifically authorized by RAP 2.4(b) as the recent Order will prejudicially affect the decisions designated in the original Notice of Appeal and the Order was entered before the appellate court has accepted review of the earlier Orders as the Appellant has sought direct review by the Washington State Supreme Court and review has not been accepted to date. Further, Plaintiff timely noted the underlying motion prior to the original Notice of Appeal, but the Presiding Judge of Snohomish Superior Court refused to hear the motion on the date it was noted and ordered it to be re-noted before the same judge whose conflicted status was being challenged and from whom Plaintiff was seeking re-assignment. That judge would not allow for the motion to be noted for several weeks thereafter, and did not rule for 13 days after the note date. The issues surrounding the latest Order overlap and are identical to the issues to be addressed in the appeal of the earlier Orders, making a separate appeal inefficient and unnecessary.

//  
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1 **Counsel are as follows:**

2 **Attorney for Plaintiff:**

3 Michele Earl-Hubbard, WSBA # 26454  
4 ALLIED LAW GROUP LLC  
5 P.O. Box 33744  
6 Seattle, WA 98133  
7 Telephone: (206) 443-0200  
8 michele@alliedlawgroup.com

**Attorneys for Defendants:**

Mari Isaacson, WSBA # 42945  
Monique Cohen, WSBA # 42129  
KING COUNTY PROSECUTING ATTORNEY  
Room W400 King County Courthouse  
516 Third Ave.  
Seattle, WA 98104  
Telephone: (206) 477-1120  
mari.isaacson@kingcounty.gov  
monique.cohen@kingcounty.gov

8 DATED this 20th day of March, 2019.

9 ALLIED LAW GROUP LLC

10 By Michele Earl Hubbard

11 Michele Earl-Hubbard, WSBA #26454  
12 Attorneys for Plaintiff Christy Diemond  
13 P.O. Box 33744, Seattle, WA 98133  
14 (206) 443-0200 Phone; (206) 428-7169 Fax  
15 michele@alliedlawgroup.com

13 **CERTIFICATE OF SERVICE**

14 The undersigned certifies under the penalty of perjury under the laws of the State of  
15 Washington that on this date I filed with the trial court and Washington State Supreme Court and  
16 served by email per agreement a copy of this document to

17 Mari Isaacson and Monique Cohen  
18 King County Prosecuting Attorney  
19 Room W400 King County Courthouse  
20 516 Third Ave.  
21 Seattle, WA 98104  
22 mari.isaacson@kingcounty.gov  
23 monique.cohen@kingcounty.gov

20 Dated this 20th day March, 2019, at Shoreline, Washington.

21 ALLIED LAW GROUP LLC

22 By Michele Earl Hubbard

23 Michele Earl-Hubbard, WSBA #26454  
24 Attorneys for Plaintiff Christy Diemond

**FILED**

Judges Civil Motion Calendar  
Hearing Date: October 19, 2018 at 9:30 a.m.  
With Oral Argument

2018 OCT 19 AM 9:46

SONYA KRASKI  
COUNTY CLERK  
SNOHOMISH CO. WASH

15-2-04073-0  
ORGSJ 57  
Order Granting Summary Judgment  
4067503



SUPERIOR COURT OF WASHINGTON  
FOR SNOHOMISH COUNTY

CHRISTY DIEMOND,

Plaintiff,

vs.

KING COUNTY,

Defendant.

No. 15-2-04073-0

ORDER GRANTING DEFENDANT  
KING COUNTY'S MOTION FOR  
SUMMARY JUDGMENT

~~PROPOSED~~ *UBJ*

THIS MATTER having come on for heading before the undersigned Court on Defendant King County's Motion for Summary Judgment, and the Court having reviewed the following documents:

1. King County's Motion for Summary Judgment;
2. Declaration of Johanna Loomis and attached exhibits;
3. Declaration of Rachel Miles and attached exhibits;
4. Declaration of Shelby Miklethun and attached exhibits;
5. Declaration of Kelli Williams and attached exhibits;
6. Declaration of Joel Wade and attached exhibits;

ORDER GRANTING DEFENDANT  
KING COUNTY'S MOTION FOR  
SUMMARY JUDGMENT - 1

Daniel T. Satterberg, Prosecuting Attorney  
CIVIL DIVISION  
W400 King County Courthouse  
516 Third Avenue  
Seattle, Washington 98104  
(206) 477-1120/FAX (206) 206-0191

7. Declaration of Mari Isaacson and attached exhibits;

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WMD

Also having considered the briefing, ~~the arguments of counsel~~, and the records and files herein, and finding no material issue of fact:

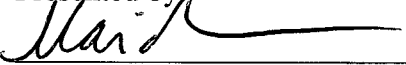
Now, therefore, it is hereby

ORDERED, ADJUDGED, and DECREED that King County's Motion for Summary Judgment is GRANTED. This case is dismissed with prejudice.

DONE IN OPEN COURT this 19<sup>th</sup> day of October, 2018.

  
HONORABLE MARYBETH DINGLEY

Presented by



MARI ISAACSON, WSBA #42945  
MONIQUE COHEN, WSBA #42129  
Senior Deputy Prosecuting Attorney  
Attorneys for King County

Approved as to Form, Presentation Waived:

  
CHRISTY DIEMOND, Plaintiff Pro. Se

ORDER GRANTING DEFENDANT  
KING COUNTY'S MOTION FOR  
SUMMARY JUDGMENT - 2

Daniel T. Satterberg, Prosecuting Attorney  
CIVIL DIVISION  
W400 King County Courthouse  
516 Third Avenue  
Seattle, Washington 98104  
(206) 477-1120/FAX (206) 206-0191

FILED

2018 OCT 19 AM 9:46

Judges Civil Motion Calendar  
Hearing Date: October 19, 2018, at 9:30 a.m.  
Without Oral Argument

SONYA KRASKI  
COUNTY CLERK  
SNOHOMISH CO. WASH

15-2-04073-0  
ORDYMT 56  
Order Denying Motion Petition  
4067494



SUPERIOR COURT OF WASHINGTON FOR SNOHOMISH COUNTY

CHRISTY DIAMOND,

Plaintiff,

vs.

KING COUNTY,

Defendant.

No. 15-2-04073-0

UBP

~~(PROPOSED)~~ ORDER DENYING  
PLAINTIFF'S MOTION FOR  
CONTINUANCE

THIS MATTER having come on for hearing before the undersigned court on Plaintiff

Christy Diamond's Motion for a Continuance, and the Court having reviewed said motion,

Defendant's Opposition, and Plaintiff's Reply if any, and all matters submitted with these

pleadings, and being otherwise fully advised.

NOW THEREFORE, it is ORDERED that Plaintiff's Motion for a Continuance

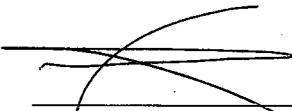
DENIED.

UBP  
~~(PROPOSED)~~ ORDER DENYING PLAINTIFF'S  
MOTION FOR CONTINUANCE - 1

Daniel T. Satterberg, Prosecuting Attorney  
CIVIL DIVISION  
W400 King County Courthouse  
516 Third Avenue  
Seattle, Washington 98104  
(206) 477-1120/FAX (206) 296-0191

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DONE IN OPEN COURT this 9<sup>th</sup> day of October, 2018.

  
 \_\_\_\_\_  
 JUDGE  
**MARYBETH DINGLEDY**

Presented by:

DANIEL T. SATTERBERG  
 King County Prosecuting Attorney

By: Mari Isaacson  
 MARI ISAACSON, WSBA #42945  
 MONIQUE COHEN, WSBA #42129  
 Senior Deputy Prosecuting Attorney  
 Attorneys for King County  
 King County Prosecuting Attorney  
 516 3<sup>rd</sup> Avenue, Suite W400  
 Seattle, WA 98104

Copy received:

By: \_\_\_\_\_  
 Christy Diamond, pro se

MD  
 (PROPOSED) ORDER DENYING PLAINTIFF'S  
 MOTION FOR CONTINUANCE - 2

Daniel T. Satterberg, Prosecuting Attorney  
 CIVIL DIVISION  
 W400 King County Courthouse  
 516 Third Avenue  
 Seattle, Washington 98104  
 (206) 477-1120/FAX (206) 296-0191

FILED

2019 JAN 22 AM 10:36

15-2-04073-0  
ORMRC 66  
Order on Motion for Reconsideration  
4722914



SONYA KRASKI  
COUNTY CLERK  
SNOHOMISH CO WASH

IN THE SUPERIOR COURT OF STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF SNOHOMISH

CHRISTY DIEMOND

15-2-04073-0

v.

Order on Motion for Reconsideration

KING COUNTY

This MATTER having come before the Court on MOTION FOR  
RECONSIDERATION;

The Court, after having considering the Motion and the Objection Opposition to  
Plaintiff's Request, ORDERS that the Motion for Reconsideration is DENIED.

Dated this 17th day of January, 2019.

The Honorable Marybeth Dingley  
Snohomish County Superior Court

WBO

Presiding Judge's Calendar  
The Honorable Bruce I. Weiss  
Noted for Hearing February 22, 2019, at 9 a.m.

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SUPERIOR COURT OF WASHINGTON FOR SNOHOMISH COUNTY

CHRISTY DIAMOND,	)	
	)	
	)	No. 15-2-04073-0
	)	FCB
vs.	)	(PROPOSED) ORDER DENYING
	)	PLAINTIFF'S CR 60 MOTION
KING COUNTY,	)	
	)	
	)	
	)	
	)	
	)	
	)	
	)	

THIS MATTER having come on for hearing before the undersigned Court on Plaintiff Christy Diamond's CR 60 Motion to Vacate Orders of Judge Mary Elizabeth Dingley and For Assignment of Non-Conflicted Judge to Hear a Re-Noted Summary Judgment Motion ("Motion to Vacate");

And the Court having reviewed said request, Defendant's Opposition to Plaintiff's CR 60 Motion, and Plaintiff's Reply, if any, and all matters submitted with these pleadings, and being otherwise fully advised;

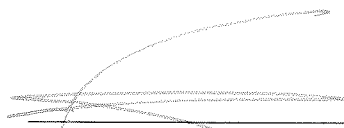
WSTB  
(PROPOSED) ORDER DENYING PLAINTIFF'S  
REQUEST FOR RECONSIDERATION - 1

Daniel T. Satterberg, Prosecuting Attorney  
CIVIL DIVISION  
W400 King County Courthouse  
516 Third Avenue  
Seattle, Washington 98104  
(206) 477-1120/FAX (206) 296-0191

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NOW THEREFORE, it is ORDERED that Plaintiff's CR 60 Motion to Vacate is DENIED. (X)

DONE IN OPEN COURT this 18<sup>th</sup> day of March, 2019.

  
\_\_\_\_\_  
JUDGE  
Walter Dingley

Presented by:

DANIEL T. SATTERBERG  
King County Prosecuting Attorney

By: Mari Isaacson  
MARI ISAACSON, WSBA #42945  
MONIQUE COHEN, WSBA #42129  
Senior Deputy Prosecuting Attorney  
Attorneys for King County  
King County Prosecuting Attorney  
516 3<sup>rd</sup> Avenue, Suite W400  
Seattle, WA 98104

(X) For further clarification due to allegations in Plaintiff's CR 60 Motion, Judge Dingley was the Civil Motions Judge on both October 12 and October 19, 2018.

Copy received:

By: \_\_\_\_\_  
Michele Earl-Hubbard, WSBA#26454  
Attorney for Plaintiff Christy Diamond

(PROPOSED) ORDER DENYING PLAINTIFF'S REQUEST FOR RECONSIDERATION - 2

**Daniel T. Satterberg**, Prosecuting Attorney  
CIVIL DIVISION  
W400 King County Courthouse  
516 Third Avenue  
Seattle, Washington 98104  
(206) 477-1120/FAX (206) 296-0191



# **Appendix B to Brief of Appellant**

**3/22/19 Supreme Court Letter re:  
Amended Notice of Appeal**

SUSAN L. CARLSON  
SUPREME COURT CLERK

ERIN L. LENNON  
DEPUTY CLERK/  
CHIEF STAFF ATTORNEY

**THE SUPREME COURT**  
STATE OF WASHINGTON



TEMPLE OF JUSTICE  
P.O. BOX 40929  
OLYMPIA, WA 98504-0929

(360) 357-2077  
e-mail: [supreme@courts.wa.gov](mailto:supreme@courts.wa.gov)  
[www.courts.wa.gov](http://www.courts.wa.gov)

March 22, 2019

**LETTER SENT BY E-MAIL**

Michele Lynn Earl-Hubbard  
Allied Law Group LLC  
P.O. Box 33744  
Seattle, WA 98133-0744

Hon. Sonya Kraski, Clerk  
(sent by U. S. mail only)  
Snohomish County Superior Court  
3000 Rockefeller Avenue, MS 605  
Everett, WA 98201-4046

Mari K. Isaacson  
Monique E. Cohen  
King County Prosecutor's Office  
516 3rd Avenue, Room W400  
Seattle, WA 98104-2388

Re: Supreme Court No. 96890-0 - Christy Diamond v. King County  
Snohomish County Superior Court No. 15-2-04073-0

Clerk and Counsel:

Pursuant to RAP 5.4, the Snohomish County Clerk forwarded to this Court a copy of the "AMENDED NOTICE OF APPEAL TO THE SUPREME COURT OF THE STATE OF WASHINGTON", which was filed in the Snohomish County Superior Court on March 20, 2019.

The amended notice is timely as to the addition of a request for review of the order denying the CR 60 motion and review of that order is appropriately considered as part of this appeal. See RAP 5.3(h). Therefore, the Appellant is granted permission to amend the notice of appeal.

Sincerely,

A handwritten signature in black ink that reads "Susan L. Carlson".

Susan L. Carlson  
Supreme Court Clerk

SLC:bw



# **Appendix C to Brief of Appellant**

**3/25/19 Designation of CPs noting 3/18/19 Order  
not yet on docket**

FILED  
SUPREME COURT  
STATE OF WASHINGTON  
3/25/2019 10:00 AM  
BY SUSAN L. CARLSON  
CLERK

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**SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR SNOHOMISH COUNTY**

CHRISTY DIAMOND,  
  
Plaintiff,  
  
vs.  
  
KING COUNTY,  
  
Defendant.

No. 15-2-04073-0  
  
Washington State Supreme Court  
Cause No. 96890-0  
  
**PLAINTIFF'S/APPELLANT'S  
DESIGNATION OF CLERK'S  
PAPERS**  
  
**[Clerk's Action Required]**

Plaintiff/Appellant Christy Diamond pursuant to RAP 9.6 and 9.7 designates the following documents for transmission to the Washington State Supreme Court, Cause No. 96890-0. The clerk shall assemble the copies and number each page of the clerk's papers in chronological order of filing and prepare an alphabetical index to the papers. The clerk shall promptly send a copy of the index to each party. The clerk shall transmit complete documents with any attachments thereto listed under the corresponding sub number to the Washington State Supreme Court. I agree to pay the amount owed within 14 days of receiving a copy of the index regardless of the status of the appeal.

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Sub	Docket Date	Docket Description
2	05/21/2015	SUMMONS AND COMPLAINT
7	06/16/2015	ANSWER
32	04/16/2018	AGREEMENT TO ELECTRONIC SERVICE
37	08/24/2018	NOTICE OF WITHDRAWAL OF ATTORNEY
38	08/24/2018	NOTICE OF APPEARANCE
39	08/31/2018	NOTICE OF WITHDRAWAL
40	09/19/2018	MOTION FOR SUMMARY JUDGMENT
41	09/19/2018	DECLARATION
42	09/19/2018	DECLARATION
43	09/19/2018	DECLARATION
44	09/19/2018	DECLARATION
45	09/19/2018	DECLARATION
46	09/19/2018	DECLARATION
47	09/19/2018	NOTE FOR CALENDAR
48	09/19/2018	AFFIDAVIT/DECLARATION OF SERVICE
49	10/12/2018	NOTICE OF ABSENCE/UNAVAILABILITY
50	10/12/2018 (incorrectly docketed as filed 10/15/2018)	DIEMOND'S MOTION TO CONTINUE
51	10/15/2018	ERRATA TO CERTIFICATE OF SERVICE
52	10/17/2018	CONFIRMATION OF SERVICE
53	10/17/2018	OBJECTION/OPPOSITION
54	10/17/2018	DECLARATION
55	10/19/2018	MINUTE ENTRY/SUMMARY JUDGMENT HEARING
56	10/19/2018	ORDER DENYING MOTION FOR CONTINUANCE
57	10/19/2018	ORDER GRANTING SUMMARY JUDGMENT
58	11/02/2018	DECLARATION/AFFIDAVIT
59	11/01/2018 (incorrectly docketed as 11/2/18; was attached to SUB 60)	MOTION FOR RECONSIDERATION
60	11/01/2018	NOTE FOR CALENDAR – MOTION FOR RECONSIDERATION

Sub	Docket Date	Docket Description
64	11/26/2018	REPLY RE MOTION FOR RECONSIDERATION AND MOTION FOR RECUSAL OF OPPOSING COUNSEL
65	01/04/2019	RE-NOTE FOR CALENDAR – MOTION FOR RECONSIDERATION
66	01/22/2019	ORDER ON MOTION FOR RECONSIDERATION
67	02/14/2019	NOTICE OF APPEARANCE
68	02/14/2019	MOTION
69	02/14/2019	DECLARATION
70	02/14/2019	DECLARATION
71	02/14/2019	DECLARATION
72	02/14/2019	NOTE FOR CALENDAR
73	02/14/2019	AFFIDAVIT/DECLARATION OF SERVICE
77	02/21/2019	TRANSMITTAL LETTER
78	02/21/2019	REPLY
79	02/21/2019	NOTICE OF APPEAL TO SUPREME COURT
80	02/21/2019	NOTICE OF APPELLATE FEES PAID
81	02/25/2019	TRANSMITTAL LETTER
82	02/26/2019	DECLARATION
83	02/26/2019	RE-NOTE FOR CALENDAR
84	03/05/2019	AMENDED TRANSMITTAL LETTER
85 (??) (not yet docketed)	03/18/2019 03/--/2019 (signed 3/18/2019 but not yet docketed)	ORDER DENYING PLAINTIFF'S CR 60 MOTION

Dated this 25th day of March, 2019.

  
 Michele Earl-Hubbard, WSBA # 26454  
 Attorney for Plaintiff/Appellant Christy Diamond  
 Allied Law Group LLC  
 P.O. Box 33744, Seattle, WA 98133  
 (206) 443-0200  
 michele@alliedlawgroup.com


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**CERTIFICATE OF SERVICE:**

I, Michele Earl-Hubbard, hereby declare under penalty of perjury under the laws of the State of Washington, that on March 25, 2019, I filed the foregoing document with the clerk of the trial court and Washington State Supreme Court, and caused a true and correct copy to be delivered by email pursuant to agreement to:

Mari Isaacson and Monique Cohen  
King County Prosecuting Attorney  
Room W400 King County Courthouse  
516 Third Ave., Seattle, WA 98104  
mari.isaacson@kingcounty.gov  
monique.cohen@kingcounty.gov

Dated this day March 25, 2019, at Shoreline, Washington.

  
Michele Earl-Hubbard, WSBA #26454

**ALLIED LAW GROUP LLC**

**March 25, 2019 - 10:00 AM**

**Transmittal Information**

**Filed with Court:** Supreme Court  
**Appellate Court Case Number:** 96890-0  
**Appellate Court Case Title:** Christy Diemond v. King County  
**Superior Court Case Number:** 15-2-04073-0

**The following documents have been uploaded:**

- 968900\_Designation\_of\_Clerks\_Papers\_20190325095931SC130080\_9713.pdf  
This File Contains:  
Designation of Clerks Papers  
*The Original File Name was 2019-03-25 FINAL Designation of CPs.pdf*

**A copy of the uploaded files will be sent to:**

- Ed@clarkraymond.com
- cdiemond@comcast.net
- mari.isaacson@kingcounty.gov
- monique.cohen@kingcounty.gov

**Comments:**

---

Sender Name: Michele Earl-Hubbard - Email: michele@alliedlawgroup.com  
Address:  
PO BOX 33744  
SEATTLE, WA, 98133-0744  
Phone: 206-443-0200

**Note: The Filing Id is 20190325095931SC130080**



**ALLIED LAW GROUP LLC**

**July 08, 2019 - 4:52 PM**

**Transmittal Information**

**Filed with Court:** Supreme Court  
**Appellate Court Case Number:** 96890-0  
**Appellate Court Case Title:** Christy Diemond v. King County  
**Superior Court Case Number:** 15-2-04073-0

**The following documents have been uploaded:**

- 968900\_Briefs\_20190708165048SC980994\_6211.pdf  
This File Contains:  
Briefs - Appellants  
*The Original File Name was 2019-07-08 Brief of Appellant with Appendixes A-C.pdf*
- 968900\_Other\_20190708165048SC980994\_1064.pdf  
This File Contains:  
Other - Appendix to Brief of Appellant  
*The Original File Name was 2019-07-08 Appendix to Brief of Appellant.pdf*

**A copy of the uploaded files will be sent to:**

- Natalie.brown@kingcounty.gov
- mari.isaacson@kingcounty.gov
- monique.cohen@kingcounty.gov

**Comments:**

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Sender Name: Michele Earl-Hubbard - Email: michele@alliedlawgroup.com  
Address:  
PO BOX 33744  
SEATTLE, WA, 98133-0744  
Phone: 206-443-0200

**Note: The Filing Id is 20190708165048SC980994**

# Appendix C

NO. 81420-6-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

---

CHRISTY DIEMOND,

Appellant,

v.

KING COUNTY,

Respondent.

---

**BRIEF OF RESPONDENT**

---

DANIEL T. SATTERBERG  
King County Prosecuting Attorney

MARI K. ISAACSON, WSBA #42945  
Senior Deputy Prosecuting Attorney  
Attorneys for Appellant

King County Prosecuting Attorney  
W400 King County Courthouse  
516 Third Avenue  
Seattle, Washington 98104  
(206) 477-1120  
Mari.Issacson@kingcounty.gov

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## I. INTRODUCTION

Diemond's Public Records Act lawsuit was properly dismissed on summary judgment. Subsequently, Diemond made attempts in the trial court to change the court's ruling. Diemond now asserts several meritless claims to overturn the trial court's decisions that were not in her favor.

## II. STATEMENT OF ISSUES

- A. Should the denial of Diemond's motion to vacate be affirmed when Diemond fails to show any CR 60 criteria are met?
- B. Should Diemond's appeal of the trial court's decisions granting summary judgment, denying her motion for a continuance, and denying her motion for reconsideration be denied because it is untimely?

## III. STATEMENT OF THE CASE

### Diemond's public records requests

Over the course of three years, Diemond made over 25 Public Records Act ("PRA") requests to the King County Executive Branch ("Executive"). CP 843. She also made 21 public records requests to the King County Sheriff's Office (Sheriff's Office) between 2011 and 2019. CP 976. Diemond's PRA requests are often broad and involve voluminous potentially responsive records. CP 783-86, 723-26, 792-93, 795-97, 819-20, 977, 988-96.

King County Code (KCC) section 2.12.005 defines the Executive Branch and the Sheriff's Office as separate agencies for the purposes of responding to public records requests. King County Code 2.12.005.A, 2.12.230.B; CP 970-75. A request to one agency does not constitute a request to any other agency. *Id.*

#### Request to the King County Sheriff's Office

On February 17, 2015, Diemond submitted a broad public records request to the Sheriff's Office for the personnel file and all communications, including emails, relating to four employees. CP 977, 988-96.

The Sheriff's Office started by working on the employees' personnel files as this was a high priority for Diemond. CP 977-78, 1000, 1059, 1076-77. Given the sensitive nature of the information contained in personnel files, reviewing each page and making redactions to exempt information required careful review. CP 977. The Sheriff's Office also ran an initial centralized email and voice mail search, locating around 67,000 emails that were potentially responsive. CP 979, 1010-12.

On April 8, 2015, the Sheriff's Office produced a first installment of records consisting of 615 pages and 11 audio files. CP 978,1000. The Sheriff's Office informed Diemond that the

second installment of records would be available by May 30, 2015.

*Id.*

On May 21, 2015, Diamond filed this lawsuit. CP 848, 943-49. On May 29, 2015, the Sheriff's Office produced a second installment that consisted of personnel-related records. CP 978, 1002-04. By March 2018, the Sheriff's Office had produced 23 installments to Diamond. CP 985, 1000-56.

From the fifth installment through the twenty-third installment, the Sheriff's Office made records available to Diamond via an online record retrieval system called GovQA. CP 985. As of March 2018, Diamond had not accessed records provided by the Sheriff's Office in response to this request since December of 2016.

*Id.*

#### Requests to King County Executive Branch

On February 17, 2015, Diamond made a broad request for records to the Executive for the personnel file and all communications, including emails, relating to a former employee of the King County Executive Branch. CP 843, 851-52.

Executive staff started producing this former employee's personnel file because that was Diamond's preference. CP 845. Responding to Diamond's PRA request took a substantial amount

of time because records had to be scanned, converted into a PDF file, and each page had to be reviewed for potential redactions and exemptions. CP 844-46. Staff also continued to research, gather, and review documents responsive to Diemond's other pending PRA requests. CP 845-46.

On March 12, 2015, Diemond submitted another broad PRA request to the Executive for the personnel file and all communications, including emails, relating to a former King County Sheriff's Office employee. CP 846, 926-30. Because the Executive provides personnel-related services for all King County employees, the Executive had responsive records. CP 782-83.

The Executive provided the first installments of records responsive to these two requests on April 22, 2015. CP 846, 951. These installments included various personnel-related records. CP 846-48. Second installments of records for both requests were provided on May 8, 2015. CP 846-48, 952. The Executive notified Diemond that the next installments of records for both requests would be provided to Diemond in two weeks. CP 952.

After this lawsuit was filed, the Executive continued to provide Diemond with regular installments of records. CP 723-81,

846-48, 951-69. The Executive provided Diamond with numerous installments of records over the next several years. *Id.*

#### Lawsuit in Snohomish County Superior Court

Despite having received records from the Sheriff's Office and the Executive, with promises of additional installments, Diamond initiated this lawsuit on May 21, 2015. CP 978, 848, 943-49.

After extensive discovery and nearly three years after the filing of this lawsuit, King County noted a motion for summary judgment for April 11, 2018. CP 615-16, 619-28, 630-39, 641-53. The County's motion was served on Diamond's prior counsel, Michael Kahrs. CP 616, 655-65. The County then struck its motion for summary judgment and it was not heard. CP 693.

In April 2018, Kahrs and counsel for the County signed an electronic service agreement for this case under CR 5(B)(7). CP 1181-83. Paragraph 6 of the agreement made clear that "[n]othing in this stipulation shall preclude a party from serving another party by traditional means as described in CR 5." CP 1183. The service agreement signed by Kahrs and the County was the only service agreement in this case. CP 1130.

On August 24, 2018, Diamond informed the County that her attorney had withdrawn and that she was representing herself. CP

616, 667-71. Diemond filed a Notice of Appearance, provided a mailing address, and requested that any further correspondence in this case be directed to her at that address. *Id.*

On September 7, 2018, the County notified Diemond by email of its intention to re-note its summary judgment motion for October 12.<sup>1</sup> CP 1130, 1191-92. Three days later, on September 10, 2018, the County emailed Diemond that it intended to re-note its summary judgment motion for October 19 due to a scheduling conflict. *Id.* The same day, Diemond replied “[t]hanks for letting me know.” *Id.*

King County met with Diemond on September 12, 2018, to discuss settling this case but the parties did not reach a resolution at that meeting. CP 1130.

#### Summary Judgement Proceedings

On September 19, 2019, the County re-noted its summary judgment motion for October 19, 2019. CP 693. Also on September 19, the motion was served on Diemond at the address she provided in her Notice of Appearance. CP 1130, 1198-1209. The County’s motion was identical to the summary judgment

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<sup>1</sup> In relevant part, the County’s email to Diemond stated “We are hopeful we will settle this case; however, out of an abundance of caution we plan to re-note our motion for summary judgment to be heard on October 12th.” CP 1192.

motion that was filed with the Court and served on Kahrs on March 14, 2019. CP 1169-79, 1198-1209.

The County's summary judgment motion addressed the timelines of the County's response to Diemond's PRA requests under RCW 42.56.520 and RCW 42.56.550(2). CP 1101-04. It also addressed the premature nature of Diemond's lawsuit under RCW 42.56.550(1) because neither the Sheriff's Office nor the Executive had taken any final action denying Diemond access to a record. CP 1099-1101. The County also argued that Diemond had abandoned her request to the Sheriff's Office under RCW 42.56.120(4). CP 1104.

On October 12, 2018, Diemond filed a notice of unavailability and a motion for continuance of the summary judgment hearing scheduled for October 19. CP 707-15. Diemond asserted that she was "unavailable for any hearings, trials, motions, or any other required court appearance[s]" from October 12, 2018, "to an undetermined time." CP 714. With no compelling explanation, Diemond simultaneously stated that the earliest she could be available for a court hearing was January 25, 2019. CP 712. Diemond did not file a response that countered the facts in King County's summary judgment motion.

On October 19, 2018, Snohomish County Superior Court Judge Marybeth Dingley denied Diemond's motion for a continuance of the summary judgment hearing and granted King County's motion for summary judgment. CP 610-13. Diemond did not appear at the hearing. CP 1358.

On November 2, 2018, Diemond filed a "Request for Reconsideration RE: King County Summary Judgment." CP 594-95. King County opposed Diemond's request for reconsideration. CP 1356-60. On January 17, 2019, Judge Dingley denied Diemond's request for reconsideration. CP 563.

#### Diemond's CR 60 Motion

On February 14, 2019, Diemond filed a CR 60 Motion to Vacate, noting it before Snohomish County Civil Presiding Judge Bruce Weiss for February 22, 2019, only five court days later. CP 544. King County opposed the motion because it raised many of the meritless, factually inaccurate and legally deficient arguments Diemond had already made. Judge Weiss declined to hear the motion and directed Diemond to note it before Judge Dingley. CP 22, 23. The motion was reset before Judge Dingley for March 5, 2019. CP 16-17. On March 18, 2019, Judge Dingley denied Diemond's motion to vacate. CP 1-2.



### Diemond's Appeal

On February 21, 2019, while her CR 60 motion was pending, Diemond filed a Notice of Appeal to the Washington State Supreme Court. CP 30-31. On March 8, 2019, Diemond filed a Statement of Grounds for Direct Review pursuant to RAP 4.2(a). On March 21, 2019, Diemond filed an amended notice of appeal to the Supreme Court. King County answered Diemond's Statement of Grounds on March 22, 2019.

On July 19, 2019, King County filed a motion to dismiss three of the issues in Diemond's appeal on procedural grounds. In September 2019, this case was transferred to this Court, including a decision on King County's Motion to Dismiss.

On May 26, 2020, this Court denied the County's motion to dismiss because Diemond's CR 60 appeal was timely. The Court noted that the parties may address the scope of review in their briefing on the merits.

## **IV. ARGUMENT**

### **A. Diemond's CR 60 Motion was Properly Denied.**

A trial court's decision on a motion to vacate is reviewed for an abuse of discretion. *In re Marriage of Tang*, 57 Wn. App. 648, 653, 789 P.2d 118 (1990) (citing *In re Adamec*, 100 Wn.2d 166,

173, 667 P.2d 1085 (1983)). The court's decision will only be disturbed “if there is a clear showing that the exercise of discretion was manifestly unreasonable, based on untenable grounds, or based on untenable reasons.” *Moreman v. Butcher*, 126 Wn.2d 36, 40, 891 P.2d 725 (1995) (citing *State ex rel Carroll v. Junker*, 79 Wn.2d 12, 26, 482 P.2d 775 (1971)).

CR 60 allows a court to grant relief from a judgment or order on the motion of a party based on a number of different grounds. *Marriage of Jennings*, 91 Wn. App. 543, 546, 958 P.2d 358 (1998). Diamond has not demonstrated that any of the criteria are present in this case. Without articulating how any of the six criteria under CR 60(b) apply to this case, Diamond makes several meritless arguments for vacating the judgment in this case.

1. No judicial conflict of interest.

Dissatisfied with the dismissal of her lawsuit, Diamond now argues that the Judge who decided her case was biased and that Snohomish County Superior Court Presiding Judge Bruce Weiss should have heard her CR 60 motion. These arguments are without merit. Judge Dingley’s rulings raised no issues relating to an “appearance of impartiality” and were in accord with well-settled case law.

A party may challenge whether decision making procedures created an appearance of impropriety when there is “evidence of a judge's or decision maker's actual or potential bias.” *State v. Post*, 118 Wn.2d 596, 619 n. 8, 826 P.2d 172 (1992), *amended*, 118 Wn.2d 596, 837 P.2d 599 (1992). “The test for determining whether the judge's impartiality might reasonably be questioned is an objective test that assumes that a reasonable person knows and understands all the relevant facts.” *Tatham v. Rogers*, 170 Wn. App. 76, 96, 283 P.3d 583 (2012).

Courts are presumed to perform their functions regularly and properly without bias or prejudice. *Id.* A party claiming a violation carries the burden to “produce sufficient evidence demonstrating bias, such as personal or pecuniary interest on the part of the decision maker; mere speculation is not enough.” *Id.* No such evidence exists in this case.

Diemond’s bias allegations are premised on Judge Dingley receiving a suspended sentence for driving while under the influence in King County District Court on November 1, 2017. CP 163-65. There is no link whatsoever between Judge Dingley’s involvement in the prior King County District Court case and this matter. Diemond falsely states that the Judge’s involvement placed

her in the position of “rul[ing] on a motion brought by the entity which holds her freedom in its hands.” *Brief of Appellant*, p. 27.

There is absolutely no action that Judge Dingledy could have possibly taken in this case that could have conceivably affected the terms of her probation in King County District Court. The mandatory conditions of her sentence have no connection to any action that relates to her role as Judge in this or any other case. Such conditions include, for example, complying with requirements related to driving a motor vehicle and completing programs related to driving while under the influence. CP 163-65. Even as to these conditions of probation, it would be up to the District Court, not the parties in this case, to decide any possible action that could result from any probation violation.

Moreover, this lawsuit asserted claims against the King County Sheriff’s Office and the King County Executive branch – neither of which had any involvement in the Judge’s criminal matter. There the plaintiff was the State of Washington and the trooper involved worked for the Washington State Patrol. CP 132-34. Diamond’s arguments relating to a conflict of interest and an appearance of impropriety are neither grounded in fact nor persuasive.

In addition, the Commission on Judicial Conduct fully considered the Judge's conduct and issued an order of reprimand. CP 125-30. In its findings, the Commission made no mention of Judge Dingley having any conflict of interest in her role as a judge. Rather, the Commission noted that the Judge has "an excellent reputation as a fair and conscientious judicial officer." CP 127. There was no conflict of interest and Judge Dingley had no duty to recuse herself from this matter.

2. Diemond had notice of the County's summary judgment motion.

Diemond's arguments that the County agreed not pursue summary judgment during settlement negotiations and that the County's motion was not properly served are meritless.

Though King County told Diemond it was hopeful this case would resolve, it never indicated it would postpone filing its summary judgment motion. On September 7, 2018, and again on September 10, 2018, the County emailed Diemond and informed her that it planned to re-note its summary judgment motion to be heard on October 12, 2018, and then for October 19, 2018, due to a scheduling conflict. CP 1191-92. On September 12, 2018, the parties met but did reach a resolution. CP 1130. Diemond had

notice that the County would proceed with its summary judgment motion.

Contrary to Diamond's allegation that service of King County's summary judgment motion was deficient, on September 19, 2018, Diamond was properly served at the address she provided in her Notice of Appearance. CP 1188-89, 1198-1209. While the service agreement between the parties allowed for email service, it likewise specifically allowed for service by traditional means. CP 1181-83.

In an effort to delay the summary judgment hearing, Diamond made conclusory assertions that she was "unavailable for any hearings, trials, motions, or any other required court appearance[s]" from October 12, 2018, "to an undetermined time," and that the earliest she could be available for a court hearing is January 25, 2019. CP 707-15. Despite the lack of any indication that the scheduled motion would not proceed as noted on October 19, 2018, Diamond chose to neither appear for the hearing nor verify the outcome of the hearing in a timely manner. Given the facts and circumstances in this case, granting the County's summary judgment motion and denying Diamond's motion to continue the summary judgment hearing was entirely proper.

### 3. Various additional allegations.

Diemond also raises several unfounded allegations that have no apparent bearing on any CR 60 criteria. Diemond's brief includes extensive discussion about her criminal convictions for animal cruelty; however, the events in Diemond's criminal case do not support her request to vacate judgment in this PRA case.<sup>2</sup> Further, the records attached to Diemond's brief discussing *Brady*<sup>3</sup> issues, including the email cited in Diemond's brief, were the King County Prosecuting Attorney's (PAO) records. CP 182-200, 247-50; *Brief of Appellant*, p. 25-26. The PAO is a separate agency under the PRA and a request to the Sheriff or the Executive is not a request to the PAO. King County Code 2.12.005.A, 2.12.230.B; see *Koenig v. Pierce Cty.*, 151 Wn. App. 221, 211 P.3d 423 (2009). These inaccurate claims have no bearing on this PRA lawsuit.

Similarly, Diemond's motion appears to suggest irregularity or conspiracy based upon variation in the Judge's initials or signatures referenced on various orders and records. *Brief of*

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<sup>2</sup> This Court has rejected, and our Supreme Court has declined to review, Diemond's claims regarding *Brady* violations in the context of Diemond's criminal convictions. *State v. Diemond*, 187 Wn. App. 1005, 5 (2015). Diemond also raised *Brady* arguments in her personal restraint petition, which was dismissed by this Court. *In the Matter of the Personal Restraint Petition of Christy Ruth Diemond*, No. 76147-1-1 (2017).

<sup>3</sup> *Brady v. Maryland*, 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963).

*Appellant*, p. 10-11. Such farcical allegations lack any reasonable CR 60 grounding. This contention should be rejected.

**B. Diemond's appeal of the orders on summary judgment, motion for continuance, and motion for reconsideration is untimely and should be dismissed.**

1. Dismissal is warranted.

Diemond's untimely appeal of the trial court's orders (1) granting King County's summary judgment motion, (2) denying Diemond's motion for continuance, and (3) denying Diemond's motion for reconsideration should be dismissed pursuant to RAP 5.2, 18.8(b), and 18.9(b).

CR 59(b) states a motion for reconsideration "shall be filed not later than 10 days after the entry of the judgment, order, or other decision." The requirement is mandatory and trial courts have no authority to extend this deadline. CR 6(b); *Schaefco v. Columbia River Gorge Comm'n*, 121 Wn.2d 366, 367-68, 849 P.2d 1225 (1993); *Metz v. Sarandos*, 91 Wn. App. 357, 360, 957 P.2d 795 (1998). Moreover, because a trial court lacks authority to rule on the merits of an untimely motion for reconsideration, an appeal of such a decision should be dismissed. See *Schaefco*, 121 Wn.2d 367-68.



Here, Diemond filed an untimely motion for reconsideration of the orders granting summary judgment and denying a continuance. CP 594-99. The orders Diemond sought to overturn were entered on October 19, 2018, and a motion for reconsideration needed to be filed by October 29, 2018. CP 610-13. When Diemond received these orders does not impact the rule's compulsory 10-day timeframe, and Diemond's belated filing on November 2, 2018, was untimely.<sup>4</sup> See *Metz*, 91 Wn. App. At 360; CP 594.

A party generally has 30 days to file a notice of appeal, which can only be extended "due to some specific and narrowly defined circumstances" including "certain *timely* posttrial motions." *Schaefco*, 121 Wn.2d at 367 (emphasis in original). In this case, the trial court's January 22, 2019, ruling on Diemond's untimely motion for reconsideration did not extend the time to appeal the October 19, 2018, orders granting summary judgment and denying a continuance. *Schaefco*, 121 Wn.2d at 367-68; See, e.g., *Griffin v. Draper*, 32 Wn. App. 611, 613-14, 649 P.2d 123 (1982); RAP 5.1

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<sup>4</sup> Diemond's motion for reconsideration is date stamped November 2, 2018, by the Snohomish County Clerk. CP 594. Diemond's calendar note for her motion for reconsideration is date stamped November 1, 2018, by the Snohomish County Clerk. CP 597. Even if Diemond's motion for reconsideration had been filed on November 1, 2018, it would have been untimely.

and 5.2. Diemond's notice of appeal needed to be filed by November 19, 2018,<sup>5</sup> but it was not filed until February 21, 2019. RAP 18.6(a). Diemond has no credible argument to satisfy the rigorous and stringent standards of RAP 18.8 for extending the time to file a notice of appeal.

Like *Schaefco*, the timeliness of Diemond's appeal is not measured from the date the trial court denied her untimely motion for reconsideration; rather, it is measured from the date of the original orders that Diemond is seeking to vacate. Because her notice of appeal was filed months after the time to appeal the rulings on summary judgment and the continuance had expired, and the trial court lacked authority to rule on the merits of Diemond's motion for reconsideration, Diemond's appeal should be dismissed.

2. Summary judgment was properly granted.

Assuming for the sake of argument that Diemond's appeal of the orders granting summary judgment, denying her motion for a continuance, and denying her motion for reconsideration was timely, summary judgment was properly granted on the merits.

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<sup>5</sup> Thirty calendar days after October 19 was November 18, which was a Sunday.

The Sheriff's Office had provided one installment of records and the Executive had provided two installments of records at the time Diamond's lawsuit was filed. Similar production timelines for complex PRA requests have been approved by the courts of this state. See *Andrews v. Washington State Patrol*, 183 Wn. App. 644, 334 P.3d 94 (2014) (PRA request received on March 8, 2012, and the agency produced records on May 25, 2012); *West v. Department of Licensing*, 182 Wn. App. 500, 331 P.3d 72 (2014) (PRA request received on January 23, 2012, and the agency produced records on March 7, 2012).

Diamond's lawsuit was filed shortly after Diamond submitted her requests, and while Diamond's requests were still open. CP 848-49, 977-78, 985-86. Specifically, Diamond's suit was filed about three months after the Sheriff's Office received her request for records relating to Cleary. CP 977. Further, Diamond's lawsuit was filed about three months after the Executive received Diamond's request for records relating to Westberg and about two-and-a-half months after the Executive received Diamond's request for records relating to Cleary. CP 848. There was no indication that either the Sheriff's Office or the Executive had finished producing records to Diamond.

Several grounds warranted dismissal of this case on summary judgment. The County's summary judgment pleadings argued that Diemond's suit was premature under *Hobbs v. State*, 183 Wn. App. 925, 335 P.3d 1004 (2014). CP 1099-1101. The County's motion also addressed the timeliness of its response to Diemond's public records requests in the context of RCW 42.56.520 and RCW 46.52.550. CP 1101-04. Finally, the County argued that Diemond had abandoned her request to the Sheriff's Office under RCW 42.56.120(4). CP 1104.

King County worked diligently and thoroughly to produce records to Diemond and has consistently produced records during the pendency of this lawsuit. There is no indication that King County failed to timely respond to Diemond's requests; rather, King County's actions were "within the scope of what is permitted under RCW 42.56.520." *West*, 182 Wn. App. at 514.

Furthermore, King County communicated actively with Diemond about her requests, regularly provided her with installments of responsive records, and informed her when anticipated future installments would be produced. CP 722-969, 976-1090. Despite King County's diligence in responding to these requests, Diemond filed suit shortly making her requests. King

County continued to provide Diamond with records regularly throughout the pendency of this case. CP 722-969, 976-1090.

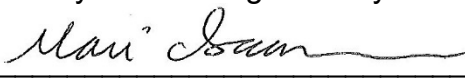
Finally, Diamond failed to substantively respond to King County's detailed, factual declarations supporting its summary judgment motion. Dismissal of Diamond's lawsuit was independently appropriate based on her failure to respond to the County's motion with any material facts or legal argument to controvert the County's motion.

#### **V. CONCLUSION**

For the foregoing reasons, King County respectfully asks this Court to affirm the trial court's rulings in this case.

DATED this 24<sup>th</sup> day of July, 2020.

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**KING COUNTY PROSECUTING ATTORNEYS OFFICE CIVIL DIVISION**

**July 24, 2020 - 3:19 PM**

**Transmittal Information**

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# Appendix D

No. 81420-6-I

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION I

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CHRISTY R. DIEMOND,

Plaintiff/Appellant

v.

KING COUNTY,

Defendant/Respondent

---

**REPLY BRIEF OF APPELLANT**

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## I. ARGUMENT

### A. This Appeal is Timely and All of the Appealed Orders are Properly Before this Court.

**Three days.** That is what King County argues prevents Diemond from being able to have her claims against the County heard in this appeal. King County argues that Diemond needed to file her Motion for Reconsideration of the Order denying her Motion for Continuance and the Order granting King County's summary judgment motion by 10/29/18, 10 calendar days after they were "filed," instead of on 11/1/18, and that because of those three days, Diemond's otherwise timely appeal of those orders and the CR 59 reconsideration denial should not be heard and cannot be heard.

King County cannot dispute that although the parties had been regularly email serving one another in the case, and that Diemond had told prosecutor Mari Isaacson and her co-counsel that the address on her Notice of Appearance when she became *pro se* was a UPS Mailbox Store and so to always serve her by email,<sup>1</sup> that Isaacson and her co-counsel chose to not email serve Diemond with the summary judgment motion and instead to secretly have it left at the counter of the UPS Mailbox store without an envelope or note. King County cannot dispute that it failed to

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<sup>1</sup> CP 174-175 at ¶31.

tell Diemond of this service at any time even though its lawyers were in contact with Diemond that day and thereafter several times in connection with ongoing settlement efforts. **CP 175 at ¶32.** King County cannot dispute that it told Diemond a summary judgment would be filed “if we don’t settle this case” (**CP 533**)—but as settlement discussions were continuing, Diemond was not aware, and was not told, that King County went ahead and secretly noted such Motion. **CP 173 at ¶30.**<sup>2</sup>

King County cannot dispute that Isaacson, the sole lawyer who now defends the County in this appeal, and makes these arguments as to timeliness, did not send Diemond the 10/19/18 Orders when they were signed at the hearing at which Isaacson appeared, did not mention their issuance to Diemond, a *pro se*, at any time before 11/1/18, and took no steps to notify Diemond a hearing had occurred and that Orders had been filed on the County’s and Diemond’s motions. King County cannot dispute that the Snohomish County Clerk, Court and issuing Judge also failed to timely notify Diemond that Orders had been issued on 10/19/18 and that the Clerk only mailed Diemond copies of the Orders in an envelope postmarked 11/6/18, **17 days after the Orders were signed.** **CP**

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<sup>2</sup> Diemond had advised Isaacson during their settlement discussions in September 2018 that if the matter did not settle that she would be securing counsel to represent her in connection with any summary judgment motion and would need a few months to secure such counsel and for such counsel to become prepared. **CP 175-176 at ¶34.**

**177 at ¶37; CP 539.** King County further does not dispute that the 10/19/18 Orders were not listed on the docket or available to the public until 11/1/18, the day that Diemond found them and the day she filed her hurried Motion for Reconsideration.<sup>3</sup> **CP 177 at ¶38; CP 51-53 at ¶¶6, 11; CP 75-90; CP 177-178 at ¶¶39-40.**

Isaacson cannot dispute that Diemond’s messenger attempted to hand serve Isaacson with the Motion for Reconsideration at 4:23 pm in the hallway on 11/1/18 when the office was prematurely locked, but that Isaacson refused to accept them (**CP 177 at ¶39**) nor that Isaacson and her co-counsel each were also email served the materials on 11/1/18 and both read the materials on 11/1/18 as documented by “read receipts” of the emails. **CP 178 at ¶40.** King County cannot dispute that the Note for Motion was docketed as 11/1/18 by the Superior Court Clerk and that the Clerk separated the Motion from the Note and docketed it incorrectly as 11/2/18.

Thus the Orders were not listed on the docket or available for Diemond to download until 11/1/18—the very day she filed her motion for reconsideration. The Order denying that Motion for Reconsideration was

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<sup>3</sup> Diemond has documented the delay in docketing Orders by the Snohomish County Superior Court with her 3/25/19 Designation of Clerk’s Papers filed in this appeal noting that the 3/18/19 Order signed 7 days prior did not yet appear on the docket and thus was not available to view, order or download. **This Designation of CPs was attached as App.-C3 to the Brief of Appellant.**

filed with the Superior Court on 1/22/19. **CP 563**. This is the date of entry of the trial court decision. Diemond filed her Notice of Appeal on 2/21/19 (**CP 30-36**), within 30 days of the Order being filed.

King County argues that the trial court and this Court lack jurisdiction to hear this appeal or consider all the Orders Appellant addresses because the County alleges Diemond failed to meet the 10 day deadline set forth in CR 59(b). King County alleges that compliance with Court Rule proscribed deadlines is necessary to confer jurisdiction upon such courts. See, e.g., Brief of Respondent at 16 (“trial courts have no authority”) and 18 (“lacked authority to rule on the merits”).

This premise—that courts lose jurisdiction and power to rule if a court rule imposed deadline is not met—was explicitly declared incorrect by the United States Supreme Court in the 2017 decision of **Hamer v. Neighborhood Housing Services of Chicago**, 138 S. Ct. 13, 199 L.Ed.2d 249 (2017). In **Hamer**, a District Court had held that it lacked jurisdiction to hear an appeal of a grant of summary judgment when the appeal was filed beyond the date allowed by Court Rules. The case addressed the misconception that a court rule can preclude jurisdiction of a court. The US Supreme Court held it could not. It held that statutes, created by the Legislature, could control jurisdiction such as determining the date by which a claim must be brought, but court rules were merely “claim-

processing rules” which can be waived or forfeited and do not determine whether a court has jurisdiction to hear a matter. **Id.**

**Griffin v. Draper**, 32 Wn. App. 611 (Div. 2, 1982), cited by King County, held the appellate court lacked jurisdiction to hear an appeal of an underlying judgment and a motion for reconsideration filed 10 months after Judgment was entered solely based on the court rule deadline to appeal within 30 days of a Judgment or 30 days after a decision on a timely motion for reconsideration. The appellant there had notice of the actual judgment and cited no explanation for his decision to wait 10 months to file the motion for reconsideration, but the validity of the decision, based on jurisdictional grounds, is no longer good law based on **Hamer**.

In **Metz v. Sarandos**, 91 Wn. App. 357, 357 P.2d 795 (Div. 2, 1998), also cited by the County, Division Two held that a trial judge was prohibited from determining that the date starting the 10 day deadline to file a Motion for Reconsideration was the date the party would have received the Order at issue, not the date it was sent to the clerk for filing. Again, Division Two ruled based on jurisdictional grounds. **Metz**, too, is no longer good law. It is also contrary to due process requirements and such a holding today would be Constitutionally invalid, as explained further below.

Finally, **Schaeffer v. Columbia River Gorge**, 121 Wn.2d 368, 949 P.2d 1225 (1993), declined to grant additional time for the notice of appeal



when a party timely filed, but did not timely serve, a motion for reconsideration on his opponent and waited four days to do so. This Opinion also is cloaked in jurisdictional grounds argument, erroneously finding that the Court is precluded from accepting appeals absent extraordinary circumstances for noncompliance with a court rule. Schaeffer, too, is no longer good law on this point based on Hamer. A Court is not precluded from accepting appeals, even absent extraordinary circumstances, and it does not lose jurisdiction to hear an appeal merely because an appellant does not meet court rule imposed deadlines.

Under Hamer, a trial court does not lose jurisdiction to hear a matter if court rule imposed deadlines are missed, nor does an appellate court lose jurisdiction to hear an appeal if court rule imposed deadlines are missed. Only a statute, drafted by the Legislature, can deprive a court of jurisdiction. A court rule imposed deadline is merely a “claim-processing rule” and cannot deprive a court of jurisdiction. Id.

Further, in a series of cases Washington appellate courts have recognized that parties must have actual notice of an order before they can be expected to appeal it, automatically accepting appeals filed beyond the court rule deadline without any discussion of jurisdiction or power. In State ex rel. L.L. Buchanan & Co. v. Washington Public Service Commission, the Washington State Supreme Court held that a failure of a

party to serve notice of entry of an order on its opponent did not start the clock for the deadline to file an appeal, making the appeal ultimately filed timely. **State ex rel. L.L. Buchanan & Co. v. Washington Public Service Commission**, 39 Wn.2d 706, 709-710, 237 P.2d 1024 (1951).

This Court, Division One, held in **Coleman v. Dennis**:

Defendant did not serve Plaintiff or his counsel with a copy of the order granting a new trial. The order was entered in the absence of counsel. Neither the plaintiff nor his counsel waived notice of presentation of the order. **Failure to serve the order or notice of its entry is fatal to defendant's motion to dismiss the appeal.**

**Coleman v. Dennis**, 1 Wn. App. 299, 301, 461 P.2d 552 (Div. 1, 1969) (emphasis added).

Division Two in the unpublished case of **Wright v. Washington State Department of Labor and Industries**, , held that an administrative appeal was timely filed and should be reinstated when the Department conceded

that there were significant delays between when the Department issued its decision and when Wright received it, and between when Wright mailed his notice of appeal and when the trial court received it, both caused by the prison mail system.

**Wright v. Washington State Department of Labor and Industries** 197 Wn. App. 1017, \*1, No. 48829-9-II (Div. 2, Dec. 30, 2016).

The United States Supreme Court in **Rosenbloom v. United States**,, ruled an appeal was timely when the District Court failed to timely send the party a notice of entry of an order and the record failed to show with

sufficient clarity that the party and his attorney had actual notice of the entry of an order earlier. **Rosenbloom**, 355 U.S. 80, 80-81, 78 S. Ct. 202, 2 L.Ed.23d 110 (1957).

These cases illustrate that court rule imposed deadlines do not control jurisdiction and further that—regardless of what a rule may say—it cannot trump or invalidate other necessary rights such as due process and notice and fundamental fairness. **And they reinforce that Diemond’s clock to file her Motion for Reconsideration cannot be held to have started until she was actually afforded notice the Orders had been entered, which did not occur here until 11/1/18, the day she filed her Motion for Reconsideration.** Isaacson and King County and the Court all failed to notify Diemond of the 10/19/18 orders until after the 10 day deadline had expired, and Diemond filed her Motion the very day she learned of the Orders when they first appeared on the docket and were available for download. Even if the clock could have started on 10/19/18, which it could not, Diemond has shown adequate grounds for alteration of any deadlines pursuant to RAP 1.2(a) and (c) and RAP 18.8(b) as Isaacson, the County and Court failed to serve Diemond with the Orders until after the 10 day deadline.

**B. The Trial Court Failed to State Why Summary Judgment was Granted, and King County’s Guesswork as to Why the Judge Ruled as She Did Do Not Support Affirmation.**

CR 56(h) requires that the order granting or denying summary judgment “designate the documents and other evidence called to the attention of the trial court before the order on summary judgment was entered.” Judge Dingley’s Order granting summary judgment to King County fails to list any materials filed by Diemond as material the judge reviewed even though Diemond filed a number of declarations and several pages of briefing illustrating that the records Diemond sought had been silently withheld by the County and were still being withheld.

CR 56(c) requires that summary judgment may only be granted “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” CR 56(d) requires that the trial court

at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall if practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the trial of the action, the facts so specified shall be deemed established, and the trial shall be conducted accordingly.

Further, CR 56(f) authorizes that

Should it appear from the affidavits of a party opposing the motion that for reasons stated, the party cannot present by affidavit facts essential to justify the party's opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

On 10/12/18, Diemond, acting as a new *pro se*, filed a Notice of Unavailability, declarations, a motion to continue, and numerous attachments in opposition to the summary judgment motion explaining specifically that she was not notified of the summary judgment filing, was unavailable on the date set for its hearing, needed a three month continuance to obtain counsel who could respond, and further showing that contrary to King County's claims numerous facts were in dispute and that numerous responsive records had not yet been provided to her in this case. The trial court did not examine the parties to determine if there were questions of fact, and according to her summary judgment order did not even consider the material filed by Diemond when deciding there were no questions of fact and that summary judgment should be granted to King County. Judge Dingley further did not explain why Diemond was not afforded a brief continuance to secure counsel and to be able to file more complete opposition materials when Diemond was ambushed with a surprise summary judgment motion that was deliberately not properly

served upon her, and that Diemond had been intentionally misled by King County into believing that the settlement discussions underway meant the motion for summary judgment had not been filed and would not be filed unless the case did not settle. Diemond sufficiently set forth specific facts showing there was a genuine issue for trial (CR 56(e)), but Judge Dingley, according to the Order, again did not even consider Diemond's filings in connection with the summary judgment motion.

Judge Dingley did not explain in her Order denying the Continuance what she reviewed or why Diemond should be denied her brief continuance. Judge Dingley did not make any findings or explain in her Orders denying the Motion for Reconsideration or the CR 60 Motion and motion for assignment of non-conflicted judge why those motions were denied. Judge Dingley did not address, at all, the conflict of interest alleged and her connection to King County, only stating that she had been the assigned judge for both of the October 2018 dates King County had selected as possible hearing dates.

The Orders show that Judge Dingley did not consider the material and declarations filed by Diemond before granting summary judgment against her, denying her request for a continuance, or denying her motion for reconsideration and CR 60 motion and motion for assignment to a non-conflicted judge.

King County speculates as to the bases Judge Dingley granted King County’s summary judgment motion, in an order signed and filed with the Court Clerk **a mere 16 minutes after the hearing began.** King County’s arguments cannot support Dingley’s Orders and do not support affirmance.

King County argues two bases for summary judgment. First, that it has carved itself into mini “agencies” by ordinance and so can insulate records it hides within one of its mini “agencies.” Second, that because the County had allegedly not finished producing records to Diamond when she sued, that three years later, when it clearly had finished producing what it intended to produce, the trial court could summarily dismiss the lawsuit as filed too soon. Both arguments fail and cannot support affirmance of Dingley’s Orders.

**1. King County is One Agency.**

King County has adopted ordinances that purport to define itself as nine (9) separate agencies under the PRA. KCC 2.12.005(A). It tries through these ordinances to trump the PRA and require requesters to make separate PRA requests to each of its mini-agencies each with a separate Public Records Officer and to eliminate the obligation of the County as a whole to response to PRA requests. KCC 2.12.230(B).

As the State Supreme Court recently held, agencies cannot pass local ordinances that infringe on the rights of requestors or narrow the obligations of agencies under the PRA. In **Kilduff v. San Juan County**, 194 Wn.2d 859, 453 P.3d 719 (2019), the county adopted an ordinance requiring a PRA requestor to request review by the county prosecutor before filing a lawsuit under the PRA. San Juan County argued that RCW 42.56.100 authorized agencies to adopt “administrative remedies” into the PRA. 194 Wn.2d 870-872. The Supreme Court rejected this argument **9 to 0**, holding that the county ordinance was invalid because it conflicted with RCW 42.56.520. The Supreme Court reiterated the point, made in numerous PRA cases, that agencies may not interpret the PRA in ways that undermine the PRA:

In sum, San Juan County’s reading of RCW 42.56.520, .040, and .100 undermines the purpose of the PRA. Far from authorizing agencies to create an internal barrier to judicial review, these three provisions are meant to further the interests of the people to receive “full access to information concerning the conduct of government on every level,” not the interests of “the agencies that serve them.” RCW 42.17A.001(11); RCW 42.56.030. To be clear, the PRA’s “mandate of liberal construction requires the court to view with caution any interpretation of the statute that would frustrate its purpose.” **Am. Civil Liberties Union v. Blaine Sch. Dist. No. 503**, 86 Wn. App. 688, 693, 937 P.2d 1176 (1997).

SJCC 2.108.130’s administrative exhaustion requirement is not authorized by any provision of the PRA, undermines the PRA’s purposes, and is contrary to the PRA model rules. We therefore hold that the ordinance is invalid.

194 Wn.2d at 873-74.



The King County Ordinance imposes an “internal barrier” to PRA compliance by requiring requestors to make 9 separate PRA requests to obtain records from the County, and allowing the County to hide responsive records by maintaining them in these separate mini “agencies”. RCW 42.56.100 does not give the County the authority to adopt PRA ordinances that conflict with the PRA. King County’s ordinances attempting to do so and to place internal barriers as they do are invalid and unenforceable under **Kilduff**.

RCW 42.56.010 defines a “county” as an agency. Interpreting this section liberally in favor of disclosure, as required by **Kilduff** and RCW 42.56.030, King County as a whole is an “agency” that must comply with the PRA. Under **Kilduff** the County has no authority to adopt a narrow interpretation of RCW 42.56.010(1) under which the whole County is not an “agency.” KCC 2.12.005(A) and KCC 2.12.230(B) are invalid and cannot support summary judgment against Diamond here.

The County also relies on **Koenig v. Pierce County**, 151 Wn. App. 221, 211 P.3d 423 (2009) for the proposition that the Prosecutor is a different agency from the other parts of King County. In that case the Pierce County prosecutor refused to produce a witness statement based on the prosecutor’s erroneous assertion that the requestor could obtain the same record from the sheriff. The requestor had explicitly asked the prosecutor and sheriff to

coordinate their responses to ensure that all records were provided. But the prosecuting attorneys representing the prosecutor and sheriff refused to do so. 151 Wn. App. 227-228. Only after being sued and submitting discovery to the requestor did Pierce County finally realize that the sheriff had *not* provided the missing witness statement, and that other responsive records were in another file that the county had failed to locate. 151 Wn. App. at 229. The Court of Appeals proceeding from an erroneous assumption that the sheriff and prosecutor were separate agencies under the PRA, faulted the requestor for trying to impose new duties on those allegedly-separate agencies. 151 Wn. App. at 232-33.

The error in the **Koenig** decision is shown by the Division One and State Supreme Court's decisions in **Yousoufian v. King County Executive** which analyzed a PRA claim against King County and treated the County as one entity that violated the PRA by its failures to adequately communicate and locate responsive records held within its various departments. See **Yousoufian v. King County Executive**, 114 Wn. App. 836, 846, 60 P.3d 667 (2003) (**Yousoufian I**), **rev'd on other grounds**, **Yousoufian v. Office of Ron Simms**, 152 Wn.2d 421, 98 P.3d 463 (2005) (**Yousoufian II**), noting that the trial court's unchallenged findings of fact faulted the county for, *inter alia*, "poor communication between County departments." 151 Wn. App. at 232; **Yousoufian v. Office of Ron Sims**,

168 Wn.2d 444, 451-55, 229 P.3d 735 (2010) (**Yousoufian V**) (penalizing the County as a whole).

King County's belated attempts to argue records held by the Prosecutor, that it failed to produce to Diemond, were not responsive to Diemond's request or relevant to this case, must fail as King County is one agency, which must comply with PRA requests of requestors and locate documents regardless of where within the County it has hidden them. Its flawed ordinance-based argument is not a ground to uphold the grant of summary judgment against Diemond and in favor of the County.

**2. Diemond Did Not Sue Too Soon and This Was Not a Basis to Grant Summary Judgment Against Her Three Years into the Lawsuit.**

King County's next argument is that the County allegedly was not done producing records when Diemond filed this lawsuit, and so it argued three years later, when the County indicated it would be producing no more records and asked the trial court to rule it need not do so, that the trial court find Diemond's lawsuit had been premature and to grant the County summary judgment.

King County's argument is based on the Division Two Court of Appeals decision in **Hobbs v. State** which held that final action on a PRA request is "some agency action, or inaction, *indicating that the agency will not be providing responsive records.*" **Hobbs v. State**, 183 Wn. App

925, 935-936, 335 P.3d 1004, 1009 (Div. II 2014). The **Hobbs** decision is in direct conflict with cases from other Divisions, including **Cedar Grove Composting, Inc. v. Marysville**, 188 Wn. App. 695, 354 P.3d 249 (Div. I, 2015); **Hikel v. Lynnwood**, 197 Wn. App. 366, 389 P.3d 677 (Div. I, 2016).

It is further in conflict with the Washington State Supreme Court's decision in **Belenski v. Jefferson County**, 186 Wn.2d 452, 460-61, 378 P.3d 176 (2016), which held that the one-year statute of limitations for PRA cases begins upon the "agency's final, definitive response to a public records request". The Court held the clock started when the agency responded with words indicating there were no responsive records or no further responsive records that "[r]egardless of whether this answer was truthful or correct ... was sufficient to put him on notice that the County did not intend to disclose [more] records or further address this request." 186 Wn.2d at 460-61; **see also** RCW 42.56.550(6). In **Belenski**, the Supreme Court held "If Belenski was unsatisfied with this answer, he could sue to hold the County in compliance with the PRA as soon as it gave this response—there was no need for him to wait an additional 25 months before bringing his cause of action." **Id.** at 461.

Here, King County agreed to produce records to Diamond by April 2015. It did not produce the records she sought, redacted non-exempt

records without sufficient explanation or justification and failed to provide a reasonable estimate of when records would be produced. Diemond waited but was forced to sue. Three years passed, with records still not provided, less redacted records not produced, no commitment that everything was coming, and in fact the County alleged exactly the opposite—that it had found all it could or would and would not be producing more. And then in October 2018, with no notice to Diemond, it moved for summary judgment on the basis it was not done producing when Diemond sued in 2015 arguing it should be let off the hook for its years of denial of records and delay of access.

This argument cannot support Judge Dingley’s Orders.

**C. Diemond Was Not Provided All Responsive Records.**

When Judge Dingley issued her Orders at issue in this appeal, Diemond had not been provided all non-exempt responsive records. Diemond is not making a “Brady” claim in this PRA case, rather she is arguing that one of the things she clearly sought, in addition to personnel misconduct and discipline files of Officers Westberg and Cleary, were Brady materials for those officers. King County withheld records within its custody and control, and produced only a redacted Brady List to Diemond, redacting the grounds Westberg and Cleary were placed on the

list and the notification information. **CP 172 at ¶22; CP 247; CP 171 at ¶20; CP 200.**

On June 26, 2020, King County finally produced an unredacted Brady List to Diamond. See **Appendix A-1 to A-76 at A-11 and A-73**, and accompanying ER 201 and RAP 9.11 Motion. The List showed that Westberg was designated a Brady officer for a 2006 shoplifting conviction, a 2008 drug possession prosecution where she admitted lying, and for a 2015 theft of wages claim where she lied about performing investigative work she had not performed. Appendix A-73. The List showed Westberg was not placed on the list until November 2012, and that Diamond and her attorney were not notified. **Id.**

Maggie Nave, the prosecutor who prosecuted Diamond, was the prosecutor for Westberg's 2008 drug prosecution. See **Appendix F-2, and accompanying ER 201 and RAP 9.11 Motion.** King County was notified of Westberg's 2006 and 2008 arrests as she was identified as an Animal Control Officer by the arresting officers, and her supervisor was called during her 2008 arrest. See **Appendix B and D hereto, and accompanying ER 201 and RAP 9.11 Motion.** King County also did not list on the Brady List Westberg's 2008 week-long suspension for theft of wages for lying about attending a seminar and charging for it when she did

not attend it. **See Appendix C hereto, and accompanying ER 201 and RAP 9.11 Motion.**

Diemond explained in her submission to Judge Dingley that she had not been given all responsive records related to Westberg and Cleary and specifically had been given just the redacted Brady List hiding the details about why Westberg and Cleary were on the list and the notifications done for those officers. Now that Diemond has the unredacted List, produced less than two months ago, it illustrates that King County was hiding numerous records from her that King County was well aware existed.

In addition, Diemond has just discovered that Mary Elizabeth Dingley, the Judge who granted summary judgment to King County and denied Diemond's CR 59 and CR 60 Motions, had been a Special Prosecutor for the King County Prosecuting Attorney's Office, the very entity that defended King County in this action and the entity that withheld responsive records from Diemond. **See Appendix E attached hereto and accompanying ER 201 and RAP 9.11 Motion.** Judge Dingley did not disclose her prior employment at the King County Prosecuting Attorneys Office prior to ruling on the motions, and King County further failed to disclose that relationship.

In **In re Dependency of ANG**, 12 Wn.App.2d 789, 459 P.32d 1099 (2020), this Court, Division One, overturned a dependency matter where

the judge disclosed to the parent’s attorney that he had been an attorney on a prior custody matter for a different child, but had not disclosed that to the parent herself.

The Court held:

This case implicates due process under the state and federal constitution because “[a] fair trial in a fair tribunal is a basic requirement of due process.” In re Murchison, 349 U.S. 133, 136, 75 S. Ct. 623, 99 L. Ed. 942 (1955); accord State ex rel. McFerran v. Justice Court of Evangeline Starr, 32 Wash.2d 544, 549-50, 202 P.2d 927 (1949). Due process requires the absence of an unconstitutional “risk of bias.” Rippo v. Baker, — U.S. —, 137 S. Ct. 905, 907, 197 L. Ed. 2d 167 (2017). The United States Supreme Court has explained that the federal Due Process Clause has been implemented by objective standards that do not require proof of actual bias, just the risk of such bias. Williams v. Pennsylvania, — U.S. —, 136 S. Ct. 1899, 1905, 195 L. Ed. 2d 132 (2016). The inquiry requires that “[t]he Court asks not whether a judge harbors an actual, subjective bias, but instead whether, as an objective matter, the average judge in his position is likely to be neutral, or whether there is an unconstitutional potential for bias.” Id. (internal citations omitted) (emphasis omitted). The Supreme Court has made clear that due process may be violated even if a judge is not actually biased. Aetna Life Ins. Co. v. Lavoie, 475 U.S. 813, 825, 106 S. Ct. 1580, 89 L. Ed. 2d 823 (1986).

12 Wn. App. 2d at 793-94.

Thus, the federal Due Process Clause does not require proof of actual bias, just the risk of such bias. Williams v. Pennsylvania, — U.S. —, 136 S. Ct. 1899, 1905, 195 L. Ed. 2d 132 (2016). “:The Court asks not whether a judge harbors an actual, subjective bias, but instead whether, as



an objective matter, the average judge in his position is likely to be neutral, or whether there is an unconstitutional potential for bias.” **Id.** (internal citations omitted) (emphasis omitted). Due process may be violated even if a judge is not actually biased. **Aetna Life Ins. Co. v. Lavoie**, 475 U.S. 813, 825, 106 S. Ct. 1580, 89 L. Ed. 2d 823 (1986)

Here, Diemond, too, was deprived of due process when she was forced to have her matter adjudicated by a Judge who not only had worked for the King County Prosecuting Attorney’s Office, when that prior employment was not disclosed to Diemond, but also Judge Dingley was still on probation under the jurisdiction of King County under a suspended sentence at the time the Judge ruled, and that fact, too, was not disclosed. The test is not whether a lawyer or judge would find a risk of bias or appearance of unfairness, but whether the average per – a lay person – would find such a situation to carry an appearance of bias or unfairness. Diemond was entitled to a fair trial in a fair tribunal, and she was denied both.

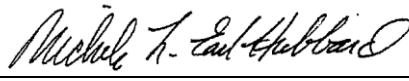
## II. CONCLUSION

For all of the reasons described above, Ms. Diemond asks the Court to vacate the trial court’s orders granting summary judgment to King County, denying her motion to continue, denying Diemond’s Motion for Reconsideration, and denying Diemond’s CR 60 Motion to Vacate and

motion for assignment of non-conflicted judge. Diemond further asks that the Court order the Presiding Judge to assign a judge other than Judge Dingley to hear any future motions in this case or preside over any further proceedings in this case, and that she be awarded her fees and costs on appeal and on remand fees, costs, and statutory penalties.

Respectfully submitted this 24th day of August, 2020.

ALLIED LAW GROUP LLC

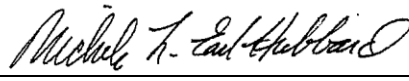
By   
Michele Earl-Hubbard, WSBA No. 26454

#### CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that on August 24, 2020, I filed with the Division One Court of Appeals and delivered a copy of the foregoing Brief of Appellant and attached Appendix to Brief of Appellant by email pursuant to agreement to the following through the appellate court's e-filing portal:

Mari Isaacson, WSBA # 42945  
King County Prosecuting Attorneys  
Room W 400 King County Courthouse, 516 Third Ave., Seattle, WA 98104  
[mari.isaacson@kingcounty.gov](mailto:mari.isaacson@kingcounty.gov)

Dated this 24th day of August, 2020, at Shoreline, Washington.

  
Michele Earl-Hubbard

# **Appendix A**

**6-26-2020 Email from King County and  
Unredacted Brady List**

## Michele Earl-Hubbard

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**From:** Johnson, Kristie <Kristie.Johnson@kingcounty.gov>  
**Sent:** Friday, June 26, 2020 11:02 AM  
**To:** Christy Diemond  
**Attachments:** Copy of Brady Committee 06-25-2020.pdf

## Brady Committee Work Product Resolved - Potential Brady

Name	Badge No.	Agency	Date of Inquiry	Source	Date Added	Reason	Provided to DPA
Abe, David	4188	SPD	3/21/11	News Articles	5/8/12	DUI Squad Investigation - investigation is focused on the administrative policy violation of screening all arrests with a supervisor in person. Abe is the Sergeant whose presence at time of arrest is in question.  05/08/12 Per Kathryn Olson of OPA, SPD Officer Abe had a series of sustained findings found against him, which included a sustained finding of dishonesty. Officer Abe did not appear for his Lauermill hearing and resigned before discipline was imposed against him.	Houston DCT 715165777 7-31-15 (08-8-01691-1); Jacobsen-Watts (08-1-12204-9); McCarthy DCU 3-30-10 (790253403) Bennett DV Ct (410087301); Love 8-6-10 (09-1-04987-1); Ungerman 9-23-10 (10-1-02311-5 SEA); Ungerman 10-20-10 10-1-02311-5 SEA; Rigsby DCU 12-3-10 (210213729); Love 12-8-10 (10-1-06174-2); Classen 2-9-11 (10-1-08887-0);
Abreu, Joe *	00006381 2 (NEW) 03101 (OLD)	KCSO	1/7/08	KCSO	1/7/08	***MATERIALS AVAILABLE***  Did not request adequate comp time / vacation to cover time for off-duty work.  NOTE: The sustained finding was amended to 'Absence from Duty without Leave' as part of a settlement agreement entered on July 16, 2008, with the KCSO.	

**Brady Committee Work Product  
Resolved - Potential Brady**

Name	Badge No.	Agency	Date of Inquiry	Source	Date Added	Reason	Provided to DPA
Alcantara, Lora *****	5843	SPD	10/30/15	OPA	3/21/16	10/30/15: Notified that OPA is investigating an allegation that Sgt. Alcantara used a racially derogatory term to describe a suspect in a criminal case. This statement by the officer was recorded on the officer's in-car video. OPA will contact our office once the investigation is complete and the Chief has issued a final finding. 2015OPA-0779	
Aldridge, Brian	2110	Pacific	5/6/09	Chief Galkins Pacific PD	5/29/09	Terminated for dishonesty. The decertification was upheld by the WSCJTC.	
Alexander, Andrea	67071 OLD: 09207	KCSCO	12/3/13	Captain DJ Nesel KCSCO	12/5/13	08/30/16 Update: Dishonesty findings remain; however, the discipline was modified. She is no longer terminated. IU2013-071 12/05/13: Terminated as of December 2, 2013, for a sustained allegation of dishonesty.	
Anderson, Gavin	75357	KCSCO	8/22/2016	KCSCO	5/9/17	05/09/17: IU2016-186 Sustained findings for making false or fraudulent reports, committing acts of dishonesty, or inducing others to do so. 08/22/16: IU2016-186 Dishonesty allegation against Deputy Gavin Anderson, #75357.	

## Brady Committee Work Product Resolved - Potential Brady

Name	Badge No.	Agency	Date of Inquiry	Source	Date Added	Reason	Provided to DPA
Assaker, Jennifer	Evidence Tech 0194	Redmond	7/23/08	Redmond PD	5/11/15	08 (07/23/2008), into misuse of city owned devices. Chief Harris noted that the untruthfulness included providing inaccurate information during the internal investigation.	
Atwood, Tiffany	70950	KCSO	6/16/16	KCSO	11/10/16	<b>SUSTAINED:</b> Terminated 10/14/16  IIU2016-134 Notified that Det. Atwood now has an allegation of dishonesty relating to her 4.7 investigation of conduct criminal in nature from April 14, 2016.	
Ayala, Dewel	74079	DAJD	5/17/19	DAJD	5/17/19	5/17/19: IIU 1902-002 IIU has sustained the administrative charge of Falsification of Records against Corrections Officer Dewel Ayala #74079. (did not receive original notification of investigation)	
Aziz, Dr. Suleman	WSH Internist Doctor 88013	WSH	4/8/16	Rebecca Vasquez	4/13/16	<b>**MATERIALS AVAILABLE**</b>  Dr. Suleman was found to have been paid \$71,753 for hours he did not work between 7/16/11 to 7/15/15. The doctor failed to submit leave slips to cover his absences.	
Bailey, Deborah	Court Security Screener	KCSO	1/15/14	Captain DJ Nesel KCSO	1/18/14	Sheriff Uquhart has terminated the employment of Deborah M. Bailey, a Court Security Screener, ID #88013, as of February 1, 2014, for Sustained allegations of (1) Conduct of a Criminal Nature, and (2) Dishonesty. <b>**MATERIALS AVAILABLE**</b>	
Bailey, Jack	5230	SPD	6/19/15	OPA	7/13/15	Sustained finding of dishonesty related to communications to supervisor and OPA. Retired from SPD in lieu of termination.	

**Brady Committee Work Product  
Resolved - Potential Brady**

Name	Badge No.	Agency	Date of Inquiry	Source	Date Added	Reason	Provided to DPA
Baisch, Michael	194	Tukwila	2/7/14	Tukwila PD	4/28/14	Officer Michael Baisch, Badge# 194 was the subject of an internal investigation at the Tukwila Police Department in which an allegation of untruthfulness was sustained. Officer Baisch submitted his resignation on April 10, 2014. His resignation was accepted and he is no longer an employee of the city of Tukwila.	Rhyan Anderson DCT 7-28-14 CR59563KC
Benjamin, Djenom	0214 (PCN) 0-14 (Badge)	Bothell	5/15/12	Bothell PD	5/16/12	<b>*MATERIALS AVAILABLE*</b> Officer Djenom Benjamin was terminated after a number of findings of misconduct were sustained against her including a sustained finding for dishonesty during the investigation process.	
Bianche, Jesse	SA	HLS / ICE	3/11/14	Jessica Berliner	3/11/14	12/02/14: IUU is investigating Deputy Barnes for a number of violations, two of which are relating to dishonesty stemming from two different incidents.	De Turme, 6-9-08 (07-C-08579-0); E. Peterson 3-25-09 (08-1-13360-1); Knightlinger 6-30-09 (590152422) J. Taylor 10-6-09 (DCT 590192680); K. Ungerman 1-20-10 09-1-01722-7; Jlbensmith DCU 8-20-10 9Y6229866
Black, Anthony	04674	KCSO	1/7/08	KCSO	08/13/09	Accomplice to forging signature on a divorce petition. Offered false instrument for filing with Superior Court while filing for bankruptcy. <b>Pending referral; contact Mary Barbosa for more info.</b>	



**Brady Committee Work Product  
Resolved - Potential Brady**

Name	Badge No.	Agency	Date of Inquiry	Source	Date Added	Reason	Provided to DPA
Blackmer, David	6147	SPD	2/5/14	SPD	2/5/14	**MATERIALS AVAILABLE** Sustained finding of dishonesty, May 5, 2014.	
Bonagofski, Tim	176	Tukwila	1/17/04	David Baker	1/18/14	**MATERIALS AVAILABLE** Was intentionally untruthful to the investigator while being asked questions directly related to investigation 2013-01; multiple other sustained findings.	
Boot, Kristofer	12055	Renton	3/6/20	Renton PD	3/6/20	03/06/2020: CO-19-04 - Officer Boot was investigated for Unbecoming Conduct (Law Enforcement Code of Ethics B), Unsatisfactory Performance (Law Enforcement Code of Ethics K), Departmental Rules (Law Enforcement Code of Ethics AK), Processing Property and Evidence (Law Enforcement Code of Ethics AL), Truthfulness (Law Enforcement Code of Ethics AT), General Standards (Standards of Conduct), Performance (Standards of Conduct (a)), Performance (Standards of Conduct (c)), Conduct (Standards of Conduct (m)).  These allegations were sustained against Officer Boot, reference number CO-19-04. Officer Boot was disciplined by the Renton Police Department and was terminated from employment on March 5, 2020.	
Borkan, Steven	04761	KCSO	6/11/12	KCSO	6/12/12	**MATERIALS AVAILABLE** An L&I investigation revealed that during the period of 01/10/11-04/30/12, Borkan was working, or performing work-type activity, or capable of working, thereby resulting in an overpayment of benefits in the amount of \$75,441.60, which was obtained by willful misrepresentation omission, and/or concealment of a material fact from the self-insured employer and L&I.	

**Brady Committee Work Product  
Resolved - Potential Brady**

Name	Badge No.	Agency	Date of Inquiry	Source	Date Added	Reason	Provided to DPA
Brazalovich, Sharon	7384	SPD	12/18/15	OPA	9/23/16	<p><b>**MATERIALS AVAILABLE**</b></p> <p>09/23/16: OPA investigation into the allegation of dishonesty against Sharon R. Brazalovich #7384 has been completed and the Chief of Police has issued a sustained finding. (OPA 15-1878)</p> <p>12/18/15: An allegation of dishonesty has been made against SPD Civilian Latent Print Examiner Brazalovich. This allegation was made by OPA based on statements made by the employee to OPA during a just completed administrative investigation. (2015OPA-1878)</p>	
Brillante, Edwin	5087	SPD	6/9/11	SPD	6/23/11	<p>Lied in IIS Investigation. (IIS File #07-0067)</p> <p>Separated from Employment.</p> <p><b>**MATERIALS AVAILABLE**</b></p> <p>08/24/16: IJU2016-027 Finding of SUSTAINED entered. (NOT NOTIFIED UNTIL 05/11/2017)</p> <p>02/04/16: IJU2016-027 Notified by KCSO that there is a dishonesty investigation pending involving Dep. Mark Brown for lying to a dispatcher.</p>	
Brown, Mark	73812	KCSO	2/4/16	KCSO	5/11/17	<p>12/13/19: IJU1904-009 Sustained finding regarding Cook/Baker Michael Browning #99664.</p>	
Browning, Michael	99664	DAJD	10/1/19	DAJD	12/13/19	<p>10/1/19: IJU is investigating Cook/Baker Michael Browning #99664 for violating the administrative charge of falsification of records/statements under IJU case #1904-009.</p>	

**Brady Committee Work Product  
Resolved - Potential Brady**

Name	Badge No.	Agency	Date of Inquiry	Source	Date Added	Reason	Provided to DPA
Bruch, Matthew	10237	Port of Seattle	7/11/05	Port of Seattle	2/7/20	In 2019, an allegation relating to dishonesty was sustained against Officer Bruch. It was alleged that Officer Bruch inappropriately accessed testing materials which subsequently provided him with an unfair advantage when taking and passing a job-related certification test.	
Buabeng, Eugene	99710	DAJD	1/15/19	DAJD	5/17/19	5/17/19: IIU1809-013 IIU has sustained the administrative charge of Falsification of Records against Juvenile Detention Officer Eugene Buabeng #99710. 1/15/19: IIU1809-013: Investigation for Falsification of Records.	
Burns, Dewey	71152	KCSO	5/11/15	KCSO	10/01/15	October 2015: Sustained findings for 1) Conduct criminal in nature; and 2) Conduct unbecoming - racial bias. Non-sustained finding for false/misleading statements. IIU2015-129 (TERMINATED)	
Caballero, Luis	73149	KCSO	5/12/15	KCSO	8/20/15	Effective 08/19/15, terminated for sustained findings of dishonesty.	
Cagle, John	45610	Kent	10/5/09	Kent PD	12/11/09	<b>**MATERIALS AVAILABLE**</b> Sustained finding of untruthfulness regarding a missing traffic ticket, Oct. 2009, resigned in lieu of termination. Resigned 10/01/09	

## Brady Committee Work Product Resolved - Potential Brady

Name	Badge No.	Agency	Date of Inquiry	Source	Date Added	Reason	Provided to DPA
Camarao, Jr., Florentino	10270	Port of Seattle	6/7/10	Port of Seattle via Maggie Nave	6/10/10	Chief Wilson terminated Officer Camarao effective today (06/07/10) for violations of department policy, including truthfulness violations.	Zeck DCU (CPS013534) 8-26-10; Lee DCU (CPS012935) 9-1-10
Camba, Johnalden	79227	DAJD	7/17/17	DAJD	12/14/17	07/17/17: 1106-016 Sustained findings of making false or fraudulent reports or statements or inducing others to do so; Dishonesty; Withholding evidence.	
Carter, Terry	2147	Pacific	10/1/18	Pacific	10/1/18	10/1/18: Sustained finding of dishonesty by intentionally omitting information.	
Castro, Heather	63	FWPD	11/15/19	FWPD	11/15/19	<b>**MATERIALS AVAILABLE**</b> 11/15/19: Detective Castro signed an affidavit for a warrant prepared by a Senior DPA that contained technical information about cell phone technology that, although accurate, included some technical information the detective was unfamiliar with, but that was known to her fellow officers. The trial court found that the information provided to the reviewing magistrate was accurate, but also made a finding that adopting that information as her own, some of which she did not fully understand, amounted to a knowing and intentionally false statement in her affidavit in the absence of a reference to her fellow officers.	

**Brady Committee Work Product  
Resolved - Potential Brady**

Name	Badge No.	Agency	Date of Inquiry	Source	Date Added	Reason	Provided to DPA
Chapackdee, Alex	6657	SPD	5/24/17	OPA	12/13/17	2/13/19: SUSTAINED 11/27/17: 2017OPA-0475 Chapackdee PG in US District Court to Conspiracy to Distribute Marijuana and Conspiracy to Commit Money Laundering. Sentencing set for March 2018. 05/24/17: 2017OPA-0475 The following Seattle Police Department Officer has been arrested and indicted on federal criminal charges of transporting marijuana across state lines and money laundering. Officer Alex B. Chapackdee #6657	
Chapin, Thomas	000063506 Investigat	KCME	8/8/08		8/12/08	Admitted to taking narcotics from various crime scenes. Pending felony narcotics cases.	
Chen, Jeffrey	0340	Medina	9/14/11	Woods	1/9/20	***MATERIALS AVAILABLE*** Fired, effective 04/27/11, for: dishonesty, abuse of position, unauthorized removal and/or destruction of public records, Improper access of city resources, improper access of city email archives, loss of confidence of subordinate officers.	
Cierley, Robert ****	6216	SPD	6/23/14	SPD	7/10/14	***MATERIALS AVAILABLE*** Sustained finding for violating Seattle Police Manual, Section 5001. V - Standards & Duties/Honesty	

**Brady Committee Work Product  
Resolved - Potential Brady**

Name	Badge No.	Agency	Date of Inquiry	Source	Date Added	Reason	Provided to DPA
Ciraulo, Eric	100056	KCSO	6/3/19	KCSO	6/3/19	6/3/19: IU2018-590 Sustained findings for conduct unbecoming and making false or fraudulent statements, committing acts of dishonesty or inducing others to do so. (did not receive original notification of investigation)	
						<b>**MATERIALS AVAILABLE**</b> 10/24/16: Engaged in official misconduct by unlawfully disclosing to a friend that he was about to be criminally investigated and thereby compromised the investigation and undermined public trust - <b>SUSTAINED</b> ; Dishonesty allegation is <b>UNSUSTAINED</b> . 10/28/14: Sustained finding of dishonesty in an IU investigation. Discipline imposed was termination. Last day of employment with KCSO was 10/24/14. Allegations that Robin Cleary provided false testimony on five occasions. There is history with the complainant regarding her motive. A lot of it has to do with disagreeing on being prosecuted for horse neglect. She recently tried to get one of our Major Crimes detectives to answer questions when she falsely presented herself as an investigative reporter.	
Cleary, Robin	64688	KCSO	4/30/2014 08/12/14	Clark Patty Shelley	10/28/14		
Comner, Raymond	70263	DAJD	3/31/20	DAJD	4/24/20	IJU #1908-001 Sustained findings of falsification of records.	

## Brady Committee Work Product Resolved - Potential Brady

Name	Badge No.	Agency	Date of Inquiry	Source	Date Added	Reason	Provided to DPA
Constant, Robert	45670	Kent PD	7/17/19	Kent PD	1/21/20	<p>Sgt. Robert Constant #45670</p> <p>7/17/19: Kent PD is investigating allegations that the below Kent Police Department employee may have engaged in "on duty untruthfulness":</p> <p>Sgt. Robert Constant #45670</p>	
Cooney, Lauren		AFIS Print Examiner	3/4/11	Michelle Triplett (AFIS)	4/8/11	<p>In 2003, Cooney made an erroneous ID which was caught during verification. After an IIU investigation, it was determined that she was taking medication that her doctor didn't tell her had cognitive effects. Her previous work was reviewed, with no additional errors found. She was put in an 18 month retraining program, but found another job before it was completed. Prior to her leaving KC, she testified in a trial about this error and it was said to have gone well.</p>	

**Brady Committee Work Product  
Resolved - Potential Brady**

Name	Badge No.	Agency	Date of Inquiry	Source	Date Added	Reason	Provided to DPA
Crispin, Ashley	142	FWPD	8/6/13	Chief Brian Wilson	8/6/13	<p align="center"><b>**MATERIALS AVAILABLE**</b></p> <p>According to Federal Way Police Department, Federal Way Police Officer Ashley Crispin resigned in lieu of termination on 6-24-13. An Internal Standards Investigation which concluded on August 5, 2013, revealed sustained findings that Officer Crispin used his official position as a police officer in an attempt to engage in a sexual relationship with a victim of a crime, made untruthful and misleading statements to commanding officers (investigators), and was insubordinate by contacting the victim in an effort to interfere with an official police investigation. There is an ongoing criminal investigation pending against Officer Crispin. Federal Way Police Department has initiated the decertification process with the WSCJT Commission.</p>	
Cross, Randall	74221	DAJD	6/20/19	DAJD	6/20/19	6/20/18: 1706-013B Sustained finding Falsification of Records.	
Dang, Qui	70297	DAJD	3/31/20	DAJD	4/24/20	IJU #2003-002A Sustained findings of falsification of records.	
Daniels, Selina	81535	DAJD	7/17/17	DAJD	7/17/17	1611-006 Sustained finding for falsification of records.	



**Brady Committee Work Product  
Resolved - Potential Brady**

Name	Badge No.	Agency	Date of Inquiry	Source	Date Added	Reason	Provided to DPA
Dean, Lynne	03011	AFIS Print Examiner	3/4/11	Michelle Triplett (AFIS)	4/8/11	<p>In 2005, Dean made an erroneous ID which was caught during verification. The investigation was performed by the unit supervisor. Dean had been taking medication at the time the error occurred. Dean's previous work was checked with no errors found. She went through an 18 month retraining program, then had additional quality assurance procedures for a period of time before allowing her to resume case work. No problems have been seen since this occurrence.</p>	<p>Thompson, D (DCU) 210064825 (8-26-11); Johnson, S (Juvie) 11-8-01373-3 (8-26-11); Hanrahan (Juvie) 11-8-02096-9 (12-12-11); Gregg DCU 511058049 12-19-11; Nave 10-1-06823-2-2-15-12; Herzer 12-8-00600-0 6-6-12; Marchesano 12-8-00237-3 7-9-12; Herschkowitz 12-C-02460-6 &amp; 12-C-02461-4 (10-18-12); DeSanto 11-7-12 (12-1-02973-0)</p>

**Brady Committee Work Product  
Resolved - Potential Brady**

Name	Badge No.	Agency	Date of Inquiry	Source	Date Added	Reason	Provided to DPA
Decker, Chet	7543	SPD	11/3/17	OPA	2/13/19	<p>Officer Chet Decker, #7543</p> <p>#1 2/13/19: 017OPA-0998 SUSTAINED finding of dishonesty.</p> <p>#1 11/03/17: 2017OPA-0998 the Office of Professional Accountability (OPA) is investigating an allegation that the below Seattle Police Department Officer may have engaged in dishonesty.</p>	
Dejesus, Samuel	5862	SPD	6/8/18	OPA	6/20/19	<p>6/20/19: 2018OPA-0416 SUSTAINED finding for dishonesty. Officer Resigned 2019.</p> <p>06/08/18: 2018OPA-0416 the Office of Police Accountability (OPA) is investigating an allegation that the below Seattle Police Department employee may have engaged in dishonesty.</p>	
De Los Reyes, Cindy	85125	DAJD	7/17/17	DAJD	12/2/17	<p>1510-009 Sustained finding of dishonesty.</p>	

**Brady Committee Work Product  
Resolved - Potential Brady**

Name	Badge No.	Agency	Date of Inquiry	Source	Date Added	Reason	Provided to DPA
DeSmet, Christopher	10058	Renton	1/17/13	Chief Milosevich	1/17/13	<p>On October 19, 2012 Officer Christopher DeSmet received a suspension without pay for 180 hours for the conduct below.</p> <p>The investigation was the result of an on-duty injury claim that reportedly occurred during defensive tactics training. Information was discovered that Officer DeSmet injured the same area prior to the training and admitted to others that his intention was to report it as an on-duty injury. Officer DeSmet did report the incident as occurring while on duty. On numerous occasions to a wide variety of persons Officer DeSmet was deceptive in the reporting of this incident.</p>	Delos Reyes DCT 10-1-13 320574902; Sanchez, 15-8-01830-4 3-8-16
Diaz, (Fuentes) Ashley	96918	KCSO	12/19/18	KCSO	12/19/18	<p>***MATERIALS AVAILABLE ON ALL KCSO INVESTIGATIONS***</p> <p>12/19/2018: IJU2018-280 We have a sustained finding for Deputy Robert Meyers and Deputy Ashley Diaz (96918) that requires a notification. It is for making false or fraudulent reports or statements, committing acts of dishonesty or inducing others to do so.</p> <p>12/19/18: IJU2018-484: We have a sustained finding for Deputy Diaz that requires a notification. It is for making false or fraudulent reports or statements, committing acts of dishonesty or inducing others to do so.</p>	

**Brady Committee Work Product  
Resolved - Potential Brady**

Name	Badge No.	Agency	Date of Inquiry	Source	Date Added	Reason	Provided to DPA
Diaz, Ricardo	97478	KCSO	5/9/17	KCSO	5/2/19	<p>05/09/17: IU2017-024 Pending investigation for making false or fraudulent reports or statements, committing acts of dishonesty, or inducing others to do so.</p> <p>4/17/19: Undetermined finding-employee resigned prior to finding.</p>	
Dill, Mark	73565	DAJD	1/15/19	DAJD	10/1/19	<p>10/1/19: IU 1809-015 Sustained finding for the administrative charge of falsification of records: Juvenile Detention Officer Mark Dill #73565</p> <p>1/15/19: IU1809-015: Investigation for Falsification of Records.</p>	
Ditusa, Salvatore	5668	SPD	4/24/18	OPA	4/24/18	<p>04/24/18: OPA recommended that biased policing allegations be sustained against Officer Ditusa in case number 2017OPA-1036. Officer Ditusa resigned prior to the Chief making a finding on this matter.</p>	

**Brady Committee Work Product  
Resolved - Potential Brady**

Name	Badge No.	Agency	Date of Inquiry	Source	Date Added	Reason	Provided to DPA
D'orazio, Michael W.	00008322 6 (NEW) 05665 (OLD)	KCSO	4/18/11	Juanita Holmes	4/18/11	04/06/92 Conviction for Giving False Info to an Officer  Per Patty Shelledy, D'orazio gave a false name because he was afraid there was a warrant for a previous NVOL. She has the docket for the case.	- CR41286K); Gianoli 6-22-11 (410247964); Okoro (DCU CS002139K); Jefferson DCU (711091257) 11-10- 11, Gauen (11-1- 08013-3) 11-30-11; Gregg DCU (CS001567K) 12-8- 11; Okoro DCU 711212486 (2-28- 12); Washington, DVDCU 412072819 (3-30-12); Sewell DVDCU 412110466 (5-15-12); Norgaard 5-22-12 (CS002137K); Baker 6-6-12 (412116773); Washington 6-22-12 DVDCU 412141729; Washington 6-22-12 DVDCU 412N15043; Taguba 7-16-12
Dorman, Robert	00007100 6 (NEW) 00543 (OLD)	KCSO	1/7/08	KCSO	1/7/08	Lied about sick leave use.	(Flores 580126701 DV); J. Taylor DCT 8- 17-09 (78137341A & 78137341B); J Taylor DCT (790200779); Kevin Zeck (790165508) 5-7-10; ODonnell (5-25-10) (09-1-06102-1 SEA); McCarthy DCU 5-26- 10 (CR30332KC); Zeck 6-7-10

**Brady Committee Work Product  
Resolved - Potential Brady**

Name	Badge No.	Agency	Date of Inquiry	Source	Date Added	Reason	Provided to DPA
Draves, Jolene	63927	DAJD	7/17/17	DAJD	12/2/17	1302-035 and 1203-001 Sustained finding for making false or fraudulent reports or statements or inducing others to do so. Engaging in conduct that could constitute a crime or involvement in an act of dishonesty or an act that endangered, damaged or injured the property or person of another. Criminal traffic violations. Conformance to laws.	
						<b>**MATERIALS AVAILABLE**</b>	
						08/19/16: This administrative investigation has been completed with a proven finding.	
Drout, Dustin	433	WSP	5/19/16	WSP	3/9/17	05/19/16: It is alleged trooper entered inaccurate information on the Time and Activity Reports. It is further alleged trooper failed to log into PMDC as required at the beginning of each work shift as well as not activate the COBAN system as required for each contact.	
						#2 6/20/19: 1706-013A Sustained finding Falsification of Records.	
						#2 Pending investigation for submitting a false report.	
Dutczak, Jonathan	71781	DAJD	7/17/17	DAJD	6/20/19	#1 1208-010 Sustained finding of harassment based on race, ethnic origin, gender, religion or sexual orientation.	

**Brady Committee Work Product  
Resolved - Potential Brady**

Name	Badge No.	Agency	Date of Inquiry	Source	Date Added	Reason	Provided to DPA
Edmonds, Mellanie	00008643 3 (NEW) 02704 (OLD)	AFIS Print Examiner	3/4/11	Michelle Triplett (AFIS)	4/8/11	In 2010, Edmonds made an erroneous ID which was caught during verification. Edmond's investigation went through IUU. Her previous work was checked with no errors found and she's currently going through a retraining program (not doing casework at this time - 03/04/11). Edmonds came to KC with training from another agency. KC AFIS feels that the change in agency policies (and current changes within the discipline) contributed to the error. She is now being retrained in the office standard (which is more conservative than most agencies) that conclusions must be those that will hold up to the scrutiny of others (general consensus conclusions).	Adams 4-8-13 (12-1-05870-5)
Ellingsen, Robert	78649	DAJD	5/17/19	DAJD	10/1/19	10/1/19: IUU1903-011A Sustained finding for the administrative charge of falsification of records:  Juvenile Detention Officer Robert Ellingsen #78649  5/17/19: IUU1903-011A IUU is investigating the administrative charge of Falsification of Records against Juvenile Detention Officer Robert Ellingsen #78649.	
Elliott, Mike	150	Bellevue		Bellevue PD	12/8/08	During an internal investigation into a delayed response time, he explained he was delayed b/c he was at a certain location. That statement was determined to be false. When questioned, he maintained his statement was true. He resigned in lieu of termination in 2007 and agreed to surrender his certification to CJTC, which he did.	

**Brady Committee Work Product  
Resolved - Potential Brady**

Name	Badge No.	Agency	Date of Inquiry	Source	Date Added	Reason	Provided to DPA
Elliott, William	89810	DAJD	5/17/19	DAJD	10/1/19	10/1/19: IUU1902-004 Sustained finding for the administrative charge of falsification of records: Corrections Officer William Elliott Jr #89810  5/17/19: IUU1902-004 IUU is investigation the administrative charge of Falsification of Records against Corrections Officer William Elliott #89810.	
Elkins, Sidney	102972	KCSO	10/7/19	Luke Parker/KCSO	10/7/19	10/07/19: Notified by KCSO there is a sustained finding of dishonesty during an IUU interview. Terminated 09/06/19.	
Evans, Charles	320	Kirkland	10/22/08	Kirkland PD	10/23/08	*** <b>MATERIALS AVAILABLE</b> *** Utilized confidential police data sources w/o proper authority to conduct an improper background check on a private citizen & intentionally made false written statements in documents in order to obtain info to which he was not legally authorized.	
Fesko, Denis	79992	DAJD	7/17/17	DAJD	12/2/17	1008-007 Sustained finding for engaging in conduct that could constitute a crime or involvement in an act of dishonesty or an act that endangered, damaged or injured the property or person of another. Criminal traffic violations. Conformance to laws.	



**Brady Committee Work Product  
Resolved - Potential Brady**

Name	Badge No.	Agency	Date of Inquiry	Source	Date Added	Reason	Provided to DPA
Fitzpatrick, Dylan	100057	KCOS	11/18/19	DPA Andrei Nedelcu	1/27/20	<p>***MATERIALS AVAILABLE***</p> <p>1/27/2020: IJU2019-309 SUSTAINED findings for Making false or fraudulent reports or statements, committing acts of dishonesty, or inducing others to do so:</p> <p>Deputy Dylan Fitzpatrick #100057 Deputy Eric Shuty #92394</p> <p>7/18/19: IJU2019-309 Deputy Eric Shuty #92394 is under investigation for Making false or fraudulent reports or statements, committing acts of dishonesty, or inducing others to do so.</p> <p>11/18/19: IJU2019-309 Deputy Dylan Fitzpatrick #100057 is also part of this investigation but we did not receive notice at the same time as we did for Deputy Eric Shuty #92394.</p>	
Flores, Lisa	L-62	Bellevue	7/11/14	BPD	10/23/14	<p>Lt. Flores was terminated from employment with the Bellevue Police Department for providing false information during an internal investigation related an unofficial Department form she turned in as an official form. This termination was effective as of October 23, 2014. Lieutenant Flores was found to have violated five Bellevue Police Department policies: (1) Use of Force Reporting/Notification, BPD 1.00.090; (2) Code &amp; Canon of Ethics, (3) False Information, BPD 11.00.175; (4) Investigative Conditions, 14.00.100; and (5) Insubordination, 11.00.230.</p>	

**Brady Committee Work Product  
Resolved - Potential Brady**

Name	Badge No.	Agency	Date of Inquiry	Source	Date Added	Reason	Provided to DPA
Fortney, Kevin	110375	WSP	4/17/13	WSP	4/22/13	It is alleged in January 2003, March 2004, October 2004, and October 2008, the accused employee placed evidence into a temporary storage area of the laboratory and falsely recorded in LIMS that these cases were completed and reports released.	
Fowler, James	88162	KCSO	5/9/17	KCSO	4/15/19	4/15/19: IU2017-045 Sustained finding of conduct that is criminal in nature and making false or fraudulent reports or statements, committing acts of dishonesty, or inducing others to do so. 05/09/17: IU2017-045 Pending investigation for conduct that is criminal in nature/making false or fraudulent reports or statements, committing acts of dishonesty, or inducing others to do so.	
Freeman, Alyson	8843	Auburn	6/22/11	Auburn PD	6/23/11	The cause of termination was due to lack of proper investigation on two incidents and when questioned in an Internal Investigation, lied about the facts of her involvement. Officer Freeman was dishonest in her statements regarding a victim of an assault being cooperative during a criminal investigation; Freeman was dishonest with her supervisor when he inquired as to lack of investigation; Freeman destroyed evidence of an attempted burglary.	Bell 6-23-11 (11-1-02524-8); Atchison 09-1-05350-9 (10-20-11)
Fridge, Calvin	77703	DAJD	7/17/17	DAJD	7/17/17	07/17/17: 1012-004 Sustained findings for making false or fraudulent reports or statements or inducing others to do so; Dishonesty.	

**Brady Committee Work Product  
Resolved - Potential Brady**

Name	Badge No.	Agency	Date of Inquiry	Source	Date Added	Reason	Provided to DPA
Gardner, Rachel	1120	WSP	12/27/16	WSP	1/9/17	<p align="center">***MATERIALS AVAILABLE***</p> <p>12/27/16: In 2011, the Ninth Circuit Court of Appeals issued an opinion in Chism v. WSP that found Rachel Gardner disregarded the truth in a warrant application.</p>	
Gardiner, William	42	WSP	10/3/11	News Articles	10/3/12	<p>PG to Official Misconduct (underlying dishonesty) on 08/01/12</p> <p>Accused of of claiming hundreds of hours of overtime that he did not work; fixing parking tickets.</p>	
Garner, Matthew	102116	DAJD	9/13/18	DAJD	1/16/19	<p>1/16/19: Sustained finding for Falsification of Records regarding IJU#1808-003.</p> <p>Corrections Officer Matthew Garner #102116 is being investigated by IJU for falsification of records under IJU#1808-003.</p>	
Garrett, Christopher	5639	SPD	3/22/06	Messitt	3/22/06	<p align="center">**MATERIALS AVAILABLE**</p> <p>Lied in court about availability</p> <p>05137-3 KNT.</p>	
Gaskill, Lee	8498	Algona	3/25/15	News	12/8/17	<p>08/04/15 Gaskill charged with Theft 1-Abuse of Trust - and Abuse of Power under case number 15--1-05137-3 KNT.</p> <p>Gaskill was arrested on 03/25/15 for theft of funds from a</p>	

**Brady Committee Work Product  
Resolved - Potential Brady**

Name	Badge No.	Agency	Date of Inquiry	Source	Date Added	Reason	Provided to DPA
Gaston, Zach (Zachary)	W-141	WDFW	4/25/16	Captain Dan Brinson via WAPA	10/21/16	04/25/16: Provided false and/or misleading testimony as a witness during an administrative investigation.	
Gill (Singh), Manjinder	83496	DAJD	7/17/17	DAJD	11/20/17	1606-002 Sustained finding for falsification of records.	
Goedeke, Peter	330	Kirkland	2/11/08	Kirkland PD	2/26/09	Charged with false swearing relating to a civil trial concerning a protection order at KC NE District Court. (560050383) Case was later dm w/ prejudice. Dept. submitted paperwork to revoke his certification as a police officer in Washington State.	
Gordon, Ann Marie	X468	WSP		Larson		Certified under penalty of perjury that she tested items she had not	
Grass, Linda	00795	AFIS Print Examiner	6/17/10	Clark	10/8/10	06/17/10 Clark to request info: originally added to Resolved-Potential database on 06/17/10, but after discussion with MRL, it was moved to pending until additional info was gathered and reviewed. On 10/08/10, the committee discussed again and decided to move Grass to Resolved-Potential Brady. In 2007, Grass made an erroneous ID which was caught during verification. During the investigation, which was performed by the unit supervisor, it was determined that she was pushing the limits and should have consulted with other examiners, with which she fully agreed. Her previous work was checked, with no errors found. She went through an 18 month retraining program, and then retired at the end of 2008, prior to resuming casework.	

**Brady Committee Work Product  
Resolved - Potential Brady**

Name	Badge No.	Agency	Date of Inquiry	Source	Date Added	Reason	Provided to DPA
Grimm, Raymond **	07985	KCSO	5/19/09	KCSO	5/20/09	<p><b>*MATERIALS AVAILABLE*</b></p> <p>Sustained findings of 1) Failure to submit reports; 2) Making False Statements; 3) Performance Standards; 4) Found Property and Allegation; and 5) Handling of Evidence and Property. Overall, taken collectively, the Sheriff found that there was a clear pattern of dishonesty. Terminated.</p> <p><b>NOTE: New materials sent 1/28/10 suggesting (2) was overturned. 02/08/10: Copy of MOU between Sheriff's Office and KCSPOG received. As part of the agreement, the (2) allegation - Making False Statements - will be changed to non-sustained and will not form the basis for termination.</b></p>	K. McCarthy, DCU (10-21-09)
Gronewold, Aaron	7794	SPD	3/1/19	OPA	9/26/19	<p>9/26/19: 2019OPA-0030 the OPA investigation into this allegation has been completed and a finding <b>SUSTAINED</b> has been issued by the Chief of Police.</p> <p>Officer Aaron Gronewold #7794</p> <p>3/1/19: 2019OPA-0030 the Office of Professional Accountability (OPA) is investigating an allegation that the below Seattle Police Department Officer may have engaged in dishonesty:</p> <p>Officer Aaron Gronewold #7794</p>	

## Brady Committee Work Product Resolved - Potential Brady

Name	Badge No.	Agency	Date of Inquiry	Source	Date Added	Reason	Provided to DPA
Gulla, Denny	00006781 1 (NEW) 04392 (OLD)	KCOSO Tommy with Sno County				<p>06/14/18: IUJ2017-302 Sgt. Gulla has sustained finding for dishonesty regarding an allegation that he lied in an internal investigation.</p> <p>False statements &amp; Unlawful use of force</p> <p><b>*MATERIALS AVAILABLE*</b></p>	<p>11/14/18: S. Singla 11/08 (08-1-02798-4); Zeck DCU (790165371) 6-29-10; Zeck DCU (290165371) 6-29-10; Baker DCU 410199773 &amp; 410224746) 10-8-10; Elsner 10-1-05579-3 KNT 10-19-10; Small (DCU 210199616) 1/14/11; Soles Juvie (10-8-01603-3) 3-18-11; Thompson DCU (211098421) 9-6-11; Washington 41-1-27638-5 KNT (DV DCT) 12-28-11; Wiener, 3-21-12 11-1-10647-7; Wynne 1-29-13 10-1-08743-1; Brenner 2-13-13 12-1-06486-1; Taguba 6-28-13 13-1-10951-1; Holmgren 7-3-13 DCU 212PA5084; Brookhysler 7-30-13 3Z0405207; Maryman DVDCU 10-18-13 413203858; Curtis DVDCU 11-5-</p>
Hager, James E.	Unknown		11/2/12	Amy Montgomery	1/4/20	Convicted of a crime of dishonesty 08/15/13 - Burg 2 - 12-1-05798-9 SEA	

**Brady Committee Work Product  
Resolved - Potential Brady**

Name	Badge No.	Agency	Date of Inquiry	Source	Date Added	Reason	Provided to DPA
Hall, Ernest	4792	SPD	8/6/15	OPA	8/10/15	** MATERIALS AVAILABLE ** Sustained findings of dishonesty.	
Harmon, Jeff	67728	KCSO	10/12/15	KCSO	5/9/17	05/09/17: IUU2015-258 Conduct that is criminal in nature and making false or fraudulent reports was SUSTAINED. 07/06/16: Notified that Deputy Harmon has been charged and is pending adjudication on Theft 3 charges (516PA5079). On 10/12/15, KCSO received a complaint involving Deputy Harmon for criminal conduct, dishonesty, and insubordination. Alleged to have stolen a ballistic vest and then lied about it.	
Hawk, Ayana	97065	DAJD	5/17/19	DAJD	10/1/19	10/1/19: IUU1903-004 Sustained finding for the administrative charge of falsification of records: Juvenile Detention Officer Ayana Hawk #97065 5/17/19: IUU1903-004 IUU is investigation the administrative charge of Falsification of Records against Juvenile Detention Officer Ayana Hawk #97065.	
Henry, Mark	5137	SPD	11/18/15	OPA	11/24/15	**MATERIALS AVAILABLE** Sustained findings of dishonesty and misuse of official position for personal gain.	

**Brady Committee Work Product  
Resolved - Potential Brady**

Name	Badge No.	Agency	Date of Inquiry	Source	Date Added	Reason	Provided to DPA
Higgins, Darrell	Loss Prevention Officer	Wal-Mart		Herschokowitz	12/16/08	Mr. Higgins' statements were very different from his signed report. When asked by the defense investigator why that was, he said he just wrote what the defendant confessed to and not what Mr. Higgins actually observed. Auburn PD likely notifying Wal-Mart that they will no longer be arresting based on Darrell Higgins' statements.	1-06178-5); Nami Kim, 7-21-08 (Send 570335291 - DV); Woo 4-30-09 (08-1-13352-1); J. Taylor 9-18-09 (CR51126KC) McCarthy, K 3-26-10 ; (790146661); Mares (CDU) (5-14-10) (CR171816); Mares (DCU)(5-14-10) (CR17815KC); Sanchez (DV DCU 410196727) 8-26-10; Lee DCU (710PA5169) (CR55704KC) 9-14-10; Jibbensmith 3/31/11 (DCU CR55705KC); Romar (Rule 9) (11-8-01526-4); Thompson DCU (CR55701KC) 8-24-11; Johnson Juvie 11-
Hill, Bryan *	00006360 2 (NEW) 07154 (OLD)	KCSO	1/7/08	KCSO	1/7/08	<p>***MATERIALS AVAILABLE***</p> <p>Did not request adequate comp time / vacation to cover time for off-duty work.</p> <p><b>NOTE: The sustained finding was amended to 'Absence from Duty without Leave' as part of a settlement agreement entered on July 16, 2008, with the KCSO.</b></p>	



**Brady Committee Work Product  
Resolved - Potential Brady**

Name	Badge No.	Agency	Date of Inquiry	Source	Date Added	Reason	Provided to DPA
Holland, Jon	00006953 3 (NEW) 09460 (OLD)	KCSO	7/15/10	Baird	6/14/11	Having been specifically requested to provide a full and complete rendition of his interaction with a suspect, Detective Holland sent a document to a DPA that omitted critical information. Holland also made a comment in the same investigation about needing to engage in 'creative writing' concerning his police report. A Superior Court found these incidents admissible as potential impeachment material at trial. The KCSO did not sustain any findings of misconduct concerning the incidents.	Mr. Connor E. Z... (11-8-003941); Knighthlinger 7-21-11 (11-1-02507-8) S. O'Toole 09-02-11 (Carnation); John Castleton 09-13-11; Torres (11-1-07155- 0) 9-16-11; K. Meyers 11-8-01722-4 (9-19-11); Kline 10-1- 09696-1 (9-23-11); Gianoli 11-28-11 (11- C-07872-4); Gianoli 12-23-11 11-C-08162-
Hollwell, Darrion	64290	KCSO	6/19/14	KCSO	10/30/14	Hollwell plead guilty to Theft 1; Promoting Prostitution 2; and VUCSA - Delivery (14-1-02938-8 SEA).	
Holst, Henry	129	FWPD	8/8/08	FWPD	8/8/08	Convicted in Federal Court of Bank Fraud, Bankruptcy Fraud, and Evasion of Payment of Taxes.	

**Brady Committee Work Product  
Resolved - Potential Brady**

Name	Badge No.	Agency	Date of Inquiry	Source	Date Added	Reason	Provided to DPA
Hovenden, Sam	1386	Redmond	10/28/13	Redmond PD	10/29/13	<p>Sustained findings of untruthfulness, related to Internal Affairs Investigation #02-01 which was initiated August 2002. The finding of untruthfulness was sustained for being untruthful to his supervisor and the internal affairs investigator.</p> <p><b>**MATERIALS AVAILABLE**</b></p> <p>3/5/19: 18/A-011 SUSTAINED Finding. Officer resigned prior to Loudermill hearing.</p> <p>12/20/18: 18/A-011 Investigation regarding Detective Sam Hovenden #1386 regarding dishonesty.</p>	
Hunt, Jennifer	6828	SPD	4/27/18	DPA	4/27/18	<p><b>***MATERIALS AVAILABLE***</b></p> <p>04/27/18- Officer Hunt was disciplined for the following: during the pursuit of a domestic disturbance suspect, Ofc. Hunt addressed the subject in a manner that was derogatory and disrespectful toward African Americans. The Court ruled in case 17-1-01036-3 SEA that these materials should be disclosed.</p>	
Ijeoma, Chima	71759	DAJD	5/17/19	DAJD	10/1/19	<p>10/1/19: IUU1903-011B Sustained finding for the administrative charge of falsification of records:</p> <p>Juvenile Detention Officer Chima Ijeoma #71759.</p> <p>5/17/19: IUU1903-011B IUU is investigating the administrative charge of Falsification of Records against Juvenile Detention Officer Chima Ijeoma #71759.</p>	

**Brady Committee Work Product  
Resolved - Potential Brady**

Name	Badge No.	Agency	Date of Inquiry	Source	Date Added	Reason	Provided to DPA
Indahl, Joseph	338	Kirkland	5/21/15	DV Unit	5/16/16	<p>Notified 05/12/16 that the allegations were sustained.</p> <p><b>**MATERIALS AVAILABLE**</b></p> <p>This officer admitted to lying under penalty of perjury involving an incident with his estranged wife. A criminal case has been sent to Redmond City Attorney to consider filing charges of False Reporting. This officer has been terminated by Kirkland PD effective May 22, 2015.</p>	
James, Leonard	79268	DAJD	5/8/18	DAJD	1/16/19	<p>#2 1/16/19: IU1709-012 Sustained finding.</p> <p>#2 05/08/18: Officer Leonard James, #79268 is being investigated for submitting false documents under IU case #1709-012.</p>	
Jamison, Greg	606	Kirkland	5/16/18	Kirkland Chief of Police	5/16/18	<p><b>***MATERIALS AVAILABLE***</b></p> <p>#2 05/16/18: Kirkland PD sustained an allegation that Detective Greg Jamison failed in his duties to be truthful and honest in the conduct of official business.</p>	

**Brady Committee Work Product  
Resolved - Potential Brady**

Name	Badge No.	Agency	Date of Inquiry	Source	Date Added	Reason	Provided to DPA
Johnson, Christian	94240	KCSO	9/9/15	KCSO	2/22/16	02/22/16: Johnson waived Loudermill on 02/02/16. Terminated because he was still on probation and for poor performance. 09/09/15: Johnson is a probationary deputy. There is an open investigation involving him allegedly lying to either a victim or his training deputy.	
Johnson, Vince (Vincent)	66403	DAJD	7/17/2017 9/14/18	DAJD	10/1/19 11/20/2017 9/14/18	#3 10/1/19: #1807-008 Sustained finding for the administrative charge of falsification of records: Corrections Program Specialist Vincent Johnson #66403 #3 9/14/18: #1807-008 Open complaint of falsification of records. #2 9/14/18: 1804-008 Sustained finding falsification of records. #1 11/20/17: 1605-015 Sustained finding of dishonesty.	
Johnston, Christopher	1591	WSPCL	8/13/18	WSPCL	8/13/18	***MATERIALS AVAILABLE*** On March 7, 2018 Forensic Scientist 3 Christopher Johnston was placed on a Job Performance Improvement Plan (JPIP) to address unacceptable performance (confirmed performance errors). On June 7, 2018, the JPIP was successfully completed.	

**Brady Committee Work Product  
Resolved - Potential Brady**

Name	Badge No.	Agency	Date of Inquiry	Source	Date Added	Reason	Provided to DPA
Jones, Katherine	68674	DAJD	7/17/17	DAJD	12/13/17	1307-012 Sustained finding for giving false statements, concealment, or providing misleading information.	01233-2); McCarthy, K 6-15-10 (790135886); Pendle 6-16-10 (10-1-00156-1); Thompson DCU (711148581) 7-11-11; Demarious DCU (712000291) 10-11-12; Gilchrist DCU 712112961 (12-3-12); Montgomery 12-
Jorgensen, Garrett *	00006758 7 (NEW) 00541 (OLD)	KCSO	1/7/08	KCSO	1/7/08	***MATERIALS AVAILABLE*** Did not request adequate comp time / vacation to cover time for off-duty work.  <b>NOTE: The sustained finding was amended to 'Absence from Duty without Leave' as part of a settlement agreement entered on July 16, 2008, with the KCSO.</b>	
Kahrs, Christopher	68334	KCSO	8/19/14	KCSO	10/20/14	Sustained finding of dishonesty related to answers he gave during an IJU investigation.	
Kamara, Salifu	68177	DAJD	1/15/19	DAJD	5/17/19	5/17/19: IJU1901-002 IJU has sustained the administrative charge of Falsification of Records against Juvenile Detention Officer Salifu Kamara #68177.  1/15/19: IJU1901-002: Investigation for Falsification of Records.	

**Brady Committee Work Product  
Resolved - Potential Brady**

Name	Badge No.	Agency	Date of Inquiry	Source	Date Added	Reason	Provided to DPA
Karlewicz, Chad	9011	Renton	6/27/03	Renton PD	12/17/08	<p><b>*MATERIALS AVAILABLE*</b></p> <p>Karlewicz located an infraction given to an acquaintance by another officer, for the purpose of voiding it. He created a false memorandum requesting the infraction be voided and then fabricated a theory that the citation couldn't be filed in a timely manner anyway. He held onto the infraction for six days, ultimately enabling his acquaintance to avoid the consequences of the driving violation. Two sustained findings.</p>	
Keller, James J.	06699	KCSO	1/7/08	KCSO	1/7/08	<p><b>***MATERIALS AVAILABLE***</b></p> <p>Former employee. Lied to IUU during investigation.</p>	
Kerns, Tim	5901	Auburn	7/20/07	Bell	8/8/08	Resigned after confronted with allegations of false reporting during an off-duty traffic accident. Convicted of Neg 1. Decertified as a police officer.	
Kiander, Judy	212	SSA	5/1/2013	Susan Storey	8/4/2014	<p>Sustained finding for lack of candor with the court.</p> <p>Alleged to have made false statements under oath in connection with her divorce proceedings.</p>	

**Brady Committee Work Product  
Resolved - Potential Brady**

Name	Badge No.	Agency	Date of Inquiry	Source	Date Added	Reason	Provided to DPA
Kieffer, Laina	79274	DAJD	7/17/2017	DAJD	12/2/17	1304-003 Sustained finding for engaging in conduct that could constitute a crime or involvement in an act of dishonesty or an act that endanger, damaged, or injured the property or person of another. Criminal traffic violations. Conformance to laws.	
Kivlin, John	P-365	Bellevue	4/30/2018	News Articles	1/24/20	<p align="center">***MATERIALS AVAILABLE***</p> <p>1/24/2020: CJTC revoked Officer Kivlin's certification based on the false information and official misconduct.</p> <p>Bellevue Police Officer John Kivlin, Badge No.: P-365 is the subject employee in a pending/open Bellevue Police Department internal investigation (FS 18-006) for allegations that include conduct that may constitute criminal actions of domestic violence. A finding has not been made yet as the case is in the investigations stage.</p>	
Kizer, Kristopher	09477	KCSO	3/9/11	News Articles	5/8/12	<p>Accused of stealing drugs that were meant to be used as training aids for a narcotics detection dog.</p> <p>04/08/11 Per Barbosa, Kizer has been charged and is awaiting adjudication.</p> <p>05/16/11 Kizer PG to Theft First Degree (x2) and VUCSA (x5)</p>	
Kleiver, Seth	77764	DAJD	7/17/17	DAJD	11/20/17	1605-018 Sustained finding of dishonesty.	

**Brady Committee Work Product  
Resolved - Potential Brady**

Name	Badge No.	Agency	Date of Inquiry	Source	Date Added	Reason	Provided to DPA
Knight, John	5511	SPD	12/18/17	OPA	2/13/19	#2 2/13/19: 2017OPA-1206-SUSTAINED Dishonesty  #2 2017-OPA-1206 the Office of Professional Accountability (OPA) is investigating an allegation that the below Seattle Police Department Officers may have engaged in dishonesty.	
Kogachi, Shari	63825	DAJD	7/17/17	DAJD	12/2/17	1312-002 Sustained finding of dishonesty.	
Knowles, Gary	1670	Redmond	8/9/10	Keating	1/21/11	SUSTAINED findings of dishonesty relating to incident reports. Resigned prior to Loudermill hearing.	Miyamasu 12-16-11 (11-1-06867-2)
Kolding, Brendan	7494	SPD	2/13/19	OPA	8/15/19	8/15/19: 2019OPA-0045 the OPA investigation into this allegation has been completed and a finding SUSTAINED has been issued by the Chief of Police.  Officer Brendan Kolding #7494  2/13/19: 2019OPA-0045 the Office of Professional Accountability (OPA) is investigating an allegation that the below Seattle Police Department Officer may have engaged in dishonesty:  Officer Brendan Kolding #7494	



**Brady Committee Work Product  
Resolved - Potential Brady**

Name	Badge No.	Agency	Date of Inquiry	Source	Date Added	Reason	Provided to DPA
Lamb, Mike	259	Bellevue		Bellevue PD	12/8/08	During an IU investigation into improper handling of evidence, he explained he was unaware of the evidentiary value of the item. He said he had never been trained on that & had never seen such an item. Those statements were determined to be false. When questioned, he maintained the statements were true. He resigned in 2003 in lieu of termination.	
Lathrop, William	60	Bellevue	12/1/09	Bellevue PD	12/11/09	<p align="center">***MATERIALS AVAILABLE***</p> <p>SUSTAINED findings that Lt. Lathrop violated duty responsibilities, performance responsibilities, and obedience to laws and regulations.</p> <p>Between 01/21/1991 - 05/16/1993, while assigned to the Eastside Narcotics Task Force as a detective, Lathrop inappropriately used his vouch money.</p>	kaake 8-12-09 (09-C-01829-1); Hamilton; Voothees 5-7-10 (09-1-04159-4 SEA);
Lavin, Beth	6 (NEW)	KCSO	1/7/08	KCSO	1/7/08	Lied to IUU investigator during investigation.	
Lawrence, Betsy	0480	Redmond	11/15/11	Comm. Scairpon	3/7/16	Theft of funds/forgery - resigned during internal investigation; declined by prosecutor for prosecution.	

**Brady Committee Work Product  
Resolved - Potential Brady**

Name	Badge No.	Agency	Date of Inquiry	Source	Date Added	Reason	Provided to DPA
Le, Duy Vu Dang	77469	DAJD	7/17/17	DAJD	5/17/19	#1 1205-014 Sustained finding for making false or fraudulent reports or statements or inducing others to do so. Sustained finding for dishonesty.  #2 9/21/18: IJU-1808-014A IJU is investigating a falsification of records complaint against Corrections Officer Duy Le #77469 in IJU case #1808-014A.	
LeFrancis, Michael	71039	DAJD	7/17/17	DAJD	12/2/17	1411-004 Sustained finding for making false or fraudulent reports or statements or inducing others to do so.  ****MATERIALS AVAILABLE**** 10/18/18: Sustained finding for false/misleading statement.	
Leitl, Markus	6045	Enumclaw	9/26/18	Enumclaw PD	10/18/18	9/26/18: Open investigation regarding his truthfulness during an internal investigation.	

**Brady Committee Work Product  
Resolved - Potential Brady**

Name	Badge No.	Agency	Date of Inquiry	Source	Date Added	Reason	Provided to DPA
Lewis, Diane	68580	DAJD	10/1/19 7/17/2017	DAJD	10/1/19 12/2/2017	<p>10/1/19: IIU1906-003 Sustained finding for the administrative charge of falsification of records: Juvenile Detention Officer Diane Lewis #68580</p> <p>10/1/19: IIU1906-003 IIU is investigating the below officer for violating the administrative charge of Falsification of Records:</p> <p>Juvenile Detention Officer Diane Lewis #68580</p> <p>1401-017 Sustained finding for making false or fraudulent reports or statements or inducing others to do so.</p>	
Lewis, Joseph Jr.	79762	DAJD	1/15/19	DAJD	10/1/19 5/17/2019	<p>#3 10/1/19: IIU1905-004 IIU has sustained the administrative charge of Falsification of Records against Juvenile Detention Officer Joseph Lewis #79762. (no notice of original notification)</p> <p>#2 5/17/19: IIU1901-003 IIU has sustained the administrative charge of Falsification of Records against Juvenile Detention Officer Joseph Lewis #79762.</p> <p>#2 1/15/19: IIU1901-003: Investigation for Falsification of Records.</p>	

**Brady Committee Work Product  
Resolved - Potential Brady**

Name	Badge No.	Agency	Date of Inquiry	Source	Date Added	Reason	Provided to DPA
Lim, Rainsey	00006956 9 (NEW) 07134 (OLD)	KCSO				Convicted of Attempted Theft 2 (98-1-02009-8) 11/24/97; Convicted of Recreational Fishing 2nd Degree (L00068156) 09/02/00	1-07984-6); Pendle, 7-14-08 (08-8-02447- 6); Woo (08-1-02322- 9); Carlstrom, T (DCT) 10-14-08; Worley 10-22-08 (08- 1-07110-0); Nielsen 2 24-09 (08-1-12396- 7); Tait DCU 2-25-09 (CR37642BU); Tait DCU 3-25-09 (280141271); C. Anderson 10-20-09; Cohen 12-28-09 (DCU) 21257679a; Mares, DCU 3/29/10 CR37647KC; Zeck, K (5-19-10) (290126374); Mares (6-3-10) 210127128; Zeck (6-14-10) 290214363; McCarthy, K (DCU) (6-21-10) (290117214); Zeck (210158298) 7-19- 10; Gianoli, 09-8- 03161-6-8-26-10; Vasquez, 8-31-10 (10- 1-06347-8 SEA); Zeck DCU
Logwood, Curtis	71883	DAJD	7/17/17	DAJD	12/13/17	1309-002 Sustained finding of dishonesty.	
Logwood, Takisha	81337	DAJD	7/17/17	DAJD	12/13/17	1309-003 Sustained finding of dishonesty.	

**Brady Committee Work Product  
Resolved - Potential Brady**

Name	Badge No.	Agency	Date of Inquiry	Source	Date Added	Reason	Provided to DPA
Lysen, Kurt	00006382 9 (NEW) 08974 (OLD)	KCSO	1/7/08	KCSO	1/7/08	Lied to radio dispatch regarding location when asked.	09-1-04098-9; Voorhees (11-1-18-09) 09-1-05189-1; Zeck DCU (210158298) 7- 19-10; Zeck (DCU CG59182KC & CG59183KC) 8-2-10; Lee DCU (CR33281KC) 8-31- 10; Vasquez, 10-27- 10 (10-1-04107-5); Kays (09-1-01751-1) 12-17-10; Kanner (10- 1-06310-9) 12-27-10; Rigsby CR33295KC 12-27-10; Washington 3-17-11 (210209030); Thompson, D (DCU 211024432) 8-5-11; D. Thompson (DCU 211025719) 8-10-11; D. Thompson (CR43890KC) 9-7- 11; D. Thompson
Magalei, Albert	75101	DAJD	7/17/17	DAJD	12/2/17	1509-010 Sustained finding for making false or fraudulent reports or statements or inducing others to do so.	
Marley, David	6053	SPD	6/9/11	SPD	6/23/11	Lied in IIS Investigation. (IIS File #07-0425) Separated from Employment.	

**Brady Committee Work Product  
Resolved - Potential Brady**

Name	Badge No.	Agency	Date of Inquiry	Source	Date Added	Reason	Provided to DPA
Martin, Keith	00007259 3 (NEW) 07500 (OLD)	KCSO		Froh?		Racially insensitive comments and omission of information in theft report	4); Kanner, 4-15-08 (07-C-05992-6); Atchison (07-C-11603-2); Atchison (07-C-11604-1); Hamilton (07-1-06097-5); Miyamasu (08-1-04176-6); Hamilton (08-C-07518-1); Messitt (1-9-09) (08-1-12495-5); Love 3-2-09 (08-C-07908-9); Nielsen 6-8-09 (09-1-02314-6); Bell 6-10-09 (08-1-
Martinez-Castellon, Diego	99048	DAJD	5/17/19	DAJD	10/1/19	10/1/19: 1902-010 IUU has sustained the administrative charge of Falsification of Records against: Corrections Officer Diego Martinez-Castellon #99048 5/17/19: 1902-010 IUU is investigating the below officer for violating the administrative charge of Falsification of Records:	
Manuel, Barbara	90265	DAJD	7/17/17	DAJD	12/2/17	07/17/17: 1505-009 Sustained finding of dishonesty.	

**Brady Committee Work Product  
Resolved - Potential Brady**

Name	Badge No.	Agency	Date of Inquiry	Source	Date Added	Reason	Provided to DPA
Matthews, Bruce *	00007097 3 (NEW) 02527 (OLD)	KCSO	1/7/08	KCSO	1/7/08	<p>Did not request adequate comp time / vacation to cover time for off-duty work.</p> <p>***MATERIALS AVAILABLE***</p> <p><b>NOTE: The sustained finding was amended to 'Absence from Duty without Leave' as part of a settlement agreement entered on July 16, 2008, with the KCSO.</b></p>	<p>Worley, 4-10-08 (07-1-09450-1); Kline 10-8-08 (08-1-07089-8); Nave (1-27-09) CR41081KC Pellicciotti (9-21-09) (Astell); Cohen (CR41081KC) (7-19-10) Calvo (10-1-03513-0 SEA) 7-19-10; Miller 11-4-10 (10-1-08869-1); Woo 09-1-05824-1 (11/15/10); Love 10-1-04281-1 (12-8-10); Classen 2-9-11 (10-1-08887-0);</p>
Mawa, Charles	968	WSP	5/18/17	WSP	8/3/17	Resigned pending allegations of untruthfulness.	
McAfee, Kevin	83237	DAJD	7/17/17	DAJD	12/14/17	1208-020 Making false of fraudulent reports or statements or inducing others to do so.  1206-015 Giving false statements, concealment, or providing misleading information.	
McBride, Calvin	73132	DAJD	3/31/20	DAJD	4/22/20	IIU 2001-005 IIU has completed an investigation of Juvenile Detention Officer Calvin McBride in which there were sustained findings of falsification of records.	

**Brady Committee Work Product  
Resolved - Potential Brady**

Name	Badge No.	Agency	Date of Inquiry	Source	Date Added	Reason	Provided to DPA
McCahill, Frank	0095	Bothell	3/6/08	Barbosa	8/13/09	Officer McCahill has a sustained finding of misconduct based upon dishonesty/false information.	
McClinicy, Kathleen	05556	Renton	3/1/11	Renton PD	3/2/11	Commander McClinicy was questioned by a superior officer about her conversation with a police department member who was the subject of a different internal investigation. Commander McClinicy told the superior office that the conversation with the other involved member did not involve contents of that internal investigation. Commander McClinicy was untruthful and admitted the same to the Chief of Police the next day, and to the superior officer a few days later. This allegation of truthfulness [sic] was sustained against Commander McClinicy. Discipline was imposed and she is still employed by Renton PD.	
McConnell, Ian	2086	Redmond	9/20/07	Bohn	4/11/08	Per e-mail, was fired for falsifying police records. Left message with Commander on 3-20-08. Replied 4-10-08: Mr. McConnell was terminated from employment with Redmond PD on August 17, 2007. One of the sustained allegations was untruthfulness. Redmond PD received notification from the WSCJT Commission that McConnell's Peace Officer certification was revoked on March 19, 2008.	Nave 1-22-09
McDade, Matt	P-307 137 307	Bellevue		Bellevue PD	12/8/08	Officer recovered stolen vehicle. He failed to process it for evidentiary items. He wrote in report he did process it. Disciplined in 2001 for inaccurate report writing, but still current employee.	Sanchez, 12-1-05615-0 12-3-12



**Brady Committee Work Product  
Resolved - Potential Brady**

Name	Badge No.	Agency	Date of Inquiry	Source	Date Added	Reason	Provided to DPA
McDonald, Timothy	66643	KCSO	4/14/16	KCSO	11/10/16	05/10/16: Second allegation of dishonesty. IU2016-093 - <b>NOT SUSTAINED</b> 10/27/16 04/14/16: Deputy McDonald is under investigation for making false or fraudulent statements. IU2016-075 - <b>SUSTAINED</b> 11/10/16	
McMartin, Richard W	68526	KCSO	10/19/18	KCSO	10/19/18	10/19/18: IU2018-113 Sustained finding for making false or fraudulent reports or statements, committing acts of dishonesty, or inducing other to do so.	
McNeeley, Brian	63725	DAJD	10/1/19	DAJD	12/13/19	12/13/19: IU1908-001 Sustained finding regarding Corrections Officer Brian McNeeley #63725. 10/1/19: #1908-001 IU is investigating the below officer for violating the administrative charge of Falsification of Records: Corrections Officer Brian McNeeley #63725	
McQuilkin, Scott	151574	Kent	7/22/13	Kent PD	5/12/14	<b>**MATERIALS AVAILABLE**</b> Officer McQuilkin was under investigation regarding allegations of dishonesty, however, he resigned prior to his Loudermill hearing and any sustained findings. Resigned effective 02/26/14, although his separation date is listed as 02/28/14.	
Meissner, Michael	9811	Des Moines	6/15/07	Ben Santos	6/15/07	Convicted of Attempted Robbery 2 (may have pending DV?).	

**Brady Committee Work Product  
Resolved - Potential Brady**

Name	Badge No.	Agency	Date of Inquiry	Source	Date Added	Reason	Provided to DPA
Merritt, Namon	72562	DAJD	2/16/17	Robert Kim - Attorney	2/16/17	<p align="center"><b>**MATERIALS AVAILABLE**</b></p> <p>Sustained finding of dishonesty.</p>	
						<p>11/8/18: IUJ2018-262 has a sustained finding for Making false or fraudulent reports or statements, committing acts of dishonesty or inducing others to do so.</p> <p>11/8/18: IUJ2018-280 has a sustained finding for Making false or fraudulent reports or statements, committing acts of dishonesty or inducing others to do so.</p> <p>12/19/18: IUJ2018-314 has a sustained finding for making false or fraudulent reports or statements, committing acts of dishonesty or inducing others to do so.</p>	
Meyers, Robert	94903	KCSO	11/8/18	KCSO	11/8/18		
Moen, Donald	85969	DAJD	7/17/17	DAJD	12/14/17	07/17/17: 1106-017 Sustained findings of making false or fraudulent reports or statements or inducing others to do so; Dishonesty; Giving false statements, concealment, or providing misleading information; Withholding evidence.	

**Brady Committee Work Product  
Resolved - Potential Brady**

Name	Badge No.	Agency	Date of Inquiry	Source	Date Added	Reason	Provided to DPA
Mong, Michael	904	WSP	3/19/14	Brandy Gevers	8/6/14	<p><b>**MATERIALS AVAILABLE**</b> Trooper Mong has a sustained finding of misconduct for "unacceptable conduct" related to providing "totally misleading" and "inaccurate" information to the owner of a small trucking company involved in a collision. The trooper was found to have been "making things up" to justify his position that the driver should have remained at the scene. The incident occurred in March 2011. The allegations were sustained in June 2011.</p>	Manza DCT 8-25-14 4Z0465161; Manza DCT 9-8-14 4Z0474958; Khong DCT 4Z0474942; Alizadeh DCT 10-3-14 4Z0812094; Khong DCT 10-7-14 4Z0763618
Murray, Wade	6260	SPD	3/11/19	OPA	3/11/19	<p><b>***MATERIALS AVAILABLE***</b> #2 3/11/19: 2017OPA-0982 OPA has completed its investigation into this allegation and a final finding of Sustained has been reached pertaining to the allegation of dishonesty for the below listed Employee: Officer Wade Murray #6260 (Did not receive original notification of investigation)</p>	
Music, Michael	66390	DAJD	9/13/18	DAJD	9/13/18	9/13/18: Plead to Attempted Theft 2 KC Superior Court 17-1-07242-3 KNT. ILL#1603-018 Sustained.	

**Brady Committee Work Product  
Resolved - Potential Brady**

Name	Badge No.	Agency	Date of Inquiry	Source	Date Added	Reason	Provided to DPA
Myers, Christopher A. Sergeant	00006415 2 (NEW)  00465 (OLD)	KCSO	1/7/08	KCSO	9/24/13	Purchased new backpack and blanket for prisoner to cover up the fact that he had lost the prisoner's property.  ** As of 03/06/15, Sgt. Myers is under a new and separate investigation for dishonesty. Notified on 05/11/15 that Sgt. Myers' new allegations of making false or fraudulent reports or statements was non-sustained (IIU2015-050).	
Niemela, Mikko	82698	DAJD	7/15/19	DAJD	10/1/19	10/1/19: IIU 1906-002 Sustained finding for the administrative charge of falsification of records:  Juvenile Detention Officer Mikko Niemela #82698  7/15/19 IIU1906-002 IIU is investigation the administrative charge of Falsification of Records against Juvenile Detention Officer Mikko Niemela #82698.	
Newton, Dave	2104	Pacific	10/1/18	Pacific	10/1/18	***MATERIALS AVAILABLE*** 10/1/18: Sustained finding of dishonesty during IIU investigation.	

**Brady Committee Work Product  
Resolved - Potential Brady**

Name	Badge No.	Agency	Date of Inquiry	Source	Date Added	Reason	Provided to DPA
Nguyen, David	1593	WSPCL	5/3/18	WSPCL	8/8/19	<p>05/03/18: David Nguyen committed three instances of unintentional non-conforming work by inattentively swapping samples during the testing phase. These errors occurred on March 15, 2017, March 23, 2017 and January 29, 2018. Some of these errors were caught by David and some by peer review. All of the errors were caught prior to a report being generated and disseminated outside of the lab. All of David's work with samples has since been checked and verified. David is no longer working with samples and is awaiting a performance improvement plan in June 2018.</p>	
Norris, James	78576	DAJD	7/17/17	DAJD	12/2/17	<p>1411-005 Sustained finding for making false or fraudulent reports or statements or inducing others to do so.</p>	

## Brady Committee Work Product Resolved - Potential Brady

Name	Badge No.	Agency	Date of Inquiry	Source	Date Added	Reason	Provided to DPA
Novisedlak, Todd	5884	SPD	6/10/16	OPA	2/28/20	<p>violation of bias-free policing.</p> <p>#4 4/25/19: 2018OPA-0966 OPA has completed its investigation into this allegation and a final finding of (Not Sustained –Inconclusive and Not Sustained-Training Referral) has been reached pertaining to the allegation of Dishonesty for the below listed Employee:</p> <p>Officer Douglas Jorgensen 6122-Training Referral Officer Joel Nark, #5151-Inconclusive Officer Todd Novisedlak #5884-Inconclusive(did not receive original notification) Officer Julius Howard #5835-Inconclusive(did not receive original notification)</p> <p>#3 11/27/18: 2018OPA-0390 OPA has completed its investigation into this allegation and a final finding of (Not Sustained – Unfounded) has been reached pertaining to the allegation of bias free policing for the below listed Employee:</p> <p>Officer Todd Novisedlak #5884</p> <p>#3 06/01/18: 2018OPA-0390 the Office of Police Accountability (OPA) is investigating an allegation that the below Seattle Police Department employee may have engaged in biased policing:</p> <p>Officer Todd Novisedlak, #5884</p> <p>#1 02/08/16: 2016OPA-0302 OPA investigation into the allegations listed below for the two named officers has</p>	

**Brady Committee Work Product  
Resolved - Potential Brady**

Name	Badge No.	Agency	Date of Inquiry	Source	Date Added	Reason	Provided to DPA
						#1 02/08/16: 2016OPA-0302 OPA investigation into the allegations listed below for the two named officers has been concluded. Based on the OPA investigation, the Chief of Police has accepted the OPA Director's recommendation that findings of NOT SUSTAINED (UNFOUNDED) be issued with respect to the allegations of bias-based policing against both officers.  #1 06/10/16: 2016OPA-0302 Please be advised that OPA is currently investigating allegations that the following Seattle Police Department Officers were racially biased in their decision to detain an individual.  Police Officer Duane D. Goodman #7455 Police Officer Todd M. Novisedlak #58884	
Orellana, Victor	68183	DAJD	3/31/20	DAJD	4/24/20	IJU #1909-012 Sustained findings of falsification of records.	
Orvis, Sharon (Loran)	6892	Auburn	6/5/19	Auburn PD	6/5/19	6/5/19: 18INT-06 Sustained finding of Misconduct on 11/28/18 related to dishonesty regarding Det. Loran Orvis #6892.	
Perez, Luis	281 or 10281	Port of Seattle	1/22/13	Port of Seattle	2/5/14	Terminated on December 11, 2013. The decision to terminate was based on sustained findings of serious violations of department policy, including dishonesty.	
Perringer, Matt	2640	Redmond	3/11/19	Redmond PD	3/11/19	3/11/19: IJU18IA-010 In addition to other findings, there was a SUSTAINED finding related to dishonesty. The employee resigned prior to appealing the finding.	

**Brady Committee Work Product  
Resolved - Potential Brady**

Name	Badge No.	Agency	Date of Inquiry	Source	Date Added	Reason	Provided to DPA
Perry, Steven	8348	Enumclaw	6/28/13	Enumclaw PD	7/1/13	<p>On April 3<sup>rd</sup> 2013 Enumclaw Police Sergeant Steven J Perry submitted a police report under penalty of perjury in EPD Case #13-0889.</p> <p>After an internal investigation, this officer report was later proved to be false.</p> <p>Prior to Steven Perry Lauderhill hearing, he submitted his letter of retirement. This letter was accepted immediately and effective as of June 5, 2013. Sgt. Perry retired in anticipation of termination.</p>	
Peters, Colby J	8344	SPD	10/6/16	OPA	10/5/18	<p align="center"><b>***MATERIALS AVAILABLE***</b></p> <p>10/5/18: 2016OPA-1199 OPA has completed its investigation into this allegation and a final finding of (Sustained) regarding Dishonesty has been reached as detailed in the attached Disciplinary Action Report (DAR) attached, pertaining to below referenced employee:</p> <ul style="list-style-type: none"> <li>• Officer Colby Peters #8344</li> </ul> <p>10/06/2016: 2016OPA-01199 OPA is currently investigating an allegation that the following Seattle Police Department Officer knowingly provided false information to a SPD supervisor regarding the officer's off-duty use of force and attempt to apprehend a shoplifting suspect in an outside jurisdiction. 2016OPA-01199</p>	Student Officer Colby J. Peters #8344



**Brady Committee Work Product  
Resolved - Potential Brady**

Name	Badge No.	Agency	Date of Inquiry	Source	Date Added	Reason	Provided to DPA
Pickens, Michael	161729	Kent Corrections Officer	3/1/11	News Articles	10/3/12	PG Theft 3 (4 Counts) on 05/04/11. Sentenced on 05/20/11. Corrections officer accused of stealing money from inmates at the Kent City Jail.	
Poblocki, Franklin	6613	SPD	8/28/18	OPA	6/10/19	<p>#3 6/10/19: 2018OPA-0735 the OPA investigation into this allegation has been completed and a finding SUSTAINED has been issued by the Chief of Police.</p> <p>#3 8/28/18: 2018OPA-0735 the Office of Police Accountability (OPA) is investigating an allegation that the below Seattle Police Department employee may have engaged in dishonesty in case number 2018OPA-0735: Sergeant Frank Poblocki, #6613</p>	
Powers, John	6243	SPD	6/9/09	News Articles	8/13/09	After an internal investigation, this officer report was later proved to be false.	

**Brady Committee Work Product  
Resolved - Potential Brady**

Name	Badge No.	Agency	Date of Inquiry	Source	Date Added	Reason	Provided to DPA
Prasad, Sanjay	170	Tukwila	9/18/17	Anita Khandelwal	9/27/19 8/6/2018	<p>9/27/19-"In anticipation of arbitration, the city of Tukwila agreed to reverse the dishonesty finding as part of a negotiated settlement. Prasad agreed to voluntarily resign from the Department, effective September 18, 2019."</p> <p>8/6/18: TPD-16-0023 Sergeant Sanjay Prasad's employment with the department was terminated for dishonesty following the investigation.</p> <p>09/18/2017: Pending IIIU investigation; no further info at this time.</p>	
Quayle, Kevin	P-465	Bellevue	2/23/16	Bellevue PD	2/23/16	Sustained finding for violation of "impartial attitude," - use of a racial slur.	

**Brady Committee Work Product  
Resolved - Potential Brady**

Name	Badge No.	Agency	Date of Inquiry	Source	Date Added	Reason	Provided to DPA
Rivera, Krystal	83994	KCSO	11/13/14	KCSO	4/17/19	<p>4/17/19: IU2017-048 Sustained finding of Ridicule. Resigned 10/2/18</p> <p>05/09/17: IU2017-048 Pending investigation for discrimination, incivility, and bigotry. Other involved Comm Spec is Jenea Foster.</p> <p>Notified on February 2, 2015, that there was a sustained finding made on January 29, 2015, for Making False or Fraudulent Reports or Statements (dishonesty).</p> <p>Comm Center Specialist investigation that will likely be sustained for dishonesty. The employee admitted during the internal investigation that she included false information in the incident report. She essentially added information into the report that she failed to ask when she took the 911 call on a missing person. She was trying to cover for her failure to ask all the appropriate questions. The Communications Center commander will be asking for suspension as discipline. Per Jesse Anderson, involved her saying she was going to write a report, but didn't. There was an explanation for that one.</p> <p>Second Allegation: NOTIFIED 08/04/15 that second incident from 06/2015 is UNFOUNDED.</p>	

## Brady Committee Work Product Resolved - Potential Brady

Name	Badge No.	Agency	Date of Inquiry	Source	Date Added	Reason	Provided to DPA
Rhea, Landon	3986	Auburn	6/24/15	Auburn PD	6/30/15	Per Auburn PD: Officer Rhea backed his patrol vehicle in to a fire valve located on a building in Auburn. He failed to report the collision and when questioned by his sergeant, claimed he didn't have any knowledge of how the car was damaged. Officer Rhea subsequently authored a department memorandum stating he didn't have knowledge. We investigated the damage and discovered a video showing Officer Rhea backing in to the fire valve. He was interviewed as part of the investigation, and he continued to claim that he didn't have knowledge and was untruthful during the interview. Once he was shown the video, he confessed to damaging the patrol car; completing a department memorandum that was untruthful, and being untruthful during the investigation specifically his interview. Officer Rhea entered in to a Separation Agreement and his employment with the City of Auburn Police Department was terminated. We also completed the necessary documentation to have his Peace Officer Certification revoked by the Criminal Justice Training Commission.	
Robertson, William	4688	SPD	2/1/16	OPA	2/1/16	<b>**MATERIALS AVAILABLE**</b> Sustained finding for dishonesty.	
Roach, Benjamin	97480	KCSO	12/6/18	Capt. Chinnick	12/6/18	#2 12/6/18: IU2018-300 Sustained finding for dishonesty.	
Rockcastle, Angela	314	Bellevue		Bellevue PD	12/8/08		

**Brady Committee Work Product  
Resolved - Potential Brady**

Name	Badge No.	Agency	Date of Inquiry	Source	Date Added	Reason	Provided to DPA
Rogers, Juliee	0301	Des Moines	10/24/11	Des Moines PD	12/1/11	<p>***MATERIALS AVAILABLE***  Evidence Specialist Juliee Rogers was terminated on August 31, 2011 after the Interim Chief of Police sustained 8 findings of untruthfulness / honesty violations committed during an IJU investigation. It was determined that Rogers submitted false internal reports and provided false statements during the investigation.</p>	
Roy, Tara	1202	WSPCL	3/24/16	Tom McBride/WSP	3/25/16	<p><b>**MATERIALS AVAILABLE**</b></p> <p><b>There was no finding for Unsatisfactory Performance as the employee resigned prior to the completion of the administrative investigation.</b></p> <p>It is alleged between October and December 2015, Forensic Scientist (FS) 4 Tara Roy assigned a CODIS puncher worklist to the wrong CODIS case file. It is further alleged instead of correcting the mistake and reporting it through established practices and procedures, FS 4 Roy knowingly deleted and altered data before a technical review was completed.</p>	
Ruedebusch, Gera	2734	SPD	5/15/08	SPD	5/15/08	<p>Sustained a complaint of Honesty against Detective Gerald Ruedebusch (recently retired) with a termination recommendation. The allegation arises from a Federal Bankruptcy Court case in which the Federal judge chastised Ruedebusch for misstating his assets.</p>	

**Brady Committee Work Product  
Resolved - Potential Brady**

Name	Badge No.	Agency	Date of Inquiry	Source	Date Added	Reason	Provided to DPA
Saario, Dena	06184	KCSO	1/7/08	KCSO	1/7/08	<p><b>*MATERIALS AVAILABLE*</b></p> <p>Former employee. Lied to IUU during investigation.</p> <p>Court found Saario to have intentionally misrepresented facts in an affidavit for a search warrant. (See 07-1-09006-8 KNT).</p>	Kaake, 7-30-08 (07-1-09006-8 )
Sablan, James	102111	DAJD	5/17/19	DAJD	10/1/19	<p>10/1/19: IUU 1902-003 IUU has sustained the administrative charge of Falsification of Records against: Corrections Officer James Sablan #102111</p> <p>5/17/19: 1902-003 IUU is investigating the below officer for violating the administrative charge of Falsification of Records:</p> <p>Corrections Officer James Sablan #102111</p>	
Savage, Kevin	02804	KCSO	11/10/11	News Articles	11/16/11	<p>Per KCSO, Deputy Savage was terminated effective 11/10/2011 . There were four IUU cases resolved, two of which involved sustained findings of making false and fraudulent reports.</p>	<p>Jefferson (DCU 211PA5186) 11-28-11; Jefferson (DCU 211PA5187) 11-28-11</p>

## Brady Committee Work Product Resolved - Potential Brady

Name	Badge No.	Agency	Date of Inquiry	Source	Date Added	Reason	Provided to DPA
Schmitz, Debby	66221	KCSO	1/29/14	KSCO	6/6/14	Rules of Conduct - Being under the influence of drugs or alcohol while off duty resulting in criminal conduct, charge or conviction. Rules of Conduct – Conduct Criminal in Nature – for the reckless endangerment allegation of having her child in the car with her. Rules of Conduct - Making false and fraudulent reports of statements, committing acts of dishonesty, or inducing others to do so. For initially telling the investigating police officer that she wasn't driving. We have obtained the judgment/sentence and can confirm that she was convicted of a DUI under .15. She	413189879; Houston 11-17-14 DCT 214274432; Houston 11-21-14 DCT 214279020; Houston 11-21-14 DCT 214PA5240; Houston DCT 11-21-14 C055107; Houston DCT 12-24-14 214PA5261; Brookhyser DCT 1-23-15 214313242;
Schrimpsher, James	09660	KCSO	1/7/08	KCSO	1/7/08	<b>**MATERIALS AVAILABLE**</b> Former employee. Lied to IJU during investigation.	Nave 1-22-09; Baker 10-20-09; Eisner 10-1-09762-3-3-29-11; Knightlinger 11-1-06890-7 (12-27-11); N. Kim 411DV5007 (DV CT 1-3-12); Soukup 11-1-10667-1 2-15-12; McDonald and O'Donnell 12-1-02457-6 KNT; Meyers 3-5-13 (12-C-06269-9 & 12-C-06270-2 KNT); Baker 6-7-13 (13-1-01076-0 KNT)
Scott, James	5106	SPD	9/8/15	SPD	4/10/16	<b>**MATERIALS AVAILABLE**</b> Notified on 04/10/16, that SPD Chief upheld sustained findings. Allegation of taking SPD materials for personal use and lying during OPA investigation.	

**Brady Committee Work Product  
Resolved - Potential Brady**

Name	Badge No.	Agency	Date of Inquiry	Source	Date Added	Reason	Provided to DPA
Sermeno, Raphael	8578	Auburn	10/9/07	Abbott	6/27/08	Per Chief of Police: Terminated from the City of Auburn for false reporting, no criminal charges filed. He lost his certification to be a peace officer in Washington State.	Herschkowitz, 11-12-08 (08-8-03303-3)
Sharp, Dan	84	WSP	9/20/18	WSP	1/15/19	1/15/19: Lt. quit before final determination-but finding would have been SUSTAINED regarding his truthfulness during an internal investigation. 9/20/18: Open investigation regarding his truthfulness	



**Brady Committee Work Product  
Resolved - Potential Brady**

Name	Badge No.	Agency	Date of Inquiry	Source	Date Added	Reason	Provided to DPA
Shibley, Stephan ***	00007353 9 (NEW) 02115 (OLD)	KCSO	11/25/08	KCSO	11/25/08	<p><b>**MATERIALS AVAILABLE**</b></p> <p>Was dishonest in statements made to Sgt. Neff during a meeting they attended.</p> <p><b>NOTE: New information was sent to us via Patty Shelledy with KCSO on 02/10/10, stating, "Through the grievance process the Sheriff's Office revised its finding in IJU case 2008-045 involving Deputy Stephen Shibley and have now non-sustained the finding of making false and fraudulent reports in that case."</b></p>	<p>PROBABLE CAUSE (08-1-07500-8); Jacobsen-Watts 2-10-09 (08-1-12555-2); Mares (DCU) 2-24-10 (590290249); McCarthy (DCU) 4-20-10 59010670; Zeck (4-29-10) 510PA5071; McCarthy (DCU) (5-12-10) 510107431; Zeck (DCU) (590290089) (590256904)6-18-10; Zeck (510143421) 7-19-10; Zeck (51016950A) 7-22-10; Zeck (510170623) 7-22-10; Lee (DCU) C10617) 7-28-10; Lee (DCU) 510PA5150) 7-28-10; Zeck (DCU) 510180060) 8-2-10; Zeck (DCU) 510194742) 8-23-10; Zeck DCU 9-10-10</p>
Shoblom, Amy	77968	KCSO	5/11/2015	KCSO	8/20/15	Deputy Shoblom was terminated on 08/11/15 for a sustained finding of dishonesty.	

**Brady Committee Work Product  
Resolved - Potential Brady**

Name	Badge No.	Agency	Date of Inquiry	Source	Date Added	Reason	Provided to DPA
Shultz, Jeremy	640	Kirkland	6/12/2018	Kirkland PD	6/12/18	06/12/18: The sustained findings were on allegations of ethics violations, failure to comply with oath of office, not being truthful and honest. He admittedly lied to a supervisor regarding the reason for his delayed response to a call for service. Resigned on 5/24/18.	
						<p align="center"><b>***MATERIALS AVAILABLE***</b></p> <p>#2 1/27/2020: IJU2019-309 SUSTAINED findings for Making false or fraudulent reports or statements, committing acts of dishonesty, or inducing others to do so:            Deputy Dylan Fitzpatrick #100057            Deputy Eric Shuty #92394</p> <p>#2 7/18/19: IJU2019-309 Deputy Eric Shuty #92394 is under investigation for Making false or fraudulent reports or statements, committing acts of dishonesty, or inducing others to do so.</p> <p>#2 11/18/19: IJU2019-309 Deputy Dylan Fitzpatrick #100057 is also part of this investigation but we did not receive notice at the same time as we did for Deputy Eric Shuty #92394.</p> <p>#1 IJU2016-138, performance standards (sustained), rules of conduct/acts of dishonesty (sustained).</p>	
Shuty, Eric	92394	KCSO	1/9/2017	KCSO	1/27/20		
Sims, Britney	93620	DAJD	7/17/2017	DAJD	11/20/17	1606-008 Sustained finding for falsification of records.	
Slater, Roy	72337	DAJD	7/17/2017	DAJD	12/2/17	1411-007 Sustained finding for making false or fraudulent reports or statements or inducing others to do so.	

**Brady Committee Work Product  
Resolved - Potential Brady**

Name	Badge No.	Agency	Date of Inquiry	Source	Date Added	Reason	Provided to DPA
Smith, Ron	5937	SPD	5/9/2019	OPA	2/14/20	<p>Officer Ron Smith #5937</p> <p>5/9/19: 2019OPA-0264 Office of Police Accountability (OPA) is investigating an allegation that the below Seattle Police Department Officers may have been biased in their law enforcement activities.</p> <p>02/14/20: 2019OPA-0264: Sustained finding for engaging in bias-based policing.</p> <p><b>**MATERIALS AVAILABLE**</b></p>	
Snavey, Bryton	633	Kirkland	4/10/2020	Kirkland	4/23/20	<p>The Department received a complaint from the military indicating that he had not reported for reserve duty for quite some time. Snavey had told his reserve unit that he was unable to attend due to a conflict with training at KPD. During the investigation it was learned that Snavey was not scheduled to attend police training and a conflict involving KPD did not exist. Snavey's correspondence with his commander was found to be misleading and untruthful. Snavey received a written reprimand.</p>	
Sorrells, Jesse	91854	KCSO	5/1/2013	KCSO	4/19/16	<p>April 2016: Sustained finding for discrimination, incivility, and bigotry for content contained in a text message that Sorrells sent. IUU 2015-076 - 03.00.015-RULES OF CONDUCT. Sustained June 19, 2015.</p>	

**Brady Committee Work Product  
Resolved - Potential Brady**

Name	Badge No.	Agency	Date of Inquiry	Source	Date Added	Reason	Provided to DPA
Sortland, Eric	5056	Enumclaw	12/12/11	Enumclaw PD	2/26/13	<p align="center"><b>**MATERIALS AVAILABLE**</b></p> <p>Terminated 10/31/11 ; Civil Service Appeal Completed 07/10/12 - finding upheld the City's termination; sustained charges of being dishonest. Pending Civil Service Appeal 03/08/13 In Pierce County Superior Court.</p>	
Spassenikov, Andrei	69417	DAJD	7/17/17	DAJD	12/14/17	<p>07/17/17: 1106-022 Sustained finding of making false or fraudulent reports or statements or inducing others to do so.</p>	
Stangeland, Donna	4949	SPD	5/1/15	Brian McDonald	5/4/15	<p align="center"><b>**MATERIALS AVAILABLE**</b></p> <p>In 2006, SPD Detective Donna Stangeland was found to have reviewed privileged documents and destroyed her copy in State v. Guantai, 05-1-05673-4 SEA. Judge Kessler has recently (May 1, 2015) ruled in State v. Garcia-Mendez, 13-1-10159-5 SEA, "While the mere fact of unlawfully reading a privileged communication may not by itself be clearly impeachment evidence, the shredding of the communication is at least arguably a coverup, potentially a specific instance of conduct probative of truthfulness or untruthfulness, ER 608(b)." "</p>	
Stephens, Robert	2140	Pacific	10/3/18	Pacific	9/24/19	<p align="center"><b>**MATERIALS AVAILABLE**</b></p> <p>9/24/19: 9/24/19: No longer with Pacific PD. Moved to Potential PID.</p> <p>10/3/18: Pending investigation of alleged dishonesty in Court.</p>	

**Brady Committee Work Product  
Resolved - Potential Brady**

Name	Badge No.	Agency	Date of Inquiry	Source	Date Added	Reason	Provided to DPA
Storrs, Jane	78106	DAJD	9/14/18	DAJD	9/14/18	9/14/18: IU 1804-003 Sustained finding falsification of records.	

## Brady Committee Work Product Resolved - Potential Brady

Name	Badge No.	Agency	Date of Inquiry	Source	Date Added	Reason	Provided to DPA
Swift, David	00006634 5 (NEW) 09839 (OLD)	KCSO	5/2/13	KCSO	5/15/13	False or fraudulent reports, four incidents (three findings): 04/08/1994 (failed to show for court, but put in for OT) - 1 day suspension 10/18/1999 (same thing) - 2 day suspension 07/12/2000 (same thing) - 3 day suspension 01/22/2001 (same thing) - procedurally KCSO was beyond their timeframes so no finding was issued and no discipline imposed	22-13 (CS038239K); Cushing DCU DV 6-14-13 413133157; Desanto 6-14-13 713PA5135 DCU; Houston 6-28-13 CS038242K; Houston 6-28-13 DCU 213140663; Brookhyser DCU 6-28-13 CS038233K; Cushing DV DCU 7-2-13 413119939; Houston 7-17-13 DCU 213136421; Bannerman DCU 7-17-13 213097160; Delos Reyes DCU 7-17-13 213134691; Merkel 7-30-13 220553926 and 220553924; Brookhyser 7-30-13 CS038228K; Delos Reyes 8-8-13 DCU 712283226; Delos Reyes DCU 8-21-13 CS038231K; Relyea DCU 8-21-13 CS038231K; Delos Reyes DCU 8-23-13 CS038248K; Delos

**Brady Committee Work Product  
Resolved - Potential Brady**

Name	Badge No.	Agency	Date of Inquiry	Source	Date Added	Reason	Provided to DPA
Teeter, Jonathan	98102	DAJD	5/17/19	DAJD	06/22/2020 10/1/2019	<p>#1 5/17/19: 1903-005 IUU is investigating the below officer for violating the administrative charge of Falsification of Records:</p> <p>Corrections Officer Jonathan Teeter #98102</p> <p>#2 IUU2003-002B Sustained findings of Falsification of Records.</p> <p>#1 10/1/19: IUU1903-005 Sustained finding for the administrative charge of falsification of records:</p>	
Thompson, Clint	473	WSP	3/29/18	WSP	3/29/18	<p>***MATERIALS AVAILABLE***</p> <p>03/29/18: Washington State Patrol completed an investigation finding that the Unsatisfactory Performance allegation against Trooper Clint Thompson #473 was proven. According to WSP, the Trooper submitted inaccurate and incomplete information on multiple affidavits.</p>	
Thompson, Evan	X528	WSP		WSP		Terminated for various issues.	
Townsend, Joseph	73244	DAJD	5/17/19	DAJD	12/13/19	<p>12/13/19: IUU1904-007 Sustained finding regarding Juvenile Detention Officer Joseph Townsend #73244.</p> <p>5/17/19: IUU1904-007 IUU is investigating the administrative charge of Falsification of Records against Juvenile Detention Officer Joseph Townsend #73244.</p>	

**Brady Committee Work Product  
Resolved - Potential Brady**

Name	Badge No.	Agency	Date of Inquiry	Source	Date Added	Reason	Provided to DPA
Turner, David	1190	Issaquah PD	9/25/18	Issaquah PD	9/25/18	<p align="center"><b>**MATERIALS AVAILABLE**</b></p> <p>9/25/18: The Issaquah Police Department completed an internal investigation on Police Officer David Turner, badge number 1195. Internal investigation number is 18-01. The department sustained policy violations against Officer Turner regarding bias conduct towards a race (African Americans). During a public meeting of approximately 20-30 people, Officer Turner told the audience, "This is where we train to shoot all the black people" while showing a PowerPoint slide of police officers at a gun range. An African American female adult was in the audience and felt the comments were extremely offensive. Officer Turner commented after this statement that he was joking and/or had a sense of humor.</p>	
Van Liew, Angela	00007965 5	KCSO	1/15/14	Captain DJ Nesel KCSO	1/18/14	<p>KCSO Photographer Angela Van Liew, KCSO ID #07810 was investigated for an allegation of "Dishonesty" under IJU case number: IJU2013-172. She attended her Loudermill with Sheriff Urganhart on 01/14/14 for this matter and the Sheriff sustained the allegation.</p>	
Vance, Brendan	W96	Dept of Fish and Wildlife	12/5/17	Dept of Fish and Wildlife	1/4/20	<p align="center"><b>**MATERIALS AVAILABLE**</b></p> <p>12/05/17: Found to have intentionally provided false information regarding work activity, falsified official records related to timekeeping, and claimed time for work he had not actually completed.</p>	



**Brady Committee Work Product  
Resolved - Potential Brady**

Name	Badge No.	Agency	Date of Inquiry	Source	Date Added	Reason	Provided to DPA
Vanderwielen, Andrew	401	WSP	7/14/14	WSP	9/12/14	<p><b>**MATERIALS AVAILABLE**</b></p> <p>10/16/14: Clarification notification: The finding on the untruthfulness allegation was undetermined and the finding on the unsatisfactory performance allegation was proven.</p> <p>07/14/14: Sustained finding of dishonesty related to being untruthful in IIIU investigation when questioned about cutting and pasting large portions of his narrative from one DUI case to another.</p>	Anderson DCT 6-19-15 5Z0344302
Verhelst, Frantz	86904	DAJD	7/17/17	DAJD	12/2/17	07/17/17: 1601-028 Sustained finding for giving false statements, concealment, or providing misleading information.	Larson (10-1-02812-5) 8-5-11; Raz, 1-9-12 (09-1-05492-1); Classen (11-1-05821-9) 7-9-12; Meyers 2-13-13 (12-1-02573-4); Johnson JUV 10-11-13 13-8-06832-1; Sanchez, 16-8-01456-1 (3-31-17)
Vojir, Joe	3280	Auburn	2/8/11	Clark	2/11/11	On 05/24/10, Officer Vojir was disciplined for knowingly completing his time card incorrectly by indicating he was working when he was not. As a result of the time card being completed incorrectly, Officer Vojir took a "pay back day" due to his time card indicating he was training on a scheduled day off.	

**Brady Committee Work Product  
Resolved - Potential Brady**

Name	Badge No.	Agency	Date of Inquiry	Source	Date Added	Reason	Provided to DPA
Wall, Philip C.	5236	SPD	4/13/17	OPA	11/3/17	Detective Philip C. Wall #5236	
Walker, John	64929	DAJD	3/31/20	DAJD	4/24/20	IIU #2003-001 Sustained findings of falsification of records.	
Wanner, Jason	69619	DAJD	7/17/17	DAJD	12/2/17	1310-001 Sustained finding of dishonesty.	

**Brady Committee Work Product  
Resolved - Potential Brady**

Name	Badge No.	Agency	Date of Inquiry	Source	Date Added	Reason	Provided to DPA
Watkins, Paul	461	Lynnwood	4/27/09	Bob Boruchowitz	12/11/09	On 03/21/08, Watkins was convicted for stealing thousands of dollars from the police department. Ordered to pay back \$75,000. Sentenced to 15 months in federal prison.	
Weinreich, Eric	1514	Black Diamond	4/10/13	Black Diamond PD	4/16/13	<p align="center">***MATERIALS AVAILABLE***</p> <p>Weinreich was terminated from employment with the Black Diamond Police Department on March 28, 2013, upon completion of an internal investigation. The internal investigation involved Weinreich's off-duty conduct and upon completion of the investigation there was a sustained finding of untruthfulness.</p>	
Wells, Michael	84978	DAJD	5/17/19	DAJD	5/17/19	<p>5/17/19: IIU-1809-014- IIU has sustained the administrative charge of Falsification of Records against Corrections Officer Michael Wells #84978.</p> <p>1/16/19: IIU1809-014: Investigation for Falsification of Records.</p>	
Werner, Eric	6695	SPD	4/27/09	Love	8/19/09	<p align="center">***MATERIALS AVAILABLE***</p> <p>Sustained finding of misconduct based upon dishonesty.</p>	Yarden W. (10-7-09) 08-1-12447-5

**Brady Committee Work Product  
Resolved - Potential Brady**

Name	Badge No.	Agency	Date of Inquiry	Source	Date Added	Reason	Provided to DPA
West, Mike	77203	DAJD	7/17/17	DAJD	12/13/17	1107-014 Sustained finding of dishonesty.	
						<b>*MATERIALS AVAILABLE*</b> As of April 13, 2015: Terminated for falsification of Regional Animal Services of King County (RASKC) documents, use of county paid time for personal business, improper use of county owned equipment and dishonesty in an investigation. Specifically, she over reported labor hours on more than one occasion, used King County owned property for personal use on at least three occasions and was admittedly dishonest during the investigation of the aforementioned allegations.	
Westberg, Jenae	AC47	KC Animal Control	10/29/12	Holmgren	11/29/12	Kent Municipal Court Case #K00054373 / Theft 3 Admitted to stealing. KC Case #58SD00211 / VUCSA Admitted to lying.	McCoy (11/29/12) 11-1-07347-1 SEA; Relyea DCT 10-23- 13 713001076
Wherley, Shane	71115	DAJD	7/17/17	DAJD	12/2/17	07/17/17: 1411-009 Sustained finding for making false or fraudulent reports or statements or inducing others to do so.	

**Brady Committee Work Product  
Resolved - Potential Brady**

Name	Badge No.	Agency	Date of Inquiry	Source	Date Added	Reason	Provided to DPA
Williams, Jeffrey	45507	Kent	12/17/09	Kent PD	12/17/09	Sustained finding of untruthfulness to supervisors about a minor traffic incident at work, dated Nov. 11, 1998, received 20 unpaid days off. Still employed.	Soukup 4-21-10 (10-1-00676-8 KNT); Carlstrom 12-1-02730-3 KNT (10-18-12); Brenner 11-6-12 (12-C-00898-8); Brenner 11-14-12 (12-1-02315-4 KNT); Herschkowitz 2-4-13 (12-C-02094-5 KNT, 12-C-02124-1 KNT); Baker 2-26-13 (11-1-01405-0); Martin, M 4-1-13 13-8-00221-5
Wolfe, Russell	07590	KCSO	1/7/08	KCSO	1/7/08	***MATERIALS AVAILABLE*** Former employee. Made false statement in writing to King County Superior Court during petition for Court Order. Lied to IJU.	O'Donnell (12-8-10) 10-1-04112-1 and again on 9-12-11; Childers 15-8-01579-8 12-3-15
Woods, Vera	83510	DAJD	8/10/17	DAJD	11/9/17	#1 11/09/17: IU1705-003 Sustained findings that she falsified records/reports. #1 08/10/17: IU1705-003 Pending investigation for submitting a false report.	

**Brady Committee Work Product  
Resolved - Potential Brady**

Name	Badge No.	Agency	Date of Inquiry	Source	Date Added	Reason	Provided to DPA
Young, Darren	08464	KCSO	04/08/09	KCSO	7/9/2009	<p>Charged with DUI; charge amended and defendant pled guilty to Neg 1 on 05/08/09; sentenced to 90 days with 89 suspended, no crim viol for 24 months on 05/08/09; no longer with KCSO (C00704292)</p> <p><b>Check on deferred 05/2011.</b></p> <p><b>*MATERIALS AVAILABLE*</b> Sustained finding of Making False Statements (Dishonesty); Terminated</p>	

**Brady Committee Work Product  
Resolved - Potential Brady**

Name	Badge No.	Agency	Date of Inquiry	Source	Date Added	Reason	Provided to DPA
<p>* The sustained finding was amended to "Absence from duty without leave.", as part of a settlement agreement entered on July 16, 2008, with the KCSO.</p>							
<p>** Through the grievance process, the King County Sheriff's Office revised its findings and has now non-sustained the finding of making false statements in IIU case 08-022.</p>							
<p>*** Through the grievance process, the King County Sheriff's Office revised its findings and has now non-sustained the findings of making false statements and fraudulent reports in IIU case 08-045.</p>							

# Appendix B

**2006 Westberg Kent arrest records identifying Westberg as a King County Animal Control Officer and stating she offered a \$500 bribe to arresting officers not to arrest her.**



# Case Report

## KENT POLICE DEPARTMENT

06-11604

Supplement No  
ORIG

Reported Date  
08/26/2006  
Crime/Incident  
THEFT  
Officer  
STEFFES, EL

Administrative Information							
Agency	KENT POLICE DEPARTMENT		Case No	06-11604		Supplement No	ORIG
			Reported Date	08/26/2006		/Time	19:42
			IH No	060061639			
Status	CLEARED / SINGLE ADULT ARREST			Crime/Incident THEFT			
Location	24800 W VALLEY HWY				City	KENT	
			From Date	08/26/2006		/Time	18:45
To Date	08/26/2006	/Time	19:35	Officer	126683/STEFFES, EL		Assignment
						PATROL LATE SWING 2	
Entered by	126683	Assignment	PATROL LATE SWING 2		RMS Transfer	Successful	
			Approving Officer	44990		Approval Date	08/27/2006
Approval Time	23:59:40						
APPROVED BY FTO?	46195						
# Offenses	1	Offense	060330			Description	THEFT-3/SHOPLIFT
					Complaint Type		
Person Summary							
Invl	Invl No	Type	Name	MNI	Race	Sex	Date of Birth
ARR	1	I	WESTBERG, JENEE A	421575	W	F	01/30/1976
Invl	Invl No	Type	Name	MNI	Race	Sex	Date of Birth
VIC	1	B	K MART	447941			
Invl	Invl No	Type	Name	MNI	Race	Sex	Date of Birth
WIT	1	I	HEFFNER, THOMAS W	538195	W	M	07/21/1978
Invl	Invl No	Type	Name	MNI	Race	Sex	Date of Birth
WIT	2	I	BAYNE, ALISIA A	540267	W	F	10/25/1984
Property Summary							
Involvement SAR							
[TRANS] ARTICLE: PERSONAL ACCESSORIES (INC. JEWELRY) GLOVE stn and recovered/ bath gloves							
Involvement SAR							
[TRANS] ARTICLE: PERSONAL ACCESSORIES (INC. JEWELRY) COSMET sar/ foot scrub							
Involvement SAR							
[TRANS] ARTICLE: PERSONAL ACCESSORIES (INC. JEWELRY) COSMET REVLON sar/ nail polish							
Involvement SAR							
[TRANS] ARTICLE: PERSONAL ACCESSORIES (INC. JEWELRY) LIGHTE sar/ cigarette lighters							
Involvement SAR							
[TRANS] ARTICLE: PERSONAL ACCESSORIES (INC. JEWELRY) COSMET REVLON sar/ powder (makeup)							
Involvement SAR							
[TRANS] ARTICLE: PERSONAL ACCESSORIES (INC. JEWELRY) COSMET sar/ lash curler							
Involvement	[TRANS] STN ARTICLE: PERSONAL ACCESSORIES (INC. JEWELRY) PURSE sar/ hip pouch						

# Case Report

## KENT POLICE DEPARTMENT

06-11604

Supplement No  
ORIG

### ARRESTEE 1: WESTBERG, JENEE A

Involvement	Invl No	Type	Name	MNI	Race		
ARRESTEE	1	INDIVIDUAL	WESTBERG, JENEE A	421575	WHITE		
Sex	Date of Birth	Age	Juvenile?	Height	Weight	Hair Color	Eye Color
FEMALE	01/30/1976	30	No	5'03"	130#	BROWN	BROWN

Type	Address	City	State
HOME	15826 SE 342 PL	AUBURN	WASHINGTON
ZIP Code	98092		

Type	ID No	OLS
OPERATOR LICENSE	WESTBJA245BT	WASHINGTON

Type	ID No
SOCIAL SECURITY NUMBER	[REDACTED]

Phone Type	Phone No
HOME	(253) 804-6264

Alias Name	Race	Sex	Date of Birth	Height	Weight	Hair Color	Eye Color
GOODMAN, JENEE AMBER	WHITE	FEMALE	01/30/1976				

Skin	Alias Name	Race	Sex	Date of Birth	Height	Weight	Hair Color
	WESTBERG, JENEE AMBER	WHITE	FEMALE	01/30/1976			

Eye Color	Skin

Mark Type	Mark Code
PIERCED EARS	PIERCED BODY PARTS

Description
7 PIERCES ON LEFT/5 PIERCES ON RIGHT

Mark Type	Mark Code
CHIN	- SCAR SCARS

Description
SCARS

Mark Type	Mark Code
KNEE, LEFT	- SCAR SCARS

Description
SCARS

Employer/School	Position/Grade	Phone Type	Phone No
KING COUNTY	ANIMAL CON	BUSINESS	(206) 296-3938

Involvement	Arrest Date/Time	Booking No
ARRESTED (BOOKED, CITED, AT LARGE FILING)	08/26/2006	06-2574

Book Date/Time	Citation No	Status	Arrest Dispo
08/26/2006 20:47:00	K54373	NORMAL BOOK IN	MISDEMEANOR

Arrest Location	POB ST	POB City
24800 W VALLEY HY	CALIFORNIA	LONG BEACH

Charge	Level	Charge Literal
RCW9A.56.050	GM	THEFT 3

### VICTIM 1: K MART

Involvement	Invl No	Type	Name	MNI
VICTIM	1	BUSINESS	K MART	447941

Type	Address	State
WORK/BUSINESS	24800 W VALLEY HWY	WASHINGTON

Phone Type	Phone No
BUSINESS	(253) 852-9071

### WITNESS 1: HEFFNER, THOMAS W

Involvement	Invl No	Type	Name	MNI	Race	Sex
WITNESS	1	INDIVIDUAL	HEFFNER, THOMAS W	538195	WHITE	MALE

Date of Birth	Age	Juvenile?
07/21/1978	28	No

Type	Address	State
WORK/BUSINESS	24800 W VALLEY HWY	WASHINGTON

Phone Type	Phone No
BUSINESS	(253) 852-9071

### WITNESS 2: BAYNE, ALISIA A

Involvement	Invl No	Type	Name	MNI	Race
WITNESS	2	INDIVIDUAL	BAYNE, ALISIA A	540267	WHITE

Sex	Date of Birth	Age	Juvenile?
FEMALE	10/25/1984	21	No

# Case Report

## KENT POLICE DEPARTMENT

06-11604

Supplement No  
ORIG

Type <b>WORK/BUSINESS</b>		Address <b>24800 W VALLEY HWY</b>				State <b>WASHINGTON</b>	
Phone Type <b>BUSINESS</b>		Phone No <b>(253) 852-9071</b>					
<b>Property</b>							
Item	Involvement				In Custody?	Value	
<b>1</b>	<b>STOLEN AND RECOVERED - RELEASED TO OWNER</b>				<b>No</b>	<b>\$3.29</b>	
Description <b>stn and recovered/ bath gloves</b>							
Type <b>Article</b>		Cat <b>PERSONAL ACCESSORIES (INC. JEWELRY)</b>			Article <b>P Glove</b>		# Pieces <b>1</b>
Link <b>OWN</b>	Involvement <b>VIC</b>	Invl No <b>1</b>	Name <b>K MART</b>		Race	Sex	Date of Birth
Item	Involvement				In Custody?	Value	
<b>2</b>	<b>STOLEN AND RECOVERED - RELEASED TO OWNER</b>				<b>No</b>	<b>\$2.99</b>	
Description <b>sar/ foot scrub</b>							
Type <b>Article</b>		Cat <b>PERSONAL ACCESSORIES (INC. JEWELRY)</b>			Article <b>P Costmetics</b>		# Pieces <b>1</b>
Link <b>OWN</b>	Involvement <b>VIC</b>	Invl No <b>1</b>	Name <b>K MART</b>		Race	Sex	Date of Birth
Item	Involvement				In Custody?	Value	
<b>3</b>	<b>STOLEN AND RECOVERED - RELEASED TO OWNER</b>				<b>No</b>	<b>\$10.04</b>	
Description <b>sar/ nail polish</b>							
Type <b>Article</b>		Cat <b>PERSONAL ACCESSORIES (INC. JEWELRY)</b>			Article <b>P Costmetics</b>		Brand <b>REVLON</b>
Link <b>OWN</b>	Involvement <b>VIC</b>	Invl No <b>1</b>	Name <b>K MART</b>		Race	Sex	Date of Birth
Item	Involvement				In Custody?	Value	
<b>4</b>	<b>STOLEN AND RECOVERED - RELEASED TO OWNER</b>				<b>No</b>	<b>\$11.98</b>	
Description <b>sar/ cigarette lighters</b>							
Type <b>Article</b>		Cat <b>PERSONAL ACCESSORIES (INC. JEWELRY)</b>			Article <b>P Cigarette Lighter</b>		# Pieces <b>2</b>
Rec Location <b>24800 W VALLEY HWY</b>				Rec City <b>KENT</b>		Rec St <b>WASHINGTON</b>	
Link <b>OWN</b>	Involvement <b>VIC</b>	Invl No <b>1</b>	Name <b>K MART</b>		Race	Sex	Date of Birth
Item	Involvement				In Custody?	Value	
<b>5</b>	<b>STOLEN AND RECOVERED - RELEASED TO OWNER</b>				<b>No</b>	<b>\$5.39</b>	
Description <b>sar/ powder (makeup)</b>							
Type <b>Article</b>		Cat <b>PERSONAL ACCESSORIES (INC. JEWELRY)</b>			Article <b>P Costmetics</b>		Brand <b>REVLON</b>
Link <b>OWN</b>	Involvement <b>VIC</b>	Invl No <b>1</b>	Name <b>K MART</b>		Race	Sex	Date of Birth
Item	Involvement				In Custody?	Value	
<b>6</b>	<b>STOLEN AND RECOVERED - RELEASED TO OWNER</b>				<b>No</b>	<b>\$3.17</b>	
Description <b>sar/ lash curler</b>							
Type <b>Article</b>		Cat <b>PERSONAL ACCESSORIES (INC. JEWELRY)</b>			Article <b>P Costmetics</b>		# Pieces <b>1</b>
Link <b>OWN</b>	Involvement <b>VIC</b>	Invl No <b>1</b>	Name <b>K MART</b>		Race	Sex	Date of Birth
Item	Involvement	In Custody?	Value				
<b>7</b>	<b>STOLEN</b>	<b>No</b>	<b>\$12.00</b>				
Description <b>sar/ hip pouch</b>							
Type <b>Article</b>		Cat <b>PERSONAL ACCESSORIES (INC. JEWELRY)</b>			Article <b>P Purse</b>		
Link <b>OWN</b>	Involvement <b>VIC</b>	Invl No <b>1</b>	Name <b>K MART</b>		Race	Sex	Date of Birth

# Case Report

## KENT POLICE DEPARTMENT

06-11604

Supplement No  
ORIG

### Modus Operandi

Property Targeted <b>OTHER</b>	Physical Evidence <b>NONE / NOT APPLICABLE</b>	Premise Type <b>OTHER COMMERCIAL</b>	Theft Type <b>SHOPLIFTING</b>
Suspect's Action <b>SELECTIVE IN LOOT</b>			
Crime Code(s) <b>THEFT</b>			

### Narrative

On 8/26/06, about 1942 hrs, I was dispatched to a SHOPLIFT at VIC K-Mart, 24800 W VALLEY HWY.

On scene, I met with Loss Prevention Manager WIT Thomas Heffner. He stated store security had the suspect in the office. He said that he wished to pursue prosecution and that he wanted the suspect trespassed for the shoplift.

I went to the office with Heffner, where I made contact with loss prevention agent WIT Alisia Bayne and ARR Jenee Westberg. I placed Westberg into custody, handcuffing, and double locking them. I first spoke with Bayne, who said she was monitoring the store's security camera system at about 1845 hrs. She said she observed Westberg in the cosmetics department, taking several cosmetics items from the counters. She said she maintained observation and watched Westberg walk to the automotive department. There Westberg removed the items' soft tags and concealed the cosmetics in her purse. Bayne said she then observed Westberg go to the automotive section, where she selected two car plug-in lighters. Westberg also placed these items in her purse. Bayne said that Westberg then selected five or six bottles of oil and some light bulbs. These items were put in Westberg's bag, so as to block the other items from view. Bayne then stated she followed Westberg to the front of the store where the suspect got into the checkout line. Westberg paid for the light bulbs and oil, however she did not attempt to pay for the cosmetics. Bayne said she then watched Westberg exit the store, where Heffner was waiting for her. Bayne and Heffner made contact with Westberg at the front of the store (about 1935 hrs), identifying themselves as store security. Westberg was walked to the office, where the unpaid items were recovered from her purse.

I then spoke with Heffner, who confirmed Bayne's story. He said that after Westberg was observed stealing the items via the store's camera system, he went out on the floor, following Westberg on foot. He said he used the store's security mirrors and other methods to observe Westberg steal the items in the automotive aisle. He also observed her place the oil and light bulbs over the top of the stolen items in her purse. He stated he wanted Westberg trespassed from K-Mart for one year, which Westberg acknowledged.

I read Westberg her Miranda warnings via my Kent codebook. While crying, she stated she understood her rights and waived her right to counsel. I asked Westberg if the accounts Bayne and Heffner gave were accurate. She said that they were, saying she was "so stupid" and "so sorry." Westberg stated she had no reason to steal the items and that she had the money to pay for them. Westberg said that she had a job and that she was worried about losing it due to her arrest. She offered to pay us \$500 if I did not arrest her. I told Westberg this was not possible. During my search incident to arrest, I looked through Westberg's purse. I found two more bottles of nail polish which she finally admitted were also stolen.

I supplied Heffner with a case number and cleared the scene.

I transported and booked Bayne into the CKCF without incident.

I contacted Kent Records and requested they trespass Westberg from K-Mart for one year.

Case cleared.

# Case Report KENT POLICE DEPARTMENT

06-11604

Supplement No  
ORIG

## Narrative

"I certify (or declare) under penalty of perjury under the laws of the State of Washington that this report is true and correct to the best of my knowledge and belief":

\_\_\_\_\_  
Date and Place

\_\_\_\_\_  
Signature

06-11604

CRIMINAL  TRAFFIC  NON-TRAFFIC  K

054373

IN THE  DISTRICT  MUNICIPAL COURT OF KENT, WASHINGTON

STATE OF WASHINGTON, PLAINTIFF VS NAMED DEFENDANT

COUNTY OF KING

CITY/TOWN OF KENT

WA017111J (KENT)

LEA ORI # WAO170700

COURT ORI #

WA017033J (AUKEEN)

THE UNDERSIGNED CERTIFIES AND SAYS THAT IN THE STATE OF WASHINGTON

DRIVER'S LICENSE NO WESTBJA245BT STATE WA EXPIRES 8/06 PHOTO ID ON PERSON  YES  NO

NAME LAST WESTBERG FIRST JENEE MIDDLE A

ADDRESS 15826 SE 382 P  IF NEW ADDRESS

CITY AUBURN STATE WA ZIP CODE 98092 EMPLOYER \_\_\_\_\_ LOCATION \_\_\_\_\_

DATE OF BIRTH 1/30/76 RACE W SEX F HEIGHT 503 WEIGHT 128 EYES Bro HAIR Bro

RESIDENTIAL PHONE NO (206) 380 6588 CELL / PAGER NO \_\_\_\_\_ WORK PHONE NO \_\_\_\_\_

VIOLATION DATE MONTH 8 DAY 26 YEAR 06 TIME 1940  INTERPRETER NEEDED

ON OR ABOUT \_\_\_\_\_ 24 HOUR \_\_\_\_\_ LANG \_\_\_\_\_

AT LOCATION 24800 W Valley Hwy CITY/COUNTY OF Kent/King

DID OPERATE THE FOLLOWING VEHICLE/MOTOR VEHICLE ON A PUBLIC HIGHWAY AND

VEHICLE LICENSE NO	STATE	EXPIRES	VEH YR	MAKE	MODEL	STYLE	COLOR
TRAILER #1 LICENSE NO	STATE	EXPIRES	TR YR	TRAILER #2 LICENSE NO	STATE	EXPIRES	TR YR
OWNER/COMPANY IF OTHER THAN DRIVER							
ADDRESS CITY STATE ZIP CODE							
ACCIDENT	BAC	COMMERCIAL	HAZARD	EXEMPT	FARM	FIRE	
NO	NR	R	I	F	READING	VEHICLE	PLACARD

DID THEN AND THERE COMMIT EACH OF THE FOLLOWING OFFENSES

1 VIOLATION/STATUTE CODE RCW 9A.56.050  DV  
Theft 3rd

2 VIOLATION/STATUTE CODE \_\_\_\_\_  DV

MANDATORY COURT APPEARANCE OR  BAIL FORFEITURE IN U.S. \$

APPEARANCE DATE MO DY YR TIME A M P M RELATED # 06-11604 DATE ISSUED 8/26/06

WITHOUT ADMITTING HAVING COMMITTED EACH OF THE ABOVE OFFENSE(S), I PROMISE TO APPEAR AS DIRECTED ON THIS NOTICE

X booked DEFENDANT'S SIGNATURE

OFFICER E. Steffes 1266824

COMPLAINT / CITATION

CRG	PLEA	CNG	FINDINGS	FINE	SUSPENDED	SUB-TOTAL	FND/JUDG DATE
1	G	NG	G NG D BF	\$	\$	\$	ABS MLD TO OLY
2	G	NG	G NG D BF	\$	\$	\$	TO SERVE
OTHER COSTS \$						WITH	DAYS SUSP
RECOMMENDED NONEXTENSION OF SUSPENSION <input type="checkbox"/>				LICENSE SUR-RENDER DATE	TOTAL COSTS \$	CREDIT/TIME SVD	

WASHINGTON UNIFORM COURT DOCKET - COURT COPY

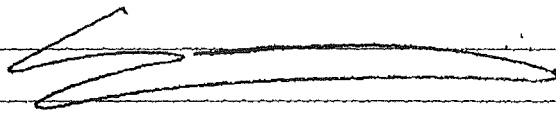
January 2003

WASHINGTON UNIFORM COURT DOCKET - POLICE COPY January 2003

054373

OFFICER REPORT

CR 06-11604 hereby incorporated  
by reference.



TRAFFIC			WEATHER				STREET				LIGHT				
LT	MED	HY	CL	RN	FG	SN	D	W	I	S	D	DWN	DSK	DK	
WITNESS NAME (LAST FIRST, M I)											PHONE				
ADDRESS						CITY				STATE		ZIP			
WITNESS NAME (LAST FIRST, M I)											PHONE				
ADDRESS						CITY				STATE		ZIP			
INCIDENT NUMBER						RELATED CITATION/INFRACTION NUMBERS						APPROVING OFFICER/NO			

# Appendix C

**2008 King County Suspension of Westerberg for lying about hours worked and claiming pay for attending seminar she did not attend**





**King County**

**Records and Licensing Services Division**

Department of Executive Services  
King County Administration Building  
500 Fourth Avenue, Room 411  
Seattle, WA 98104-2337  
206-296-1540 Fax 206-296-4029  
TTY Relay: 711

October 30, 2008

TO: Jenee Westberg, Animal Control Officer

FM: Carolyn Ableman, Division Director

RE: Notice of Discipline

*received 11-4-08*  
*Jenee Westberg*  
*Carolyn Ableman*  
*Dates of susp. are 11/9/08*  
*11/26/08*  
*12/1/08*  
*12/24/08*

The purpose of this letter is to inform you of my decision regarding the proposal to suspend you from work for four (4) days / forty (40) hours without pay. On October 21, 2008, a Loudermill meeting was held to discuss the proposed action as detailed in the September 26, 2008 proposed discipline letter.

During our meeting, you stated that you chose not have any union representation present. Additionally, you stated that you had no additional information you believed was relevant to the issue. Because you did not present any evidence to suggest you did attend the training on June 19, 2007, I have no other recourse than to uphold the decision to suspend you from work for four (4) days / forty (40) hours without pay. You will need to discuss with Tom Brown, Acting Assistant Manager, when you will serve this suspension. The suspension must occur no later than January 15, 2009. Please be advised that repeated incidents of the nature described in your Loudermill letter will not be tolerated and will be subject to appropriate disciplinary action up to and including termination.

You are advised that you may grieve this action through the grievance procedures provided in your Collective Bargaining Agreement. By copy of this letter, your union is being advised of this action.

If you believe that your most recent actions are a result of personal, behavior or medical conditions, I would encourage you to contact the King County Employee Assistance Program (EAP) at (206) 263-4752. Cooperation with the EAP will not preclude progressive disciplinary action should you not meet the above expectations and directives.

Please contact Mr. Brown at (206) 205-6306 if you have any questions.



## King County

### Records and Licensing Services Division

Department of Executive Services

King County Administration Building

500 Fourth Avenue, Room 411

Seattle, WA 98104-2337

206-296-1540 Fax 206-296-4029

TTY Relay: 711

October 30, 2008

TO: Jenee Westberg, Animal Control Officer

FM: Carolyn Ableman, Division Director

RE: Notice of Discipline

The purpose of this letter is to inform you of my decision regarding the proposal to suspend you from work for four (4) days / forty (40) hours without pay. On October 21, 2008, a Loudermill meeting was held to discuss the proposed action as detailed in the September 26, 2008 proposed discipline letter.

During our meeting, you stated that you chose not have any union representation present. Additionally, you stated that you had no additional information you believed was relevant to the issue. Because you did not present any evidence to suggest you did attend the training on June 19, 2007, I have no other recourse than to uphold the decision to suspend you from work for four (4) days / forty (40) hours without pay. You will need to discuss with Tom Brown, Acting Assistant Manager, when you will serve this suspension. The suspension must occur no later than January 15, 2009. Please be advised that repeated incidents of the nature described in your Loudermill letter will not be tolerated and will be subject to appropriate disciplinary action up to and including termination.

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Please contact Mr. Brown at (206) 205-6306 if you have any questions.

October 30, 2008

Page 2 of 2

cc: Rob Sprague, Labor Negotiator, Department of Executive Services (DES), Human Resources Division  
Bob Railton, Human Resource Manager, Department of Executive Services (DES), Director's Office  
Wendy Keller, Acting Manager, DES / Records and Licensing Services Division (RALS)  
Tom Brown, Acting Assistant Manager, DES /RALS  
Melinda Dickie, Human Resources Manager, DES /RALS  
Animal Control Officers Guild  
Personnel File



## King County

### Records and Licensing Services Division

Department of Executive Services  
King County Administration Building  
500 Fourth Avenue, Room 411  
Seattle, WA 98104-2337  
206-296-1540 Fax 206-296-4029  
TTY Relay: 711

October 28, 2008

TO: Jenee Westberg, Animal Control Officer

FM: Carolyn Ableman, Division Director

RE: Notice of Discipline

The purpose of this letter is to inform you of my decision regarding the proposal to suspend you from work for four (4) days / forty (40) hours without pay. On October 21, 2008, a Loudermill meeting was held to discuss the proposed action as detailed in the September 26, 2008 proposed discipline letter (see attached).

During our meeting, you stated that you chose not have any union representation present. Additionally, you stated that you had no additional information you believed was relevant to the issue. Because you did not present any evidence to suggest you did attend the training on June 19, 2007, I have no other recourse than to uphold the decision to suspend you from work for four (4) days / forty (40) hours without pay. You will need to discuss with Tom Brown, Acting Assistant Manager, when you will serve this suspension. The suspension must occur no later than November 30, 2008. Please be advised that repeated incidents of the nature described in your Loudermill letter will not be tolerated and will be subject to appropriate disciplinary action up to and including termination.

You are advised that you may grieve this action through the grievance procedures provided in your Collective Bargaining Agreement. By copy of this letter, your union is being advised of this action.

If you believe that your most recent actions are a result of personal, behavior or medical conditions, I would encourage you to contact the King County Employee Assistance Program (EAP) at (206) 263-4752. Cooperation with the EAP will not preclude progressive disciplinary action should you not meet the above expectations and directives.

Please contact Mr. Brown at (206) 205-6306 if you have any questions.

October 24, 2008

Page 2 of 2

cc: Rob Sprague, Labor Negotiator, Department of Executive Services (DES), Human Resources Division  
Bob Railton, Human Resource Manager, Department of Executive Services (DES), Director's Office  
Wendy Keller, Acting Manager, DES / Records and Licensing Services Division (RALS)  
Tom Brown, Acting Assistant Manager, DES /RALS  
Melinda Dickie, Human Resources Manager, DES /RALS  
Animal Control Officers Guild  
Personnel File



## King County

### Records and Licensing Services Division

Department of Executive Services

King County Administration Building

500 Fourth Avenue, Room 411

Seattle, WA 98104-2337

206-296-1540 Fax 206-296-4029

TTY Relay: 711

### HAND DELIVERED BY TOM BROWN ON SEPTEMBER 26, 2008

September 26, 2008

Jenee Westberg  
32830 SE 309th ST  
Ravensdale, WA 98051

RE: Proposed Discipline - Four (4) Day Suspension

Dear Ms. Westberg:

The purpose of this memorandum is to inform you that I am proposing suspending you for four (4) workdays without pay for theft of county time and dishonesty during the course of an investigation. These actions are subject to discipline in accordance with Section 16 of the King County Personnel Guidelines. The basis for this proposal follows.

On June 19, 2007, you were registered to attend a *Stress Management for Women* training in Puyallup sponsored by Code 4 Public Safety Education Association, Inc. On July 30, 2007, Sergeant Jane Wakefield contacted the vendor inquiring when an invoice would be sent to King County in order to process the payment. At that time, the representative from Code 4 advised Sergeant Wakefield that though they had received your pre-registration on June 11, 2007, you were not marked down as attending the course. Code 4 stated that had you attended the course, you would have received a certificate at the end of the day; however, they were still in possession of your certificate at the time Sergeant Wakefield had made her inquiry.

On March 6, 2008, you met with Melinda Dickie, Human Resources Manager, at which time you stated that Al Dams, former Acting Animal Services Manager had requested a copy of the certificate sometime late summer and again in the early fall of 2007. You stated you had put a copy of the certificate in Mr. Dams' office on two occasions. You told Ms. Dickie that the training was a half day morning seminar on June 19, 2007 and after the training, you returned to work in the afternoon to complete your shift. During your meeting with Ms. Dickie, she requested that you please provide her a copy of the certificate. You told Ms. Dickie you would provide her a copy; however, you were uncertain as to where the copy would be due to various moves you have had in the last year and that your belongings are stored at several locations.

Jenee Westerberg  
September 26, 2008  
Page 2 of 3

Subsequent to this initial request by Ms. Dickie, she emailed you on three (3) separate occasions requesting for the documentation. To date, you have not provided a copy of the certificate.

On June 20, 2008, you met with Ms. Dickie for a second time regarding this matter. Also present at this meeting was the Animal Control Officer Guild's attorney, Syd Vinnedge. During this meeting, you admitted to Ms. Dickie that on the day of the training, you arrived late as well as left early because you did not feel well. You stated that you went home for a while, and then reported to work in the afternoon. You told Ms. Dickie that you did not call into your superiors to advise them you had arrived to the training late, left the training early due to illness, and went home for a while prior to reporting to work. You claimed on your timesheet and were paid for eleven (11) hours worked for June 19, 2007.

When Ms. Dickie asked at what point during the training you received your certificate, you told her you did not pick up the certificate but rather it had been mailed to you. When Ms. Dickie asked you to explain how you could have received the certificate when Code 4 told Sergeant Wakefield on July 30, 2007 they were still in receipt of the application, you had no response.

Since your last meeting with Ms. Dickie, she contacted Code 4 on July 17, 2008 to verify one more time of your attendance at the June 19, 2007 training and was told by the vendor representative that they are still in receipt of the certificate for that course and that their accounting department did not charge the agency for your attendance. The vendor advised Ms. Dickie that they are not able to pass out certificates without proof of attendance.

Based on the above, there is no evidence to suggest you did attend the training given that the vendor is still in receipt of your certificate. I find your claim that you received the certificate in the mail not to be credible given the vendor's policy that certificates can not be distributed without proof of attendance. Further, since you did not receive a certificate, your assertion that you had provided a copy to Mr. Dams on two occasions is without merit. Honesty is a critical element of the employer-employee trust relationship. You were dishonest and you have significantly and adversely affected this relationship.

Furthermore, by your own admission, you stated that you did not work your entire shift and did not report so to your superiors; however, payroll records show that you claimed and were paid for eleven (11) hours worked. Knowingly reporting for hours worked when indeed you had not, is not only dishonest, but also constitutes theft of County time.

Therefore, I am proposing to suspend you for four (4) days without pay for dishonesty and theft of County time. This action is being taken in accordance with Section 16.4 of the King County Personnel Guidelines. You have the right to respond to the proposed discipline (known as a "Loudermill" meeting), or provide additional information you believe is relevant to the issue. At the Loudermill meeting you should come prepared to provide any additional information you feel will assist in rendering my final decision. You may have assistance from your Guild representative in preparing and/or presenting your response. If you wish to take advantage of

Jenee Westerberg  
September 26, 2008  
Page 3 of 3

this opportunity, I have scheduled a meeting for Tuesday, October 21, 2008 at 1:00 p.m. in the Animal Services Manager office. Alternatively, you may submit a written response to my office by close of business October 20, 2008. If you opt not to attend a meeting or submit a written response to me by the deadlines set forth above, a final decision will be made by October 21, 2008 based on information I currently have.

If you believe that your most recent actions are a result of personal, behavior or medical conditions, I would encourage you to contact the King County Employee Assistance Program (EAP) at (206) 263-4752. Cooperation with the EAP will not preclude progressive disciplinary action should you not meet the above expectations and directives.

Sincerely,



Carolyn Ableman  
Division Director

cc: Bob Railton, Acting HR Service Delivery Manager, Dept. of Executive Services (DES)  
Melinda Dickie, Human Resources Manager, DES, RALS  
Tom Brown, Acting Assistant Animal Services Manager, DES, RALS  
Rob Sprague, Labor Negotiator, Des, Human Resources Division  
John Diel, Guild President, Animal Control Officers Guild



# Appendix D

**2008 Westerberg arrest records showing King County Animal Control Supervisor notified of her arrest and prosecution, and details showing dishonesty.**

**BLACK DIAMOND POLICE DEPARTMENT  
CERTIFICATION FOR DETERMINATION OF PROBABLE CAUSE**

That my name is Jamey Kiblinger and that I am a commissioned Assistant Police Chief for the City of Black Diamond Police Department, and that I have reviewed the investigation conducted in Black Diamond Police case number 08-00059 and;

That there is probable cause to believe that Jenee A. Westberg committed the crimes of Violation of the Uniform Controlled Substance Act (2 counts), Possession of a Legend Drug and Possession of Drug Paraphernalia and;

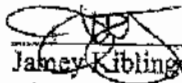
That this belief is based upon the following facts and circumstances: On January 24th 2008, at approximately 2241 hours, Sergeant Heather Dunn of the Black Diamond Police Department made a lawful traffic stop on a vehicle in which Westberg was the driver at the intersection of Roberts Drive and 3<sup>rd</sup> Avenue, Black Diamond, King County, Washington. During the initial contact with Westberg, Sergeant Dunn noticed a strong odor of marijuana coming from inside the vehicle. Westberg advised she had recently purchased the vehicle and was on her way home after riding her horse. During investigation into the suspected odor and prior to arrest, Westberg handed officers a glass smoking pipe which she advised she had just used to smoke the marijuana and still contained a partially burnt "bowl" of marijuana. Subsequently Westberg was arrested for investigation of possession of marijuana and read her Miranda warning, which she stated she understood and agreed to speak to officers. Incident to arrest, Sergeant Dunn searched Westberg's purse that was located on the passenger seat inside the vehicle. Inside the purse four prescription bottles were located, none of which were prescribed to Westberg. The bottles descriptions and contents, which were later verified by Sergeant Dunn through phone contact with Poison Control, are described as the following; 1) Prescription bottle with partially torn label containing 17 pills, listed to contain Hydrocodone (a Schedule II drug). 2) Prescription bottle prescribed to Sarah Woodruff containing 1 pill, listed to contain Propoxyphene, a generic type of Darvocet (a Schedule IV drug). 3) Prescription bottle distributed from Wilderness Vet Clinic with 7.5 unknown pills. 4) Prescription bottle with removed label containing 6 pills of Ibuprofen 800 (a Legend Drug). Westberg advised Sergeant Dunn that Woodruff had given her the Propoxyphene and that she was taking all of the drugs due to an injury while at work.

Westberg was in possession of Hydrocodone without a valid prescription, a violation of RCW 69.50.4013 (1), a schedule II controlled substance as defined in RCW 69.50.206 (b) (x) and also was in possession without a valid prescription of Propoxyphene, a violation of RCW 69.50.4013 (1), a schedule IV controlled substance as defined in RCW 69.50.210 (a) (2), both Class C Felonies. Furthermore, Westberg possessed without a prescription, Ibuprofen 800 a non scheduled Legend Drug, a violation of RCW 69.41.030 and possessed drug paraphernalia to ingest a controlled substance (marijuana), a violation of RCW 69.50.4121, both Misdemeanors.

2/15/08  
KCPD

01/25/08 00:34:25 FROM ACCESS - TERMINAL ID: DOLDB FOR UNIT: ??????  
L. WA01715B5.LIC/778LSP  
VIN/JHMAB522XEC009030  
.VYR/1984.VMA/HONDA.VMO/PRE2D  
EXP DATE/01-20-2008  
PHILPOT, LAURA K PIC NAME1 PHILPLK259C8  
21621 SE 255TH PL VEHICLE SOLD 12/11/2007  
MAPLE VALLEY, WA, 98038 TAB# IS R662971 08  
LEGAL OWNER SAME AS ABOVE PREV TAB B905738 07  
TITLE/ 10-28-2006 0630104902 PLATE ISSUE DATE/ 11-2000  
FIRST COLOR IS SILVER  
SECOND COLOR IS NO COLOR

Under penalty of perjury under the laws of the State of Washington, I certify that the foregoing is true and correct. Signed and dated by me this 15<sup>th</sup> day of February, 2008, at Black Diamond, King County, Washington.

  
\_\_\_\_\_  
Jamey Kiblinger, Assistant Police Chief  
Black Diamond Police Department

2/15/2008  
Date

Certification for Determination of Probable Cause

\*\*\*\*\*  
\*\*\* TX REPORT \*\*\*  
\*\*\*\*\*

TRANSMISSION OK

TX/RX NO	1171	
CONNECTION TEL		12062057475
SUBADDRESS		
CONNECTION ID	Pros Atty Office	
ST. TIME	08/21 03:04	
USAGE T	00'44	
PGS. SENT	2	
RESULT	OK	



### BLACK DIAMOND POLICE DEPARTMENT

25510 Lawson Street POB 309  
Black Diamond, WA 98010  
(253) 631-1012 FAX (360) 886-2901

FAX Transmittal

Date: 8-21-08 Time: 12:00

To: KEPO

Organization: Filing Unit

Phone Number: \_\_\_\_\_

FAX Number: 206-205-7475

From: Debbie

Subject: Lab Results

This Transmission Contains 2 Pages Including This Cover Sheet

Please forward to our case previously submitted. Thank!

AGENCY CASE NUMBER  
08-00059

WASHINGTON STATE PATROL - CRIME LABORATORY SYSTEM  
REQUEST FOR LABORATORY EXAMINATION

WSP LABORATORY NUMBER

NOTE: SEE REVERSE SIDE OF FORM FOR CRIME LABORATORY LOCATIONS & INSTRUCTIONS FOR USING FORM

HAS OTHER EVIDENCE IN THIS CASE BEEN PREVIOUSLY SUBMITTED TO ANY WSP CRIME LAB?  YES  NO  
OFFENSE ~~MURDER~~ VUCSA  
DATE OF OFFENSE 1-24-08

SUSPECT(S) LAST, FIRST, MI - DOB: Westberg, Jenee A 1-30-76  
VICTIM(S) - LAST, FIRST, MI - DOB: State of WA

EXAMINATION REQUESTED BY: Heather Dunn  
RUSH  COURT DATE: 1-25-08

AGENCY: Black Diamond PD POB 309  
STREET ADDRESS: Black Diamond  
CITY: WA  
STATE: WA  
ZIP CODE: 98010  
PHONE: 253-631-1012

ITEM #	ITEM DESCRIPTION	EXAM CODE	SPECIAL INSTRUCTIONS
HD1	Rx bottle 17 pills <sup>susp</sup> Hydrocodone	CON	
HD2	Rx bottle 1 pill susp Darvocet	CON	
HD3	Rx bottle 7.5 pills (2 types) unlabeled	CON	
HD4	Rx bottle 6 pills <sup>susp</sup> Ibuprofen 800-Logad	CON	

FOR LAB USE ONLY

SUBMITTED BY: [Signature] DATE/TIME: [ ]  
SUBMITTAL METHOD:  IN PERSON NO. [ ]  
 UPS NO. [ ]  
 US CERT MAIL NO. [ ]  
 US REG MAIL NO. [ ]  
RECEIVED BY: [Signature] DATE/TIME: [ ]

FOR LAB USE ONLY

RELEASED BY: [Signature] DATE/TIME: [ ]  
RECEIVED BY: [Signature] DATE/TIME: [ ]  
RELEASED TO: [Signature] DATE/TIME: [ ]  
RELEASE METHOD:  IN PERSON NO. [ ]  
 UPS NO. [ ]  
 US CERT MAIL NO. [ ]  
 US REG MAIL NO. [ ]

CHRISTINE O. GREGOIRE  
Governor



JOHN R. BATISTE  
Chief

STATE OF WASHINGTON  
WASHINGTON STATE PATROL

2203 Airport Way South, Suite 250 • Seattle, Washington 98134-2045 • (206) 262-6020 • www.wsp.wa.gov

CRIME LABORATORY REPORT

Agency: Black Diamond Police Department  
Agency Rep: Sergeant Heather Dunn  
Subject: Suspect - WESTBERG, JENEE A.

Laboratory Number: 108-000815  
Agency Case Number: 0800058  
Request Number: 0001

The following evidence was received:

Four sealed plastic bags (Items HD1, HD2, HD3, and HD4). Items HD2, HD3, and HD4 were not analyzed.


HD1 contained a plastic bottle holding 17 white, oblong tablets with "M357" imprints. One of these tablets was analyzed and found to contain dihydrocodeine (a Schedule III preparation of hydrocodone).

TEST CERTIFICATION

The undersigned certifies under penalty of perjury that:

1. I performed the test on the (substance) (object) in question;
2. The person from whom I received the (substance) (object) in question is  
Property & Evidence Custodian Victor El Koury;
3. The document on which this certificate appears or to which it is attached is a true and complete copy of my official report; and
4. Such document is a report of the results of a test which report and test were made by the undersigned who has the following qualifications and experience:

BA Chemistry 1990; MS Chemistry 1992; Forensic Scientist since 1998

  
Cynthia L. Graff, Forensic Scientist  
Seattle Crime Laboratory  
2203 Airport Way South, Suite 250  
Seattle, WA 98134  
(206)262-6020

8-18-08  
Date

SPRINT PAGES 2

RPT: PDDS-02

POLICE DEPARTMENT DEFENDANT DISPOSITIONS FOR MAY 2008

DEPT: BLACK DIAMOND PD  
UNIT: BLKDIA

DEFENDANT: MORGAN, MICHAEL CHARLES DOB: 04/17/1977 POL CASE #: 07329 CAUSE #: 58SD00211

UNIT: BLKDIA DETECTIVE: GORAL

CCN: 1843894 REFERRAL: 2070830801 VENUE: KENT

SENTENCE DATE: 05/16/2008 SENTENCE CONDITION - TYPE: CONFINEMENT

CHARGE COUNT: 001 DESCRIPTION: RES. VIOLATION DISPOSITION: BUILTY PLSA UNIT: DA AMOUNT: 0000030

DEFENDANT: WESTBERG, JEMEE AMBER DOB: 01/30/1976 POL CASE #: 0859 CAUSE #: 58SD00211

UNIT: BLKDIA DETECTIVE: SGT. H. DURN

CCN: 1892576 REFERRAL: 200917910 VENUE: SEBFTKT

SENTENCE DATE: 08/20/2008 SENTENCE CONDITION - TYPE: PROBATION

CHARGE COUNT: 001 DESCRIPTION: 2ND OFFENSE - BATTERY BY ASSAULT DISPOSITION: BUILTY PLSA UNIT: DA AMOUNT: 0000030



**INFRACTION**  **TRAFFIC**  **NON-TRAFFIC** **BD 0027234**  
 IN THE  DISTRICT  MUNICIPAL COURT OF BLACK DIAMOND WASHINGTON  
 STATE OF WASHINGTON, PLAINT # VS. NAMED DEFENDANT **08-00059**  
 COUNTY OF KING  
 CITY/TOWN OF BLACK DIAMOND  
 LEA ORI #: WA0171500 COURT ORI #: WA017181J

**THE UNDERSIGNED CERTIFIES AND SAYS THAT IN THE STATE OF WASHINGTON**

DRIVER'S LICENSE NO. [REDACTED] STATE **WA** EXPIRES **1/11** PHOTO I.D. WATCHED  YES  NO  
 NAME LAST **Westberg, Jenee** FIRST **Amber** MIDDLE [REDACTED] GDL  YES  NO  
 ADDRESS **32830 SE 209th ST** IF NEW ADDRESS   
**Ravensdale, WA 98051** EMPLOYER **RC Animal Control** OCCASION **PASSENGER**  
 DATE OF BIRTH **1-20-76** SEX **W** EYES **F** HAIR **B-03** WEIGHT **128** HAIR **BRN** HAIR **BRN**  
 RESIDENTIAL PHONE NO. **206-380-2191** CELL-PHONE NO. **360-886-1645** WORK PHONE NO. [REDACTED]  
 VIOLATION DATE **1-24-08** TIME **2239** INTERPRETER NEEDED   
 CITY OR ABLCT **Sunny LN + Roberts DR** CITY/COUNTY OF **Black Diamond/King**

**DID OPERATE THE FOLLOWING VEHICLE/MOTOR VEHICLE ON A PUBLIC HIGHWAY AND**

VEHICLE LICENSE NO. **778LSP** STATE **WA** EXPIRES **1/08** VEH. YR. **84** MAKE **Honda** MODEL **PRE** STYLE **2DR** COLOR **Silver**  
 TRAILER #1 LICENSE NO. [REDACTED] STATE [REDACTED] EXPIRES [REDACTED] TR. YR. [REDACTED] TRAILER #2 LICENSE NO. [REDACTED] STATE [REDACTED] EXPIRES [REDACTED] TR. YR. [REDACTED]  
 DRIVER COMPANY IF OTHER THAN DRIVER **Laura K Philpot**  
 ADDRESS **21621 SE 255th PL Maple Valley, WA 98038**  
 ACCIDENT  YES  NO COMMERCIAL  YES  NO HAZARDOUS  YES  NO EXPIRED  YES  NO FIRE  YES  NO  
 VEHICLE  YES  NO R.V.  YES  NO OTHER  YES  NO

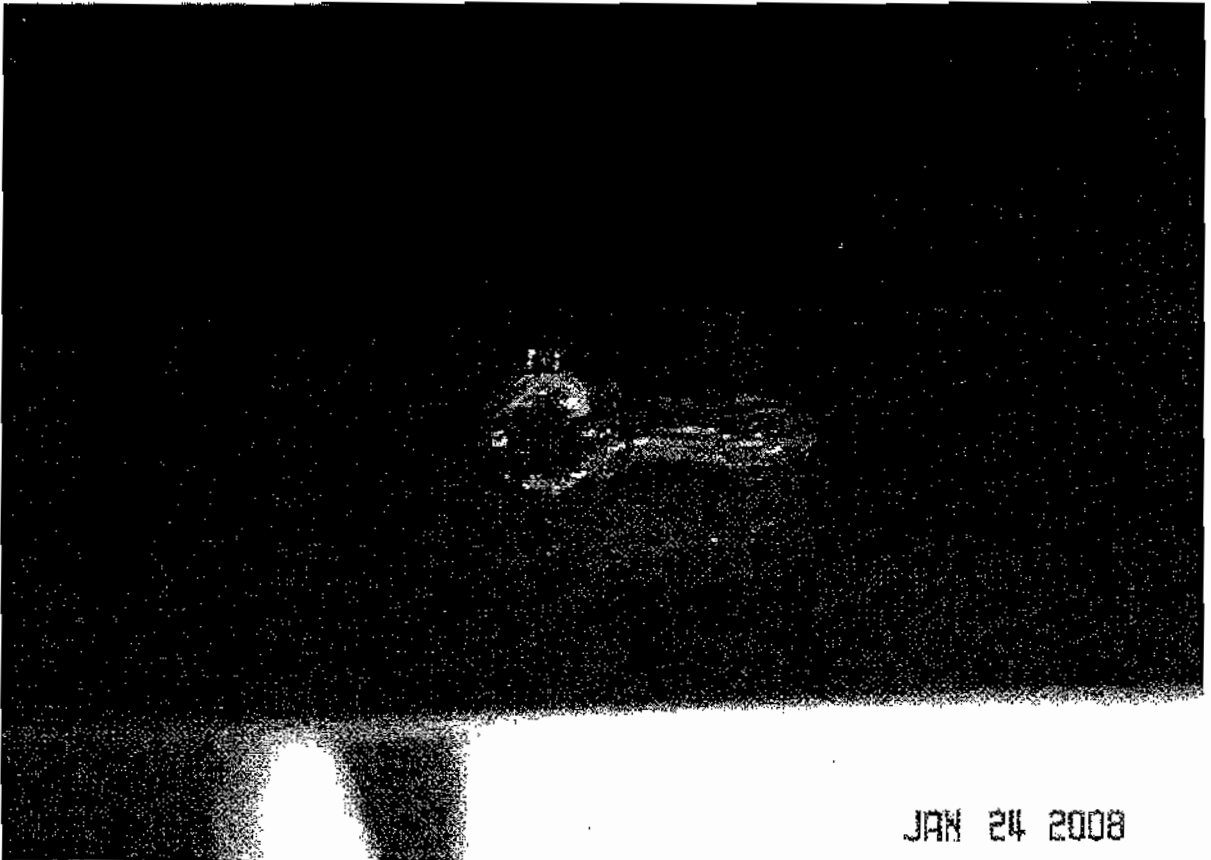
**DID THEN AND THERE COMMIT EACH OF THE FOLLOWING OFFENSES**

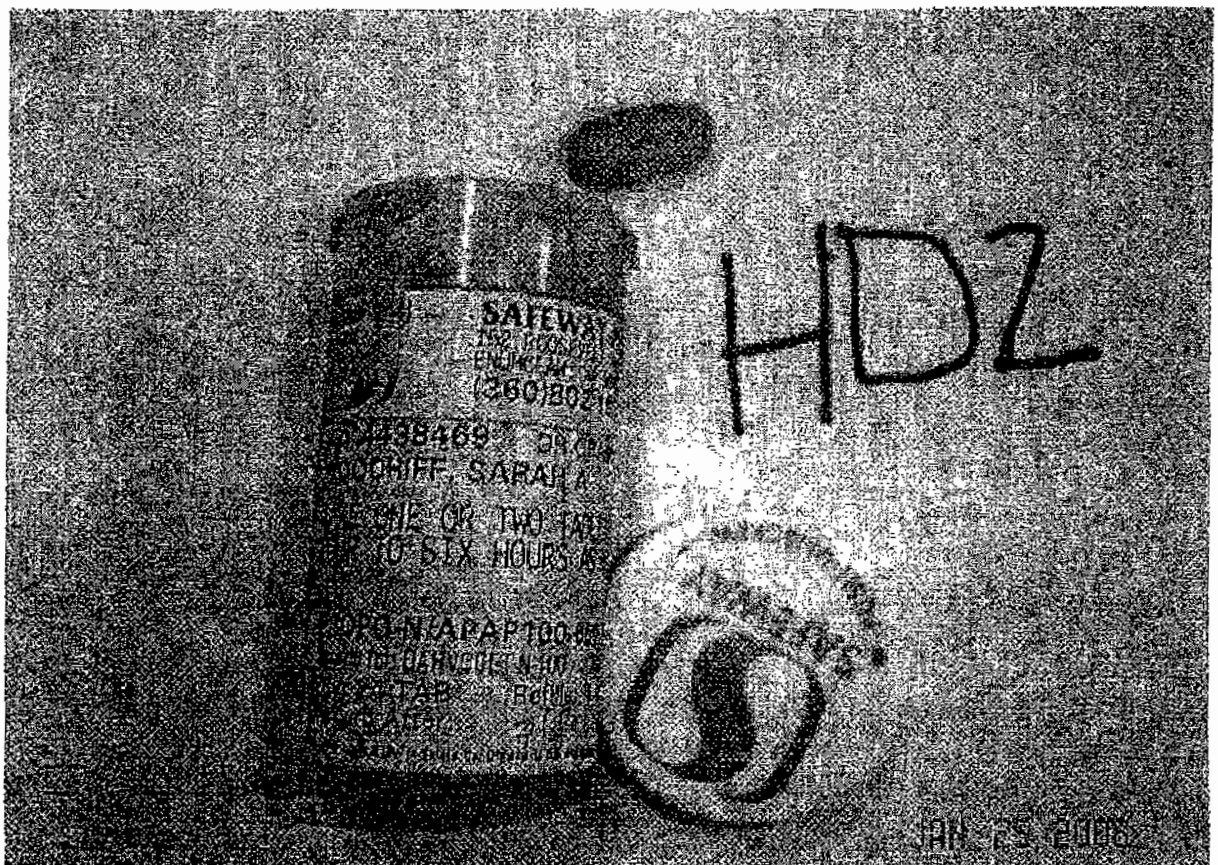
VIOLATION STATUTE CODE **RCW 46A.0519** VEHICLE SPEED **124** IN A **ZONE**  SMD  TAGS  AIRCRAFT  
**Open Alcohol Container**  
**in Vehicle**  
 VIOLATION STATUTE CODE **RCW 46A.30.020** **550**  
**No Valid Vehicle Insurance**  
 VIOLATION STATUTE CODE [REDACTED]

Served on Violator  
 Sent to Court for Mailing  
 Referred to Prosecutor  
 OFFICER **Dunn 1506**  
 U.S. \$ **124.00** DATE ISSUED **1-24-08**

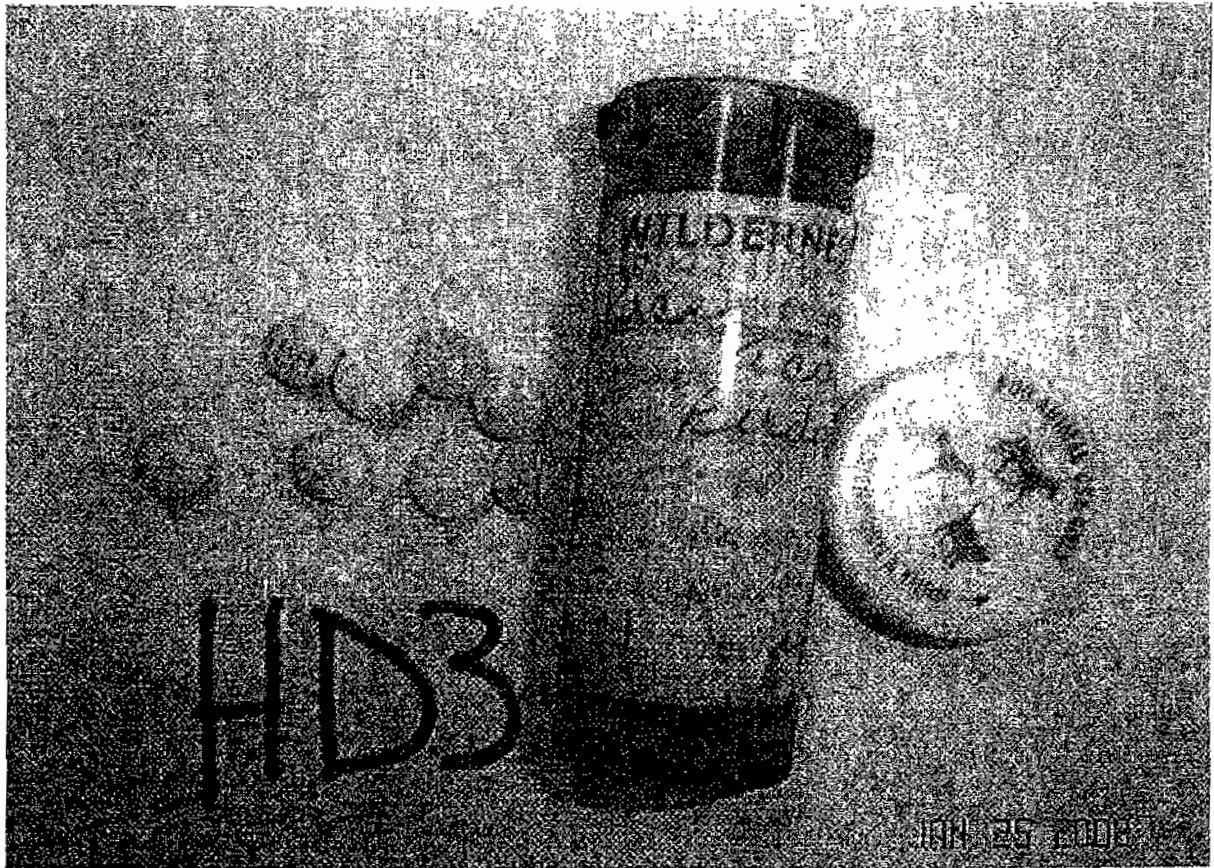
INFRACTION							
INF	RESPONSE	DISPOSITION	PENALTY	SUB-ENCOD	SUB-TOTAL	EXEMPT	ABSTRACT FILED
1	C NC	G ND D P DT	\$	\$	\$		ABSTRACT FILED
2	C NC	G ND D P DT	\$	\$	\$		ABSTRACT FILED
3	C NC	G ND D P DT	\$	\$	\$		ABSTRACT FILED













SUSPECT NAME: Westberg, Jenee Amber

08-00059  
CASE NUMBER

STATEMENT OF PROBABLE CAUSE: NON-VUCSA FELONY

CONCISELY SET FORTH FACTS SHOWING PROBABLE CAUSE FOR EACH ELEMENT OF THE OFFENSE AND THAT THE SUSPECT COMMITTED THE OFFENSE. IF NOT PROVIDED, THE SUSPECT WILL BE AUTOMATICALLY RELEASED. INDICATE ANY WEAPON INVOLVED. (DRUG CRIME CERTIFICATE BELOW.)

ON \_\_\_\_\_ AT \_\_\_\_\_, WITHIN THE CITY OF BLACK DIAMOND, COUNTY OF KING, STATE OF WASHINGTON, THE FOLLOWING DID OCCUR:

NON  
DRUG  
CRIME  
PROBABLE  
CAUSE

I CERTIFY (OR DECLARE) UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

REQUEST 72-HOUR RUSH FILE?	
YES <input type="checkbox"/>	NO <input type="checkbox"/>
ANTICIPATED FILING DATE	

DATE AND PLACE

SIGNATURE/AGENCY \_\_\_\_\_

DRUG CRIME CERTIFICATE

Part I: On 01/24/08 the suspect Jenee A. Westberg  DELIVERED  POSSESSED WITH INTENT TO DELIVER/MANUFACTURE  POSSESSED what the undersigned officer H. Dunn based on training and experience, believes to be (approximate quantity and type of controlled substance) Hydrocodone/Darvocet. Approximate street value of the controlled substance is (value of drug) \$1000.00.

Part II: FACTS INDICATING THE SUSPECT  DELIVERED  POSSESSED WITH INTENT TO DELIVER/MANUFACTURE or  POSSESSED THE CONTROLLED SUBSTANCE:

On 01/24/08 at 2241 hours within the City of Black Diamond, County of King, State of Washington, Westberg was stopped for a vehicle lab violation. Upon contact the vehicle emitted an overwhelming odor of marijuana. Westberg advised she had just smoke marijuana 20 minutes prior and handed officers a marijuana pipe. Westberg was placed into custody for investigation of possession of marijuana and read her Miranda rights which she stated she understood. Search of the vehicle incident to arrest, officers located Rx bottles containing Hydrocodone, Darvocet, unknown pills and Legend drugs, none of which were prescribed to Westberg or labeled as belonging to her.

My source of information about this crime (e.g., myself, other person with firsthand knowledge) myself

Other Facts:

I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Date and Place: 01/25/08 Black Diamond

Signature/Agency *H. Dunn Black Diamond PD*

REQUEST 72-HOUR RUSH FILE? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	SODA ZONE YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	DRUG FREE ZONE? Exact location is required: YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
ANTICIPATED FILING DATE	LAB WORK REQUESTED? (Date/Type) WSP lab to verify pill contents	

LAW ENFORCEMENT OBJECT TO RELEASE? YES  NO . IF YES, EXPLAIN WHY SAFETY OF INDIVIDUAL OR PUBLIC WILL BE THREATENED IF SUSPECT IS RELEASED ON BAIL OR RECOGNIZANCE (CONSIDER HISTORY OF VIOLENCE, MENTAL ILLNESS, DRUG DEPENDENCY, DRUG DEALING, DOCUMENTED GANG MEMBER, FAILURE TO APPEAR, LACK OF TIES TO COMMUNITY). INCLUDE FARR GUIDELINES, DESCRIBE TYPE OF WEAPON. BE SPECIFIC.

TIES TO COMMUNITY (MARITAL STATUS, TIME IN COUNTY, ETC.)

CONVICTION RECORD:

SUBJECT ARMED/DANGEROUS  SUSPECT IDENTITY IN QUESTION  WARRANT(S) FOR FTA  
 HISTORY OF FTA'S (LIST)

PRELIMINARY APPEARANCE DATE	JUDGE	BAIL AMOUNT
RETURN DATE	CONDITIONS	P.R. Y/N RETURNED Y/N EXCUSED Y/N

DRUG  
CRIME  
CERTIFICATE

OBJECT  
TO  
RELEASE

D  
P  
A

# INCIDENT REPORT

Agency: **Black Diamond Police Department**

INCIDENT NO. **08-00059**

Incident Type <b>Adult Arrest</b> <b>Drug Related</b>		Alcohol Related <b>Vehicle</b>		Incident Case #/Label <b>VUCSA</b>		#1	02	01
Reported On <b>THU 01/24/2008 22:41</b>		Occurred From Date/Time		Occurred To Date/Time		Boat of Occurrence		District
Dispatch Time		Arrived Time		Cleared Time		Report Date <b>01/25/2008</b>		Report Time <b>00:40</b>
Primary Charge <b>RCW69.50.4013 Possession of Controlled Substance</b>								UCR/NCIC Code <b>/</b>
Additional Charges <b>RCW69.41.030 Possession of Legend Drug, RCW69.50.412 Possession of Drug Paraphernalia</b>								
Location of Incident Relative Location Address <input checked="" type="checkbox"/> <b>Sunny LN and Roberts DR, Black Diamond, WA 98010</b>						Location Name (if applicable)		
Type of Premise (For Vehicles State Where Parked) [Entry Point]			Method			Weapon/Tool/Force Used		
Security				Evidence				
Officer Involved <b>Chatterson</b>								
<b>Suspects</b>								
Code <b>A-1</b>	Name: Last, First, Middle <b>Westberg, Jenae Amber</b>				Sex <b>F</b>	Race/Ethnicity <b>White/Unkno</b>		Date of Birth/Age <b>01/30/1978 31</b>
Confidentiality <input type="checkbox"/>	Address: Street, City, State, ZIP <b>32830 SE 309th ST, Ravensdale, WA 98051</b>						Home Phone Ext. <b>(360) 886-1645</b>	
Place of Employment/School/Address					Occupation:		Business Phone Ext.	
Charge Level <b>F</b>	Description <b>RCW69.50.4013 Possession of Controlled Substance</b>							UCR/NCIC Code <b>/</b>
Warrant #	Court		Judge		Bail			
Charge Level <b>M</b>	Description <b>RCW69.41.030 Possession of Legend Drug</b>							UCR/NCIC Code <b>/</b>
Warrant #	Court		Judge		Bail			
Charge Level <b>M</b>	Description <b>RCW69.50.412 Possession of Drug Paraphernalia</b>							UCR/NCIC Code <b>/</b>
Warrant #	Court		Judge		Bail			
Height <b>5'03"</b>	Weight <b>128</b>	Build <b>Normal</b>	Hair <b>Brown</b>	Eye <b>Brown</b>	Description			
Driver's License <b>[REDACTED]</b>		State <b>WA</b>	Social Security No. <b>[REDACTED]</b>		Other I.D.			

I.D. No./Name of Reporting Officer <b>1506 Dunn, Heather M</b>	Prep Date/Time <b>01/25/2008 00:38</b>	Approval 	Date/Time <b>1/24/08</b>	Distribution <b>Records</b>
RECORDS	DISTRIBUTION DATE <b>ED PROS 1-29-08</b>	Supervisor <b>[REDACTED]</b>		

**AMY**  
**ENTERED**  
**1-29-08**



AGENCY: <b>Black Diamond Police Department</b>				Incident Classification: <b>VUCSA</b>				Report No.: <b>08-00059</b>			
<b>Vehicles</b>											
Code	Stolen Evidence	Impound Abandoned Seized	Victim Suspect Held	Recovered	License No.	License State	License Year	License Type	VIN/IDN		
V-1	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	778LSP	WA	01/2008	Passenger Car	Jhmb522xec009030		
Year	Make	Model	Body Style	Color	Special Features/Description						
1984	Honda	Pro	2 Door	Silver/Alum	Nothing of value left in vehicle						
Registered Owner Name: <b>Philpot, Laura K</b>									Home Phone		Ext.
Vehicle Disposition			Registered Owner's Address, City, State, ZIP						Value \$		
<input type="checkbox"/> Left at Scene <input type="checkbox"/> Driven Away <input checked="" type="checkbox"/> Towed			21621 SE 255th PL, Maple Valley, WA 98038								
Locked	Keys in Vehicle	Delinquent Payment	Victim Consent	Driveable	Estimated Damage	Damage		Shade II		Damaged Area	
<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No		<input type="checkbox"/> Window <input type="checkbox"/> Top	<input type="checkbox"/> Interior <input type="checkbox"/> Underseat				
Tow Company				Hold Requested By:				Hold For			
Released Info	Date	Time	Release No.	Releasing Authority		Compl. Received	Date	Time	Operator's Name		

**Narrative**

I am commissioned by the City of Black Diamond to enforce the laws of the State of Washington and the City of Black Diamond. This investigation occurred within the City Limits of Black Diamond, Washington on the times and dates listed below.

On 01/24/08 at approx. 2241 hours, I was on routine patrol at Sunny LN and Roberts DR. A silver colored Honda, WA State plate number 778LSP passed me and I ran the plate number for routine stolen. The return showed the vehicle tabs to be expired 01/20/08. I caught up to the vehicle and initiated a traffic stop at Roberts DR and 3rd AVE.

I made contact with the female driver of the vehicle. I immediately saw a King County badge sitting on her lap. I advised the driver why I stopped her and asked for her license, registration and vehicle insurance. As I was speaking with the driver, later identified as Jenee A. Westberg (DOB: 01/30/76), I could smell an overwhelming odor of marijuana coming from inside the vehicle. Westberg advised me that she had recently purchased the vehicle and was on her way home after riding her horse. I asked Westberg who she worked for and she stated she worked for King County Animal Control. She later advised me she did not have any vehicle insurance. I returned to my vehicle and asked for Narcotics K9 handler, Officer Chatterson, to respond to my location.

Upon Officer Chatterson's arrival, we both recontacted Westberg and spoke with her. Officer Chatterson asked Westberg if there was any marijuana in the vehicle and advised her we could smell the odor of marijuana coming from her vehicle. Westberg advised us that her dog (that was in the vehicle at the time) had just rolled in dead salmon along the river and that was the odor we were smelling. From my training and experience, I positively recognized the odor coming from the vehicle as marijuana. We advised Westberg that we were very sure the odor was not dead salmon and asked Westberg when the last time was that she smoked marijuana. Westberg denied smoking any marijuana and then stated she had just come from a house where others were smoking marijuana. Officer Chatterson advised Westberg that the odor was too strong and that it smelled as if she had smoked the marijuana in her vehicle. Westberg denied smoking any marijuana until I advised her

CONTINUED NEXT PAGE

1580974420

AGENCY <b>Black Diamond Police Department</b>	Incident Classification <b>VUCSA</b>	Incident No. <b>08-00059</b>
-----------------------------------------------	-----------------------------------------	---------------------------------

that I wanted her to step out of the vehicle. Westberg then stated she had smoked "a few hits" of marijuana at her parents house approx 20 minutes prior. She then handed Officer Chatterson a glass smoking pipe from her coat pocket which she stated she had just smoked her marijuana out of. The pipe still contained a partially burnt "bowl" of marijuana (HD5). I asked Westberg to step out of the vehicle, which she did, and advised her she was under arrest for investigation of possession of marijuana, I searched Westberg and placed her in the rear of my patrol vehicle, I asked Westberg if she would be willing to do voluntary field sobriety tests and she stated she would not. I asked Westberg if she had been recently arrested for anything and she stated she had been arrested for shoplifting. Westberg repeatedly asked if I would just let her drive home because she was the on-call animal control officer for the evening. After telling her that it was probably not a good idea that she was the on-call officer because she had just smoked marijuana, Westberg advised that she had lied and was not supposed to be to work until the next morning. Officer Chatterson read Westberg her Miranda warnings from a printed card, which she stated she understood and agreed to speak with us. Westberg advised there was no more marijuana in the vehicle and that we might find a plastic baggie that contained marijuana residue inside the vehicle.

Officer Chatterson applied K9 Sabre to the interior/exterior of the vehicle and found no illegal substances, Officer Chatterson did locate two open 12 oz. bottles of Smirnoff alcohol that still had moisture in the bottom of the bottles. Search of Westberg's purse, I located 4 prescription bottles, none of which showed to be prescribed to Westberg. One of the prescription bottles had the label torn off other than the lower left hand corner which indicated the pills in the bottle were hydrocodone. There were 17 pills in the bottle (HD1). A second prescription bottle filled at Safeway indicated that the pills were a generic type of Darvocet and prescribed to Sarah A. Woodriff. There was one pill in the bottle (HD2). I asked Westberg who Woodriff was and she stated that Woodriff was a dog and the pills were prescribed to that dog. I confronted Westberg that Safeway does not fill prescriptions for animals and that she was lying to me. She then told me she was sorry and that her friend, Sarah Woodriff, had left the pills at her house and she was returning them to her. She then later changed her story again and stated Woodriff had given her the pills after Woodriff gave birth to a child. A third prescription bottle located in Westberg's purse was from Wilderness Vet Clinic in Maple Valley. The bottle label advised it contained Ace 25mg, which I later learned was not a controlled substance. The bottle contained two types of pills, both yellow in color. One type of pill was labeled 4333 (5.5 pills located) and the second type of pill was labeled 02/20 (2 pills located) (HD3). A fourth prescription bottle found in Westberg's purse contained 6 pills. The bottle label had been removed and the pills were labeled IBU 800 (HD4). Westberg advised me that she had been injured at work by lifting a heavy dog and missed a day of work due to that injury. She stated that was why she was taking the medications.

Westberg requested I contact her Sergeant from King County Animal Control, Sgt. Steve Couvion. She requested Sgt. Couvion come to the scene to take possession of her dog. I contacted Sgt. Couvion and advised him of my contact with Westberg. He stated he was the on-call officer for the evening and would come to the scene.

Upon Sgt. Couvion's arrival, he took custody of Westberg's dog from the vehicle. I advised him that Westberg was in custody for felony VUCSA. I advised that she would not be booked into jail but that the charges would be forwarded to the King County Prosecutor's Office. I advised Sgt. Couvion

CONTINUED NEXT PAGE



MENCY <i>Black Diamond Police Department</i>	Incident Classification <b>VUCSA</b>	Incident No. <b>08-00059</b>
----------------------------------------------	-----------------------------------------	---------------------------------

that I wanted her to step out of the vehicle. Westberg then stated she had smoked "a few hits" of marijuana at her parents house approx 20 minutes prior. She then handed Officer Chatterson a glass smoking pipe from her coat pocket which she stated she had just smoked her marijuana out of. The pipe still contained a partially burnt "bowl" of marijuana (HD5). I asked Westberg to step out of the vehicle, which she did, and advised her she was under arrest for investigation of possession of marijuana. I searched Westberg and placed her in the rear of my patrol vehicle. I asked Westberg if she would be willing to do voluntary field sobriety feats and she stated she would not. I asked Westberg if she had been recently arrested for anything and she stated she had been arrested for shoplifting. Westberg repeatedly asked if I would just let her drive home because she was the on-call animal control officer for the evening. After telling her that it was probably not a good idea that she was the on-call officer because she had just smoked marijuana, Westberg advised that she had lied and was not supposed to be to work until the next morning. Officer Chatterson read Westberg her Miranda warnings from a printed card, which she stated she understood and agreed to speak with us. Westberg advised there was no more marijuana in the vehicle and that we might find a plastic baggie that contained marijuana residue inside the vehicle.

Officer Chatterson applied K9 Sabre to the interior/exterior of the vehicle and found no illegal substances, Officer Chatterson did locate two open 12 oz. bottles of Smirnoff alcohol that still had moisture in the bottom of the bottles. Search of Westberg's purse, I located 4 prescription bottles, none of which showed to be prescribed to Westberg. One of the prescription bottles had the label torn off other than the lower left hand corner which indicated the pills in the bottle were hydrocodone. There were 17 pills in the bottle (HD1). A second prescription bottle filled at Safeway indicated that the pills were a generic type of Darvocet and prescribed to Sarah A. Woodriff. There was one pill in the bottle (HD2). I asked Westberg who Woodriff was and she stated that Woodriff was a dog and the pills were prescribed to that dog. I confronted Westberg that Safeway does not fill prescriptions for animals and that she was lying to me. She then told me she was sorry and that her friend, Sarah Woodriff, had left the pills at her house and she was returning them to her. She then later changed her story again and stated Woodriff had given her the pills after Woodriff gave birth to a child. A third prescription bottle located in Westberg's purse was from Wilderness Vet Clinic in Maple Valley. The bottle label advised it contained Ace 25mg, which I later learned was not a controlled substance. The bottle contained two types of pills, both yellow in color. One type of pill was labeled 4333 (5.5 pills located) and the second type of pill was labeled 02/20 (2 pills located) (HD3). A fourth prescription bottle found in Westberg's purse contained 6 pills. The bottle label had been removed and the pills were labeled IBU 800 (HD4). Westberg advised me that she had been injured at work by lifting a heavy dog and missed a day of work due to that injury. She stated that was why she was taking the medications.

Westberg requested I contact her Sergeant from King County Animal Control, Sgt. Steve Couvion. She requested Sgt. Couvion come to the scene to take possession of her dog. I contacted Sgt. Couvion and advised him of my contact with Westberg. He stated he was the on-call officer for the evening and would come to the scene.

Upon Sgt. Couvion's arrival, he took custody of Westberg's dog from the vehicle. I advised him that Westberg was in custody for felony VUCSA. I advised that she would not be booked into jail but that the charges would be forwarded to the King County Prosecutor's Office. I advised Sgt. Couvion

CONTINUED NEXT PAGE

12/02/07 4425

AGENCY: <b>Black Diamond Police Department</b>	Incident Classification <b>VUGSA</b>	Incident No. <b>08-00059</b>
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that this was not a professional courtesy and that cases such as these are often handled this way. Sgt. Couvlon advised that he agreed and stated Westberg should be processed the same as any other subject.

At approx. 0018 hours, I cited Westberg for Open Container and No Valid Vehicle Insurance (BD0027234). I advised her charges of VUGSA, would be forwarded to the King County Prosecutor's Office and she was released to Sgt. Couvlon. Her vehicle was impounded with Royal Towing of Black Diamond.

It should be noted that charges of DUI will not be forwarded due to insufficient evidence that being under the influence of marijuana affected her ability to drive.

All evidence items were transported to the Black Diamond police station and processed into evidence. The pills located in Westberg's purse will be sent to the WSP crime lab to confirm their content.

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct

*A. Dunn* 1506 \_\_\_\_\_ 1-25-08 Black Diamond  
Signature of Officer Date/Place Signed

END OF INCIDENT REPORT

# Black Diamond Police Department

## PROPERTY/EVIDENCE REPORT

PAGE 1 INCIDENT NO. 08-00059

DATE 01/25/2008	INCIDENT CLASSIFICATION VUCSA	DIVISION Patrol
CRIME DATE	INCIDENT LOCATION Sunny LN and Roberts DR, Black Diamond, WA 98010	KEY CASE NUMBER

REPORTING OFFICER Dunn, Heather M	ID 1506
ASSIGNED DETECTIVE	DETECTIVE'S PHONE NUMBER
DETECTIVE'S STATION/UNIT	

PERSON SUBMITTING (OTHER THAN DEPARTMENT)	OUTSIDE AGENCY	OUTSIDE AGENCY CASE NO.
-------------------------------------------	----------------	-------------------------

ADDRESS	PHONE
---------	-------

HAS OTHER EVIDENCE BEEN PREVIOUSLY SUBMITTED ON THIS CASE?	LAB SERVICE? Yes
------------------------------------------------------------	---------------------

**EVIDENCE INFORMATION SECTION**

ITEM #	LAB SERVICE?	ITEM DESCRIPTION	QUANTITY
HD1	Yes	Rx bottle 17 pills	
MAKE	MODEL	CALIBER	VALUE
Hydrocodone			
ID/SERIAL NUMBER	EVIDENCE TYPE	FILE CONTROL #	
	Found Narcotics		
PROP. AFFILIATION	NAME	SEARCH WARRANT?	
Suspect	Westberg, Jenee Amber	FINDER WISHES TO CLAIM?	

PLACE BAR CODE LABEL  
HERE

ITEM #	LAB SERVICE?	ITEM DESCRIPTION	QUANTITY
HD2	Yes	Rx bottle 1 pill	
MAKE	MODEL	CALIBER	VALUE
Darvocet			
ID/SERIAL NUMBER	EVIDENCE TYPE	FILE CONTROL #	
	Found Narcotics		
PROP. AFFILIATION	NAME	SEARCH WARRANT?	
Suspect	Westberg, Jenee Amber	FINDER WISHES TO CLAIM?	

PLACE BAR CODE LABEL  
HERE

ITEM #	LAB SERVICE?	ITEM DESCRIPTION	QUANTITY
HD3	Yes	Rx Bottle 7.5 pills (2 types)	
MAKE	MODEL	CALIBER	VALUE
unknown			
ID/SERIAL NUMBER	EVIDENCE TYPE	FILE CONTROL #	
	Found Narcotics		
PROP. AFFILIATION	NAME	SEARCH WARRANT?	
Suspect	Westberg, Jenee Amber	FINDER WISHES TO CLAIM?	

PLACE BAR CODE LABEL  
HERE

ITEM #	LAB SERVICE?	ITEM DESCRIPTION	QUANTITY
HD4	No	Rx bottle 6 pills	
MAKE	MODEL	CALIBER	VALUE
Ibuprofen 800			
ID/SERIAL NUMBER	EVIDENCE TYPE	FILE CONTROL #	
	Found Narcotics		
PROP. AFFILIATION	NAME	SEARCH WARRANT?	
		FINDER WISHES TO CLAIM?	

PLACE BAR CODE LABEL  
HERE

ITEM #	LAB SERVICE?	ITEM DESCRIPTION	QUANTITY
HD5	No	Glass Smoking Pipe	
MAKE	MODEL	CALIBER	VALUE
ID/SERIAL NUMBER	EVIDENCE TYPE	FILE CONTROL #	
	Found Narcotics		
PROP. AFFILIATION	NAME	SEARCH WARRANT?	
Suspect	Westberg, Jenee Amber	FINDER WISHES TO CLAIM?	

PLACE BAR CODE LABEL  
HERE

CONTINUED ON NEXT PAGE PROPERTY/EVIDENCE FORM

**ANALYSIS (Lab. use only)**

ANALYSIS TYPE	PERSON ASSIGNED	ITEMS	DATE ASSIGNED	DATE COMPLETED	REGULAR TIME	OVERTIME	ADDITIONAL PROCESS

**NARRATIVE**

HD1 Rx bottle 17 pills suspected Hydrocodone located in purse  
 HD2 Rx bottle 1 pill suspected Darvocet located in purse  
 HD3 Rx bottle 7.5 pills unknown content located in purse  
 HD4 Rx bottle 6 pills suspected Ibuprofen 800 (Legend drug) located in purse  
 HD5 Glass smoking pipe located in suspect coat pocket





**Black Diamond Police Department**  
Motor Vehicle Report

25510 Lawson Street, POB 309  
Black Diamond, WA 98010  
Business (253) 631-1012 FAX (360) 886-2901

Date: 01/24/08	Dispatch/On View Time: 2041	BDD Case #:	Time Arrived:	Time Cleared:
Report Classification	<input type="checkbox"/> Vehicle Theft <input type="checkbox"/> Vehicle Theft & Recovery	<input type="checkbox"/> Vehicle Recovery Only <input type="checkbox"/> Theft of Two License Plates Only	<input checked="" type="checkbox"/> Impound <input type="checkbox"/> Impound Waiver <input type="checkbox"/> See Back	
Offense Classification (DUI, DWLS, etc.) <b>VUCSA / Poss of Paraphernalia</b>				
LOCATION <b>Roberts Dr &amp; Sunny Ln</b>		City:	ST:	ZIP:
Vehicle Information				
License Number: <b>778LSP</b>	ST: <b>WA</b>	Exp: <b>01/20/08</b>	VIN: <b>JHMAB52AKEC00903n</b>	
Year: <b>04</b>	MKE: <b>Honda</b>	MOD: <b>Prelude</b>	Style: <b>2 Door</b>	Color 1: <b>Silver</b> Color 2: <b>Silver</b>
Registered Owner	Address	City	ST	ZIP
<b>Philpat, Laura K</b>	<b>21621 SE 255 PL</b>	<b>Maple Valley</b>	<b>WA</b>	<b>98039</b>
Driver	Address	City	ST	ZIP
<b>Westberg, Jenee A</b>	<b>38518 210 Ave SE</b>	<b>Kent</b>	<b>WA</b>	<b>98042</b>
Home Phone: ( ) - ( ) - ( )	(ext)	Work Phone: ( ) - ( ) - ( )	(ext)	
Legal Owner	Address	City	ST	ZIP
<input type="checkbox"/> same				
Home Phone: ( ) - ( ) - ( )	(ext)	Work Phone: ( ) - ( ) - ( )	(ext)	
Special Identifying Characteristics (Damage, Wheels, Custom items, etc.)				
Vehicle Theft Information				
Location	City	ST	ZIP	
<input type="checkbox"/> same				
Check Applicable Box	<input type="checkbox"/> Garage	<input type="checkbox"/> Carport	<input type="checkbox"/> Driveway	<input type="checkbox"/> Street
	<input type="checkbox"/> Alley	<input type="checkbox"/> Repair Facility	<input type="checkbox"/> Parking Lot	<input type="checkbox"/> Other (Indicate in report)
Person Reporting Theft	Address	City	ST	ZIP
Home Phone: ( ) - ( ) - ( )	(ext)	Work Phone: ( ) - ( ) - ( )	(ext)	
Check Applicable Box	<input type="checkbox"/> Divorce or Separation in Progress	<input type="checkbox"/> Payments Overdue	<input type="checkbox"/> Doors Locked	<input type="checkbox"/> Keys in Car
	<input type="checkbox"/> Engine Running	<input type="checkbox"/> Ignition Locked		
Sobriety of Reporting Person	<input type="checkbox"/> Has not been drinking	<input type="checkbox"/> HBD (Has been drinking)	<input type="checkbox"/> Intoxicated	<input type="checkbox"/> Unknown
	<input type="checkbox"/> Other (Indicate in report)			
Insurance Company:	Agent:	Phone: ( ) - ( ) - ( )		
Owner/Agent/Attitude of Theft				
I, THE UNDERSIGNED, HEREBY DECLARE THIS TO BE A TRUE AND CORRECT REPORT. I DID NOT GIVE ANYONE PERMISSION TO TAKE OR USE THE DESCRIBED VEHICLE. I AM THE OWNER OR PERSON WHO WAS LEGALLY IN POSSESSION OF THE DESCRIBED VEHICLE AND I WILL TESTIFY IN COURT, UNDER OATH TO THE FACTS HEREIN. I UNDERSTAND THAT I MAY BE CHARGED WITH VIOLATION OF RCW 9A.06.01, "OBSTRUCTION OF JUSTICE" BY FILING A FALSE REPORT. IF I RECOVER POSSESSION OF THIS VEHICLE, I UNDERSTAND THAT I MUST NOTIFY THE POLICE DEPARTMENT IMMEDIATELY OF THE RECOVERY. I ALSO UNDERSTAND THAT I MAY BE CHARGED WITH VIOLATION OF 46.52.110 AND ALSO HELD LIABLE FOR ANY EXPENSES RESULTING FROM MY FAILURE TO NOTIFY THE POLICE DEPARTMENT.				
Date:	Time:	Signature of Reporting Person <b>X</b>		
Recovery, Impound, Waiver or Release Information				
Location	City	ST	ZIP	
<input type="checkbox"/> same				
Condition of Recovery:	<input type="checkbox"/> Same as when Stolen	<input type="checkbox"/> Total Loss	<input type="checkbox"/> Other - See Narrative	
Vehicle Missing/Stripped of:	<input type="checkbox"/> License Plates	<input type="checkbox"/> VIN Plate	<input type="checkbox"/> Transmission	<input type="checkbox"/> Engine
How Stated:	<input type="checkbox"/> Punched Ignition	<input type="checkbox"/> Keys	<input type="checkbox"/> Flat Wired	<input type="checkbox"/> Coasted/Pushed
<input type="checkbox"/> Hold	Reason for Hold	<input type="checkbox"/> DWLS	<input type="checkbox"/> DUI	<input type="checkbox"/> Other
		# of Days on Hold	<input type="checkbox"/> Safe Keeping Only	
Impound Inventory - Narrative				
<b>Nothing of value in vehicle</b>				
<b>1-29-08</b>				
Tow Company:	Towed From / To	City	Tow Operator's Signature	
NAME: <b>Royal Towing</b>	FROM: <b>Roberts Dr / 3rd Ave</b>	<b>Black Diamond</b>	<b>Black Diamond High School</b>	
ADD: <b>Black Diamond</b>	TO: <b>Royal Towing</b>	<b>Black Diamond</b>		
OFFICER SIGNATURE: <b>[Signature]</b>	SERIAL: <b>1504</b>	UNIT: <b>K970</b>	DATE: <b>01-24-08</b>	

Printer No. 2057-1 (253) 631-8181

Copy 1: Office Copy 2: Tow Company Copy 3: Driver

# SUPERFORM

CONJCN NUMBER	B/A NUMBER	PGN NUMBER
AGENCY: <input type="checkbox"/> UNINCORPORATED KING COUNTY		08-00059
<input checked="" type="checkbox"/> CITY OF BLACK DIAMOND		FILE NUMBER
		CASE NUMBER

DATE OF ARREST/TIME 01/24/08 2241hours	BOOKING DATE/TIME	ARREST LOCATION Roberts DR and 3 <sup>rd</sup> AVE, Black Diamond WA	
NAME (LAST, FIRST, MIDDLE/II, SR., 1 <sup>st</sup> , 2 <sup>nd</sup> ) Westberg, Jenee Amber		ALIASE, NICKNAMES	
IDENTITY IN DOUBT? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	DOB 01/30/76	SEX F	
RACE W	HGT 5-03	WGT 128	
EYES Bm	HAIR Bm	SKIN TONE fair	
SCARS, MARKS, TATTOOS, DEFORMITIES		ARMED/DANGEROUS YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	
LAST KNOWN ADDRESS 32830 SE 309 <sup>th</sup> ST, Ravensdale WA 98051		CITY STATE ZIP RESIDENCE PHONE 360 886-1645	
OCCUPATION King County Animal Control		BUSINESS PHONE 206 380-2191	
EMPLOYER SCHOOL (ADDRESS, SHOP/UNION NUMBER)		CITIZENSHIP US	
DRIVER'S LICENSE #	STATE WA	APFS #	
	FBI #	STATE ID #	
VEHICLE LICENSE #	STATE	YEAR	
MAKE	MODEL	VEHICLE LOCATION	
PERSON TO BE CONTACTED IN CASE OF EMERGENCY		RELATIONSHIP	
ADDRESS		CITY	
STATE		PHONE	
1) OFFENSE <input type="checkbox"/> DV VUCSA Possession (2 counts)	RCW/ORD# RCW 69.50.4013	COURT/CAU#	
2) OFFENSE <input type="checkbox"/> DV	RCW/ORD#	COURT/CAU#	
3) OFFENSE <input type="checkbox"/> DV	RCW/ORD#	COURT/CAU#	
4) OFFENSE <input type="checkbox"/> DV	RCW/ORD#	COURT/CAU#	
ANY OTHER ADDITIONAL CHARGES Poss of Legend Drug/Paraphernalia		CRIMINAL TRAFFIC CITATION ATTACHED? YES <input type="checkbox"/> NO <input type="checkbox"/>	
		ACCOMPLICES	
LIST VALUABLE ITEMS OR PROPERTY LEFT FOR ARRESTEE AT JAIL			
LIST VALUABLE ITEMS OR PROPERTY ENTERED INTO EVIDENCE YES <input type="checkbox"/> NO <input type="checkbox"/> IF YES DESCRIBE: (SIMPLE DESCRIPTION, IDENTIFYING MARKS, SERIAL #)			
TOTAL CASH OF ARRESTEE \$ 0	WAS CASH TAKEN INTO EVIDENCE? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> AMOUNT: \$	SIGNATURE OF JAIL STAFF RECEIVING ITEMS/SERIAL #	
ARRESTING OFFICER/SERIAL # Sgt. H. Dunn #1506	TRANSPORTING OFFICER/SERIAL #	SUPERVISOR SIGNATURE/SERIAL #	
SUPERFORM COMPLETED BY (SIGNATURE/SERIAL #) <i>H. Dunn 1506</i>		CONTACT PERSON FOR ADDITIONAL INFORMATION (NAME/SERIAL #/PHONE) Sgt. Heather Dunn (253) 831-1012	
MISDEMEANOR BOOKINGS: Complete to this line. FELONY BOOKINGS: Complete both sides. OBJECTION TO RELEASE (MISDEMEANOR OR FELONY) IS ON REVERSE SIDE.			
COUNT FILE	SUPERIOR COURT <input type="checkbox"/>	IN CUSTODY	COURT CAUSE (STAMP OR WRITE)
	FILING INFO. <input type="checkbox"/>	AT LARGE	
WARRANT INFO. / EXTRADITE	COURT/DBT.	DIST. CT.	SUP. CT. DATE
	CT. NO.	BOND \$	WARRANT NUMBER
WARRANT DATE	OFF CODE OFFENSE	AMOUNT OF BAIL \$	FELONY <input type="checkbox"/> BENCH <input type="checkbox"/> MISD <input type="checkbox"/> ARREST <input type="checkbox"/>
POLICE AGENCY ISSUING	COURT	WARRANT RELEASED TO: SERIAL: UNIT DATE TIME	
PERSON APPROVING EXTRADITION	SEARCHING-LOCAL ONLY WAGO-STATE WIDE <input type="checkbox"/>	NCIC-WILL EXTRADITE FROM ID & OR ONLY <input type="checkbox"/>	NCIC-WILL EXTRADITE FROM OR, ID, MT, WY, CA, NV, VT, CO, AZ, NH, HI, AK <input type="checkbox"/>
NCIC-WILL EXTRADITE FROM ALL 50 STATES <input type="checkbox"/>	CC# _____	DOE _____	DOC _____
	WAC# _____	TOE _____	TOC _____
	NDC# _____	OP# _____	OP# _____



**RCW 69.50.4013**

**Possession of controlled substance — Penalty.**

(1) It is unlawful for any person to possess a controlled substance unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his or her professional practice, or except as otherwise authorized by this chapter.

(2) Except as provided in RCW 69.50.4014, any person who violates this section is guilty of a class C felony punishable under chapter 9A.20 RCW.

[2003 c 53 § 334.]

**Notes:**

**Intent — Effective date — 2003 c 53:** See notes following RCW 2.48.180.

**RCW 69.50.206**  
**Schedule II.**

(a) The drugs and other substances listed in this section, by whatever official name, common or usual name, chemical name, or brand name designated, are included in Schedule II.

(b) Substances. (Vegetable origin or chemical synthesis.) Unless specifically excepted, any of the following substances, except those listed in other schedules, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by combination of extraction and chemical synthesis:

(1) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate, excluding apomorphine, dextrophan, nalbuphine, nalmefene, naloxone, and naltrexone, and their respective salts, but including the following:

- (i) Raw opium;
- (ii) Opium extracts;
- (iii) Opium fluid;
- (iv) Powdered opium;
- (v) Granulated opium;
- (vi) Tincture of opium;
- (vii) Codeine;
- (viii) Ethylmorphine;
- (ix) Etorphine hydrochloride;
- (x) Hydrocodone;
- (xi) Hydromorphone;
- (xii) Metopon;
- (xiii) Morphine;
- (xiv) Oxycodone;
- (xv) Oxymorphone; and
- (xvi) Thebaine.

(2) Any salt, compound, isomer, derivative, or preparation thereof that is chemically equivalent or identical with any of the substances referred to in subsection (b)(1) of this section, but not including the isoquinoline alkaloids of opium.

(3) Opium poppy and poppy straw.

(4) Coca leaves and any salt, compound, derivative, or preparation of coca leaves including cocaine and ecgonine, and their salts, isomers, derivatives, and salts of isomers and derivatives, and any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions of coca leaves which do not contain cocaine or ecgonine.

(5) Methylenedioxyecgonine (cocaine — its salts, optical isomers, and salts of optical isomers).

(6) Concentrate of poppy straw (The crude extract of poppy straw in either liquid, solid, or powder form which contains the phenanthrene alkaloids of the opium poppy.)

(c) Opiates. Unless specifically excepted or unless in another schedule, any of the following synthetic opiates, including its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation, dextrophan and levopropoxyphene excepted:

- (1) Alfentanil;
- (2) Alphaprodine;
- (3) Anileridine;
- (4) Bezitramide;
- (5) Bulk dextropropoxyphene (nondosage forms);
- (6) Carfentanil;
- (7) Dihydrocodeine;
- (8) Diphenoxylate;
- (9) Fentanyl;
- (10) Isomethadone;
- (11) Levomethorphan;
- (12) Levorphanol;
- (13) Metazocine;
- (14) Methadone;
- (15) Methadone—intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane;
- (16) Moramide—intermediate, 2-methyl-3-morpholino-1, 1-diphenylpropane-carboxylic acid;
- (17) Pethidine (meperidine);
- (18) Pethidine—intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine;
- (19) Pethidine—intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate;
- (20) Pethidine—intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid;
- (21) Phenazocine;
- (22) Piminodine;
- (23) Racemethorphan;
- (24) Racemorphan;
- (25) Sufentanil.

(d) **Stimulants.** Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system:

- (1) Amphetamine, its salts, optical isomers, and salts of its optical isomers;
- (2) Methamphetamine, its salts, isomers, and salts of its isomers;
- (3) Phenmetrazine and its salts;
- (4) Methylphenidate.

(e) **Depressants.** Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous

system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (1) Amobarbital;
- (2) Glutethimide;
- (3) Pentobarbital;
- (4) Phencyclidine;
- (5) Secobarbital.
- (f) Hallucinogenic substances.

(1) Dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in a United States Food and Drug Administration approved drug product. (Some other names for dronabinol [6aR-trans]-6a,7,8,10a-tetrahydro-6,8,9-trimethyl-3-pentyl-6H-dibenzo[b,d]pyran-1-ol, or (-)-delta-9-(trans)-tetrahydrocannabinol.)

(2) Nabillon: Some trade or other names are (±)-trans-3-(1,1-dimethylheptyl)-6,6a,7,8,10,10a-hexahydro-1-hydroxy-6,8-dimethyl-9H-dibenzo[b,d]pyran-9-one.

(g) Immediate precursors. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances:

(1) Immediate precursor to amphetamine and methamphetamine:

(i) Phenylacetone: Some trade or other names phenyl-2-propanone, P2P, benzyl methyl ketone, methyl benzyl ketone.

(2) Immediate precursors to phencyclidine (PCP):

(i) 1-phenylcyclohexylamine;

(ii) 1-piperidinocyclohexanecarbonitrile (PCC).

The controlled substances in this section may be rescheduled or deleted as provided for in RCW 69.50.201.

[1993 c 187 § 6; 1988 c 124 § 4; 1980 c 138 § 2; 1971 ex.s. c 308 § 69.50.206.]

**Notes:**

State board of pharmacy may change schedules of controlled substances: RCW 69.50.201.

**RCW 69.50.210  
Schedule IV.**

Unless specifically excepted by state or federal law or regulation or more specifically included in another schedule, the following controlled substances are listed in Schedule IV:

(a) Any material, compound, mixture, or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below:

- (1) Not more than 1 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.
- (2) Dextropropoxyphene (alpha-(+)-4-dimethylamino-1,2-diphenyl-3-methyl-2-propionoxybutane).

(b) Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any quantity of the following substances having a depressant effect on the central nervous system, including their salts, isomers, and salts of isomers whenever the existence of those salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (1) Alprazolam;
- (2) Barbitol;
- (3) Bromazepam;
- (4) Camazepam;
- (5) Chloral betaine;
- (6) Chloral hydrate;
- (7) Chlordiazepoxide;
- (8) Clonazepam;
- (9) Clonazepam;
- (10) Clorazepate;
- (11) Clotiazepam;
- (12) Cloxazolam;
- (13) Delorazepam;
- (14) Diazepam;
- (15) Estazolam;
- (16) Ethchlorvynol;
- (17) Ethinamate;
- (18) Ethyl loflazepate;
- (19) Fludiazepam;
- (20) Flunitrazepam;
- (21) Flurazepam;
- (22) Halazepam;
- (23) Haloxazolam;
- (24) Ketazolam;

- (25) Loprazolam;
- (26) Lorazepam;
- (27) Lormetazepam;
- (28) Mebutamate;
- (29) Medazepam;
- (30) Maprobamate;
- (31) Methohexital;
- (32) Methylphenobarbital (mephobarbital);
- (33) Midazolam;
- (34) Nimetazepam;
- (35) Nitrazepam;
- (36) Nordiazepam;
- (37) Oxazepam;
- (38) Oxazolam;
- (39) Paraldehyde;
- (40) Petrichloral;
- (41) Phenobarbital;
- (42) Pinazepam;
- (43) Prazepam;
- (44) Quazepam;
- (45) Temazepam;
- (46) Tetrazepam;
- (47) Triazolam.

(c) Any material, compound, mixture, or preparation containing any quantity of the following substance, including its salts, isomers, and salts of such isomers, whenever the existence of such salts, isomers, and salts of isomers is possible: Fenfluramine.

(d) Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any quantity of the following substances having a stimulant effect on the central nervous system, including their salts, isomers, and salts of isomers:

- (1) Cathine((+)norpseudoephedrine);
- (2) Diethylpropion;
- (3) Fencamfamin;
- (4) Fenproporex;
- (5) Mazindol;

- (6) Mefenorex;
- (7) Pemoine (Including organometallic complexes and chelates thereof);
- (8) Phentermine;
- (9) Pipradrol;
- (10) SPA ((-)-1-dimethylamino-1, 2-diphenylethane).

(e) Other substances. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any quantity of the following substance, including its salts:

- (1) Pentazocine.

The state board of pharmacy may except by rule any compound, mixture, or preparation containing any depressant substance listed in subsection (b) of this section from the application of all or any part of this chapter if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a depressant effect on the central nervous system, and if the admixtures are in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances having a depressant effect on the central nervous system.

The controlled substances listed in this section may be rescheduled or deleted as provided for in RCW 69.50.201.

[1993 c 187 § 10; 1988 c 124 § 6; 1981 c 147 § 2; 1980 c 138 § 4; 1971 ex.s. c 308 § 69.50.210.]

**Notes:**

State board of pharmacy may change schedules of controlled substances: RCW 69.50.201.

**RCW 69.41.030**

**Sale, delivery, or possession of legend drug without prescription or order prohibited — Exceptions — Penalty.**

(1) It shall be unlawful for any person to sell, deliver, or possess any legend drug except upon the order or prescription of a physician under chapter 18.71 RCW, an osteopathic physician and surgeon under chapter 18.57 RCW, an optometrist licensed under chapter 18.53 RCW who is certified by the optometry board under RCW 18.53.010, a dentist under chapter 18.32 RCW, a podiatric physician and surgeon under chapter 18.22 RCW, a veterinarian under chapter 18.92 RCW, a commissioned medical or dental officer in the United States armed forces or public health service in the discharge of his or her official duties, a duly licensed physician or dentist employed by the veterans administration in the discharge of his or her official duties, a registered nurse or advanced registered nurse practitioner under chapter 18.79 RCW when authorized by the nursing care quality assurance commission, an osteopathic physician assistant under chapter 18.57A RCW when authorized by the board of osteopathic medicine and surgery, a physician assistant under chapter 18.71A RCW when authorized by the medical quality assurance commission, a physician licensed to practice medicine and surgery or a physician licensed to practice osteopathic medicine and surgery, a dentist licensed to practice dentistry, a podiatric physician and surgeon licensed to practice podiatric medicine and surgery, or a veterinarian licensed to practice veterinary medicine, in any province of Canada which shares a common border with the state of Washington or in any state of the United States: PROVIDED, HOWEVER, That the above provisions shall not apply to sale, delivery, or possession by drug wholesalers or drug manufacturers, or their agents or employees, or to any practitioner acting within the scope of his or her license, or to a common or contract carrier or warehouseman, or any employee thereof, whose possession of any legend drug is in the usual course of business or employment: PROVIDED FURTHER, That nothing in this chapter or chapter 18.64 RCW shall prevent a family planning clinic that is under contract with the department of social and health services from selling, delivering, possessing, and dispensing commercially prepackaged oral contraceptives prescribed by authorized, licensed health care practitioners.

(2)(a) A violation of this section involving the sale, delivery, or possession with intent to sell or deliver is a class B felony punishable according to chapter 9A.20 RCW.

(b) A violation of this section involving possession is a misdemeanor.

[2003 c 142 § 3; 2003 c 53 § 323; 1998 c 178 § 17; 1994 sp.s. c 9 § 737; 1991 c 30 § 1; 1990 c 219 § 2; 1987 c 144 § 1; 1981 c 120 § 1; 1979 ex.s. c 139 § 2; 1977 c 69 § 1; 1973 1st ex.s. c 186 § 3.]

**Notes:**

**Reviser's note:** This section was amended by 2003 c 53 § 323 and by 2003 c 142 § 3, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Severability -- 2003 c 142:** See note following RCW 18.53.010.

**Intent -- Effective date -- 2003 c 53:** See notes following RCW 2.48.180.

**Effective date -- 1998 c 178:** See note following RCW 18.35.110.

**Severability -- Headings and captions not law -- Effective date -- 1994 sp.s. c 9:** See RCW 18.79.900 through 18.79.902.

**Finding -- 1990 c 219:** "The legislature finds that Washington citizens in the border areas of this state are prohibited from having prescriptions from out-of-state dentists and veterinarians filled at their in-state pharmacies, and that it is in the public interest to remove this barrier for the state's citizens." [1990 c 219 § 1.]



**RCW 69.50.412**  
**Prohibited acts: E --- Penalties.**

(1) It is unlawful for any person to use drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance. Any person who violates this subsection is guilty of a misdemeanor.

(2) It is unlawful for any person to deliver, possess with intent to deliver, or manufacture with intent to deliver drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance. Any person who violates this subsection is guilty of a misdemeanor.

(3) Any person eighteen years of age or over who violates subsection (2) of this section by delivering drug paraphernalia to a person under eighteen years of age who is at least three years his junior is guilty of a gross misdemeanor.

(4) It is unlawful for any person to place in any newspaper, magazine, handbill, or other publication any advertisement, knowing, or under circumstances where one reasonably should know, that the purpose of the advertisement, in whole or in part, is to promote the sale of objects designed or intended for use as drug paraphernalia. Any person who violates this subsection is guilty of a misdemeanor.

(5) It is lawful for any person over the age of eighteen to possess sterile hypodermic syringes and needles for the purpose of reducing bloodborne diseases.

[2002 c 213 § 1; 1981 c 48 § 2.]

**Notes:**

**Severability - 1981 c 48:** See note following RCW 69.50.102.

01/25/08 00:34:02 FROM ACCESS - TERMINAL ID: DOLDB FOR UNIT: ??????  
D .WAG1715B5.OLN/WESTBJA245BT  
SOC/573-43-8040 01-25-08 RESTRICTIONS:  
WESTBERG,JENEE AMBER DOB/01-30-1976 FEMALE COR LENS  
R/28518 210TH AVE SE EYE/BRN;HGT/5-03;WGT/128  
R/KENT WA 98042  
PDL:ISS/01-20-06 EXP/01-30-11 DUI/PC 00 VH 00 CDL:STATUS: NONE  
STATUS: CLEAR RD/DUI 00 VA 00  
DWLS/R 1ST:00 DWLS/R 2ND:00 DWLS/R 3RD:00  
DONOR: Y

Incident History for:#BP08000355 CN:

Entered 01/24/08 22:41:08 BY 6B2 /BP1506  
 Dispatched 01/24/08 22:41:08 BY 6B2 /BP1506  
 Enroute 01/24/08 22:41:08  
 Onscene 01/24/08 22:41:08  
 Closed 01/25/08 00:18:42

Initial Type:TSTOP TG: Initial Alarm Level:  
 Final Type:TRFC (TRAFFIC COMPLAINT)Pri:4Dispo:C Alarm Lev:  
 Police BP9811 Fire VP9811 Grp:B1Beat: Lt/Lq:00000000000/00000000000  
 Police Rms: Fire Rms: Medic Rms: KC1990  
 Loc:MAPLE VLY BLK DIAM RD SE/ROBERTS DR ,F4 <31200,000> (V)  
 Name: Addr: Phone:

22:41:08 BP1506 6B2 ONVIEW ,NO MORE INFORMATION  
 22:41:08 6B2 \*OUTONS 6B2 @778LSP #BP1506 DUNN, HEATHER  
 ,NO MORE INFORMATION  
 22:44:41 \*\*\*\*\* REMINQ 6B2 WANT,6B2,,,,,,WESTBERG,JENEE,A,01201976  
 ,,,ENEEA01201976  
 22:46:07 REMINQ 6B2 WANT,6B2,,,,,,WESTBERG,JENEE,A,01301976  
 ,,,ENEEA01301976  
 22:48:23 VC5427 PD40 CHANGE LOC: SR169/ROBERTS DR  
 --> MAPLE VLY BLK DIAM RD SE/ROBERTS DR  
 ,F4  
 CON:  
 22:49:02 PD40 OK 6B2  
 22:54:59 PD40 ASSTOS K970 [MAPLE VLY BLK DIAM RD SE/ROBERTS DR ,F4  
 ] #BP1504 CHATTERSON,KRIS &"SABRE"(D  
 23:00:43 PD40 ASSTER 3B7 [MAPLE VLY BLK DIAM RD SE/ROBERTS DR ,F4  
 ] #BP1514 WEINREICH, ERIC  
 23:04:32 BP1514 3B7 \*ONSCNE 3B7  
 23:13:21 VC7215 PD40 OK 6B2 , ONE IN C\*\*\*  
 23:13:23 PD40 OK K970  
 23:13:23 PD40 OK 3B7  
 23:13:23 PD40 OK 6B2  
 23:20:46 PD40 MISC 6B2 , KCAC SGT STEVE COUVION (SP?). IN CUSTO  
 DY SUBJ IS AC  
 23:20:55 PD40 MISC 6B2 , 253 261-0610  
 23:21:17 PD40 CHANGE TYP: TSTOP  
 ---> TRFC  
 23:23:18 PD40 MISC 6B2 , KCPD SUPERV NOTIFIED, WILL HAVE HIM CA  
 LL  
 23:23:22 PD40 OK K970  
 23:23:22 PD40 OK 3B7  
 23:23:22 PD40 OK 6B2  
 23:51:11 PD40 TOWROT 3B7 TOW,ROYAL,BLA,ROYAL TOW,169  
 23:51:17 PD40 REMINQ K970 778LSP...  
 23:51:57 VC5244 PD37 CALLBK 3B7 , ROYAL TOW ENRT  
 23:52:14 VC7215 PD40 CONTCT 3B7

23:54:49			OK	6B2	
23:57:42	*****		REMINQ	K970	WANT, K970,,,,,, PHILPOT, LAURA, K, 01301976 ,,,,, AURAK01301976
23:58:51			REMINQ	K970	WANT, K970,,,,,, WESTBERG, JENEE, A, 0130197 6,,,,, NEEA01301976
00:01:10	VC5427	PD40	MISC	3B7	,TOW OS
00:06:40	BP1514	3B7	*REMINQ	3B7	016TLM...
00:11:33		3B7	CLEAR	3B7	
00:18:20	BP1504	K970	CLEAR	K970	
00:18:42	BP1506	6B2	CLEAR	6B2	D/C
00:18:42		6B2	CLOSE	6B2	D/C

WWCIC TIME: 1605 DATE: 012908 TO: BDIEX  
WA0171500  
ENTERED EVI LIC/778LSP VIN/JHMAB522XEC009030  
WAC/08V0014025 OCA/5469  
01/29/2008 AT 16/06

WVIC TIME: 1606 DATE: 012908 TO: BDIEX  
\*\*\*\* WVIC ADVISORY MESSAGE \*\*\*\*  
RECEIVED NICB IMPOUND ENTRY FROM NIETS:  
VIN/JHMAB522XEC009030  
FIL/10802906778  
SUCCESSFULLY MATCHED NICB ENTRY WITH:MKE/EVI WAC/08VCO14025  
ENTERED BY YOUR DEPARTMENT.  
\*\*\*\* END WVIC ADVISORY \*\*\*\*



**King County**

**Steve Couvion**

*Field Supervisor*

*Animal Services and Programs*

**Records, Elections and Licensing Services Division**

Department of Executive Services

21815 - 64th Avenue South

Kent, WA 98032-1301

[steve.couvion@metrokc.gov](mailto:steve.couvion@metrokc.gov)

[www.metrokc.gov](http://www.metrokc.gov)

206.296.3958

Fax 206.205.8043

Call 206.384.5920

TTY Relay: 711





**King County**

**Steve Couvlon**

*Field Supervisor*

*Animal Services and Programs*

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Fax 206.405.8043

Cell 206.394.5920

TTY Relay: 711





AGENCY: <b>Black Diamond Police Department</b>		Incident Classification: <b>VUCSA</b>		Report No.: <b>08-00059</b>	
<b>Vehicles</b>					
Code: <b>V-1</b>	Stolen Evidence: <input type="checkbox"/>	Impound Abandoned Seized: <input type="checkbox"/>	Victim Suspect Held: <input type="checkbox"/>	Recovered: <input type="checkbox"/>	License No.: <b>778LSP</b>
					License State: <b>WA</b>
					License Year: <b>01/2008</b>
					License Type: <b>Passenger Car</b>
					VIN/IDV: <b>Jhmab522xec009030</b>
Year: <b>1984</b>	Make: <b>Honda</b>	Model: <b>Pre</b>	Body Style: <b>2 Door</b>	Color: <b>Silver/Alum</b>	Special Features/Description: <b>Nothing of value left in vehicle</b>
Registered Owner Name: <b>Philpot, Laura K</b>					Home Phone: _____
Registered Owner's Address, City, State, ZIP: <b>21621 SE 255th PL, Maple Valley, WA 98038</b>					Value: \$ _____
Vehicle Disposition: <input type="checkbox"/> Left at Scene <input type="checkbox"/> Driven Away <input checked="" type="checkbox"/> Towed					
Locked: <input type="checkbox"/> Yes <input type="checkbox"/> No	Keys in Vehicle: <input type="checkbox"/> Yes <input type="checkbox"/> No	Delinquent Payment: <input type="checkbox"/> Yes <input type="checkbox"/> No	Victim Consent: <input type="checkbox"/> Yes <input type="checkbox"/> No	Driveable: <input type="checkbox"/> Yes <input type="checkbox"/> No	Estimated Damage: _____
Tow Company: _____			Hold Requested By: _____		Damage: <input type="checkbox"/> Window <input type="checkbox"/> Interior <input type="checkbox"/> Top <input type="checkbox"/> Underbody
Released Info: _____			Date: _____ Time: _____		Operator's Name: _____

**Narrative**

I am commissioned by the City of Black Diamond to enforce the laws of the State of Washington and the City of Black Diamond. This investigation occurred within the City Limits of Black Diamond, Washington on the times and dates listed below.

On 01/24/08 at approx. 2241 hours, I was on routine patrol at Sunny LN and Roberts DR. A silver colored Honda, WA State plate number 778LSP passed me and I ran the plate number for routine stolen. The return showed the vehicle tabs to be expired 01/20/08. I caught up to the vehicle and initiated a traffic stop at Roberts DR and 3rd AVE.

I made contact with the female driver of the vehicle. I immediately saw a King County badge sitting on her lap. I advised the driver why I stopped her and asked for her license, registration and vehicle insurance. As I was speaking with the driver, later identified as Jenee A. Westberg (DOB: 01/30/76), I could smell an overwhelming odor of marijuana coming from inside the vehicle. Westberg advised me that she had recently purchased the vehicle and was on her way home after riding her horse. I asked Westberg who she worked for and she stated she worked for King County Animal Control. She later advised me she did not have any vehicle insurance. I returned to my vehicle and asked for Narcotics K9 handler, Officer Chatterson, to respond to my location.

Upon Officer Chatterson's arrival, we both recontacted Westberg and spoke with her. Officer Chatterson asked Westberg if there was any marijuana in the vehicle and advised her we could smell the odor of marijuana coming from her vehicle. Westberg advised us that her dog (that was in the vehicle at the time) had just rolled in dead salmon along the river and that was the odor we were smelling. From my training and experience, I positively recognized the odor coming from the vehicle as marijuana. We advised Westberg that we were very sure the odor was not dead salmon and asked Westberg when the last time was that she smoked marijuana. Westberg denied smoking any marijuana and then stated she had just come from a house where others were smoking marijuana. Officer Chatterson advised Westberg that the odor was too strong and that it smelled as if she had smoked the marijuana in her vehicle. Westberg denied smoking any marijuana until I advised her

AGENCY: <b>Black Diamond Police Department</b>	Incident Classification <b>VUCSA</b>	Incident No. <b>08-00059</b>
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that I wanted her to step out of the vehicle. Westberg then stated she had smoked "a few hits" of marijuana at her parents house approx. 20 minutes prior. She then handed Officer Chatterson a glass smoking pipe from her coat pocket which she stated she had just smoked her marijuana out of. The pipe still contained a partially burnt "bowl" of marijuana (HD5). I asked Westberg to step out of the vehicle, which she did, and advised her she was under arrest for investigation of

possession of marijuana. I searched Westberg and placed her in the rear of my patrol vehicle. I asked Westberg if she would be willing to do voluntary field sobriety tests and she stated she would not. I asked Westberg if she had been recently arrested for anything and she stated she had been arrested for shoplifting. Westberg repeatedly asked if I would just let her drive home because she was the on-call animal control officer for the evening. After telling her that it was probably not a good idea that she was the on-call officer because she had just smoked marijuana, Westberg advised that she had lied and was not supposed to be to work until the next morning. Officer

Chatterson read Westberg her Miranda warnings from a printed card, which she stated she understood and agreed to speak with us. Westberg advised there was no more marijuana in the vehicle and that we might find a plastic baggie that contained marijuana residue inside the vehicle.

Officer Chatterson applied K9 Sabre to the interior/exterior of the vehicle and found no illegal substances. Officer Chatterson did locate two open 12 oz. bottles of Smirnoff alcohol that still had moisture in the bottom of the bottles. Search of Westberg's purse, I located 4 prescription bottles, none of which showed to be prescribed to Westberg. One of the prescription bottles had the label torn off other than the lower left hand corner which indicated the pills in the bottle were hydrocodone. There were 17 pills in the bottle (HD1). A second prescription bottle filled at Safeway indicated that the pills were a generic type of Darvocet and prescribed to Sarah A. Woodriff. There was one pill in the bottle (HD2). I asked Westberg who Woodriff was and she stated that Woodriff was a dog and the pills were prescribed to that dog. I confronted Westberg that Safeway does not fill prescriptions for animals and that she was lying to me. She then told me she was sorry and that her friend, Sarah Woodriff, had left the pills at her house and she was returning them to her. She then later changed her story again and stated Woodriff had given her the pills after Woodriff gave birth to a child. A third prescription bottle located in Westberg's purse was from Wilderness Vet Clinic in Maple Valley. The bottle label advised it contained Ace 25mg, which I later learned was not a controlled substance. The bottle contained two types of pills, both yellow in color. One type of pill was labeled 4333 (5.5 pills located) and the second type of pill was labeled 02/20 (2 pills located) (HD3). A fourth prescription bottle found in Westberg's purse contained 6 pills. The bottle label had been removed and the pills were labeled IBU 800 (HD4). Westberg advised me that she had been injured at work by lifting a heavy dog and missed a day of work due to that injury. She stated that was why she was taking the medications.

Westberg requested I contact her Sergeant from King County Animal Control, Sgt. Steve Couvion. She requested Sgt. Couvion come to the scene to take possession of her dog. I contacted Sgt. Couvion and advised him of my contact with Westberg. He stated he was the on-call officer for the evening and would come to the scene.

Upon Sgt. Couvion's arrival, he took custody of Westberg's dog from the vehicle. I advised him that Westberg was in custody for felony VUCSA. I advised that she would not be booked into jail but that the charges would be forwarded to the King County Prosecutor's Office. I advised Sgt. Couvion

CONTINUED NEXT PAGE

1500974126

INCIDENT REPORT CONTINUED

AGENCY: <i>Black Diamond Police Department</i>	Incident Classification <i>VUCSA</i>	Incident No. <i>08-00059</i>
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that this was not a professional courtesy and that cases such as these are often handled this way. Sgt. Couvion advised that he agreed and stated Westberg should be processed the same as any other subject.

At approx. 0018 hours, I cited Westberg for Open Container and No Valid Vehicle Insurance (BD0027234). I advised her charges of VUCSA, would be forwarded to the King County Prosecutor's Office and she was released to Sgt. Couvion. Her vehicle was impounded with Royal Towing of Black Diamond.

It should be noted that charges of DUI will not be forwarded due to insufficient evidence that being under the influence of marijuana affected her ability to drive.

All evidence items were transported to the Black Diamond police station and processed into evidence. The pills located in Westberg's purse will be sent to the WSP crime lab to confirm their content.

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct

*A. Dunn 1506*  
Signature of Officer

*1-25-08 Black Diamond*  
Date/Place Signed

END OF INCIDENT REPORT

# **Appendix E**

**Documents showing Mary Elizabeth Dingley's  
appointment as a Special Prosecutor for the King  
County Prosecuting Attorney's Office.**

APPOINTMENT OF SPECIAL DEPUTY

KNOW ALL MEN BY THESE PRESENTS:

That I, Norm Maleng, Prosecuting Attorney for King County, State of Washington, have this day appointed and by these presents do appoint Mary E. Dingledy, an attorney in the State of Washington, my true and lawful Special Deputy pursuant to RCW 36.27.040 for the purpose of acting on my behalf in connection with any investigation, prosecution or other legal action or proceeding.

This appointment shall commence on 12/11/95, and continue for one calendar year. Furthermore, I give him/her, the said Mary E. Dingledy, full power and authority to do and act in my name the same as I would in law be empowered to do if personally present for the express purpose of fulfilling the obligations under the referenced agreement.

IN WITNESS WHEREOF, I have hereunder set my hand on this 2nd day of January, 1996.

Norm Maleng  
NORM MALENG  
Prosecuting Attorney

STATE OF WASHINGTON )  
                                  )     SS.  
COUNTY OF KING     )

I, Mary E. Dingledy, do solemnly swear that I will support the Constitution of the United States and the laws and the Constitution of the State of Washington and that I will faithfully and impartially fulfill the office of Special Deputy Prosecuting Attorney for the express purposes stated above to the best of my ability, so help me God.

Mary E. Dingledy  
Attorney

SUBSCRIBED AND SWORN to before me this 2nd day of January, 1996.

Hildi E. Rooin  
NOTARY PUBLIC in and for the State of Washington, residing at Seattle

9601088008

960108-8008 03:09:00 PM KING COUNTY RECORDS 001 57

SD11902



N

# ENROLLMENT FORM

EMPLOYEE PORTION

1 DATE OF BIRTH: MONTH 4[b], DAY 04, YEAR 4[b] SEX: MALE  FEMALE  SOCIAL SECURITY NO. 4[b]

2 LAST NAME: DINGLEDY  
FIRST NAME: MARY  
MIDDLE NAME: ELIZABETH MAIDEN NAME:

3 MAILING ADDRESS: 4[b]  
CITY: 4[b] STATE: 4[b] ZIP CODE (+4 OPTIONAL): 4[b]

NOTE: The beneficiary must be related by blood or law, or have an insurable interest in the life of the member. If you are unsure whether an intended beneficiary meets the above requirements, consult your personnel officer or the Department of Retirement Systems. A member may change the beneficiary or beneficiaries by requesting and completing the proper form issued by the Department of Retirement Systems.

4 FOR THE PURPOSE OF DISBURSING ANY ACCUMULATED CONTRIBUTIONS STANDING TO MY CREDIT IN THE EVENT OF MY DEATH PRIOR TO RETIREMENT, I HEREBY DESIGNATE THE FOLLOWING BENEFICIARY(S):

FULL GIVEN NAME OF BENEFICIARY	DESIGNATION	RELATIONSHIP	BIRTH DATE	ADDRESS
4[b]	<input checked="" type="checkbox"/> PRIMARY <input type="checkbox"/> CONTINGENT	4[b]		
	<input type="checkbox"/> PRIMARY <input checked="" type="checkbox"/> CONTINGENT			
	<input type="checkbox"/> PRIMARY <input checked="" type="checkbox"/> CONTINGENT			
	<input type="checkbox"/> PRIMARY <input type="checkbox"/> CONTINGENT			

street: \_\_\_\_\_ city: \_\_\_\_\_ state: \_\_\_\_\_ zip: \_\_\_\_\_

5 I HEREBY CERTIFY THAT ALL OF THE INFORMATION I HAVE ENTERED ON THIS FORM IS TRUE AND COMPLETE.

*Marye Dingley* SIGNATURE OF EMPLOYEE DATE: 12/1/95

EMPLOYER PORTION

EMPLOYER NAME: KING COUNTY PROSECUTING ATTORNEY  
EMPLOYEE POSITION TITLE: SPECIAL DEPUTY PROSECUTOR

FIRST DATE OF EMPLOYEE ELIGIBILITY: MONTH 12, DAY 11, YEAR 95

RETIREMENT SYSTEM - check one:  
 PUBLIC EMPLOYEES  
 TEACHERS  
 LAW ENFORC. OFF.  
 STATE PATROL  
 JUDICIAL  
 FIRE FIGHTER

PLAN - check one:  
 PLAN 1  
 PLAN 2

COMPLETE AND MAIL FORM TO:  
DEPARTMENT OF RETIREMENT SYSTEMS  
P.O. BOX 48380  
OLYMPIA, WA 98504-8380  
MS:8380 (206) 753-5292

AGENCY NO. 22-50

SPECIAL EMPLOYMENT TYPE:  
 ELECTED OFFICIAL  
 CITY MANAGER/ADMINISTRATOR  
 GOVERNOR APPOINTED OFFICIAL

I HEREBY CERTIFY THAT ALL OF THE INFORMATION ENTERED ON THIS FORM IS TRUE AND COMPLETE.

KING COUNTY PROSECUTOR'S OFFICE  
W554 KING COUNTY COURTHOUSE  
SEATTLE, WASHINGTON 98104-2312

MF 4  
JAN 3 1996

Heidi Rollins PRINT NAME  
Personnel Man. TITLE OF PERSONNEL OR PAYROLL REPRESENTATIVE  
296-7008 PHONE

*Heidi Rollins*

Social Security Number has been verified. *HER* Initials

APPENDIX PAGE E62

# Appendix F

**King County Prosecutor's Confirmation that Maggie Nave, who prosecuted Diamond's animal abuse case where Westberg was called as a witness, also prosecuted Westberg for her 2008 drug prosecution.**

KING COUNTY PROSECUTING ATTORNEY'S OFFICE



DANIEL T. SATTERBERG  
PROSECUTING ATTORNEY

JUSTICE  
COMPASSION  
PROFESSIONALISM  
INTEGRITY  
LEADERSHIP

February 24, 2015

Christy Diemond  
14241 NE Woodinville Duvall Rd 154  
Woodinville, WA 98072

RE: Public Records Disclosure Requests  
*13 Individual Requests*

Dear Ms. Diemond:

Thank you for your public records requests. To date, we have received thirteen (13) requests from you, which include four (4) additional requests that were received via email on February 17, 2015. Below is the status of each of these requests.

- 1) **11-1-10721-0 (Dunham) KNT:** Per our January 14, 2015 email, we have identified 309 pages and 3 discs of responsive materials that are available for your review. We are still gathering and reviewing related emails.
- 2) **07-1-11067-1 (Lindsey) KNT:** We are in the process of gathering and reviewing responsive materials.
- 3) **14-1-03235-4 (Ridlon) KNT:** We are in the process of gathering and reviewing responsive materials.
- 4) **13-C-10914-6(Hart)/13-C-10915-4 (Novak)KNT:** We are still in the process of gathering and reviewing responsive materials.
- 5) **11-C-05776-0(Darryl)/ 11-C-05777-8 (Allen-Lindsey) KNT:** Per our January 14, 2015 email, we have identified 557 pages and 6 discs of responsive materials that are available for your review. We are still gathering and reviewing related emails.
- 6) **12-C-00542-3(Thomas)/12-C-00543-1(Markley) KNT:** Per our February 17, 2015 email, we have identified 1449 pages and 4 discs of responsive materials that are available for your review. This completes our response to this request.
- 7) **IT0060406 (Westberg):** Per our January 16, 2015 follow up email, we electronically provided all responsive materials for this request. We consider this request to be closed.
- 8) **58SD0211(Westberg):** Per our January 16, 2015 follow up email, we electronically provided all responsive materials for this request. We consider this request to be closed.
- 9) **11-1-06177-5 (Diemond)SEA:** We are in the process of gathering and reviewing responsive materials.



- 10) **Brady Lists**: Thank you for this new request that was received via email on February 17, 2015. We have started the process of identifying, gathering and reviewing responsive materials.
- 11) **Personnel file of Anthony Wisen**: Thank you for this new request that was received via email on February 17, 2015. We have started the process of identifying, gathering and reviewing responsive materials.
- 12) **Personnel file of Geraldine Anne Westberg**: Thank you for this new request that was received via email on February 17, 2015. We have started the process of identifying, gathering and reviewing responsive materials.
- 13) **Personnel file of Margaret Nave**: Thank you for this new request that was received via email on February 17, 2015. We have started the process of identifying, gathering and reviewing responsive materials.

I am also in receipt of an email sent to Monique Cohen on February 17, 2015 at 4:39 p.m. While we consider much of this to be a request for information, we would like to provide the fullest assistance possible. In regards to 58SD00211 the DPA's were Susan Harrison, Maggie Nave and Nicole Kovite. Pertaining to IT0060406, we are unable to determine the assigned DPA. Pertaining to both of these cases, we have no additional documents responsive to your request. All audio court recordings of hearings and judge records are not maintained by our office. You may wish to direct a request to:

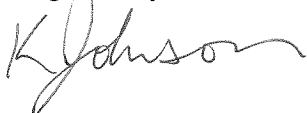
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King County District Court  
King County Courthouse W1034  
Seattle, WA 98104

As noted in Ms. Cohen's February 17, 2015 email, our next installment will be made available by approximately March 25, 2015. I am now coordinating the responses to your requests.

Best Regards,

For DANIEL T. SATTERBERG  
King County Prosecuting Attorney



Kristie Johnson  
Legal Service Supervisor  
Public Records

**ALLIED LAW GROUP LLC**

**August 24, 2020 - 4:12 PM**

**Transmittal Information**

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**Appellate Court Case Number:** 81420-6  
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# Appendix E

WASHINGTON COURT OF APPEALS  
DIVISION ONE

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CHRISTY DIEMOND,

*Appellant,*

v.

KING COUNTY,

*Respondent.*

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BRIEF OF AMICUS CURIAE

WASHINGTON COALITION FOR OPEN GOVERNMENT

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## I. IDENTITY AND INTEREST OF AMICUS

The Washington Coalition for Open Government (“WCOG”), a Washington nonprofit corporation, is an independent, nonpartisan organization dedicated to promoting and defending the public’s right to know in matters of public interest and in the conduct of the public’s business. WCOG’s mission is to help foster open government processes, supervised by an informed and engaged citizenry, which is the cornerstone of democracy. WCOG represents a cross-section of the Washington public, press, and government. Its board of directors exemplifies this diversity. A description of WCOG’s board of directors is attached to WCOG’s *Motion for Leave to File Brief of Amicus Curiae* as an **Appendix**.

## II. STATEMENT OF THE CASE

This case is *not* a *Brady*<sup>1</sup> case. This is a lawsuit against King County under the Public Records Act, Chap. 42.56 RCW (PRA). The public records at issue in this PRA case include *Brady* materials that should have been provided to Diamond in her criminal case. Contrary to the County’s misleading arguments, Diamond is *not* asserting her *Brady* rights in this case.<sup>2</sup> The resolution of Diamond’s criminal case and subsequent appeals

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<sup>1</sup> *Brady v. Maryland*, 373 U.S. 83, 83 S. Ct. 1194, 10 L.Ed.2d 215 (1963) (due process requires prosecution to disclose exculpatory evidence to criminal defendants).

<sup>2</sup> *Respondent’s Reply on Motion to Dismiss* (August 8, 2019) at 4 misleadingly cites *Mockovak v. King County*, 197 Wn. App. 1013 (December 19, 2016), ¶ 77, n. 96, for the



is irrelevant to the question of whether King County violated the PRA in response to Diamond's PRA request.

Otherwise, WCOG relies on the facts set forth in the parties' briefs.

### III. ARGUMENT

The record demonstrates that King County intentionally failed to produce important responsive records from the King County Prosecuting Attorney's Office (hereafter Prosecutor). The County responds to this evidence by asserting that the Prosecutor is a different agency from the other parts of King County:

The PAO is a separate agency under the PRA and a request to the Sheriff or the Executive is not a request to the PAO. King County Code 2.12.005.A, 2.12.230.B; *see Koenig v. Pierce Cty.*, 151 Wn. App. 221, 211 P.3d 423 (2009). These inaccurate claims have no bearing on this PRA lawsuit.

*Resp. Br.* at 15. **The County is wrong. King County is one agency under the PRA.** The County has no authority to Balkanize itself into separate agencies for purposes of complying with the PRA. The ordinances relied

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proposition that *Brady* claims are not properly made in a PRA case. *Mockovak* merely holds that a criminal defendant cannot use a PRA case to assert their due process rights under *Brady*. But *Mockovak* confirms that a disappointed criminal defendant can still make a PRA request for *Brady* material, and that the agency can only withhold such records if the agency establishes that the records are exempt. *See Id.*, ¶¶ 81-126 (upholding county's claim that requested *Brady* records were work product). In this case the County has not even identified the silently withheld records as required by *Progressive Animal Welfare Society v. UW (PAWS II)*, 125 Wn.2d 243, 270, 884 P.2d 592 (1994), which is a violation of the PRA whether or not the records are exempt. The *Brief of Respondent* at 15, n.2 does not cite *Mockovak*, but makes the irrelevant and misleading statement that Diamond's criminal appeals were unsuccessful.

on by the County impermissibly conflict with the PRA. *Koenig v. Pierce County* is erroneous in light of subsequent Supreme Court cases.

**A. KCC 2.12.005(A) and KCC 2.12.230(B) are invalid under *Kilduff v. San Juan County*, 194 Wn.2d 859, 453 P.3d 719 (2019).**

The County has adopted ordinances that purport to define King County as nine (9) separate agencies under the PRA. KCC 2.12.005(A). These ordinances further purport to require requestors to make separate PRA requests to each separate agency through a separate PRA office. KCC 2.12.230(B). Finally, these ordinances purport to eliminate any obligation by King County as a whole to respond to PRA requests:

A separate request must be made to each agency from which access to public records is requested or assistance in making such a request is sought.

KCC 2.12.230(B). All of these ordinances are based on the County's erroneous assumption that it has the legal authority to interpret the term "agency" in RCW 42.56.010(1) to elevate the bureaucratic interests of the County over the policy of the PRA.

In *Kilduff v. San Juan County*, 194 Wn.2d 859, 453 P.3d 719 (2019), the county adopted an ordinance that purported to require a PRA requestor to request review by the county prosecutor before filing a lawsuit under the PRA. San Juan County argued that RCW 42.56.100 authorized agencies to adopt "administrative remedies" into the PRA. 194 Wn.2d 870-872. The Supreme Court rejected this argument **9 to 0**, holding that the county

ordinance was invalid because it conflicted with RCW 42.56.520. The court reiterated the point, made in numerous PRA cases, that agencies may not interpret the PRA in ways that undermine the PRA:

In sum, San Juan County's reading of RCW 42.56.520, .040, and .100 undermines the purpose of the PRA. Far from authorizing agencies to create an internal barrier to judicial review, these three provisions are meant to further the interests of the people to receive "full access to information concerning the conduct of government on every level," not the interests of "the agencies that serve them." RCW 42.17A.001(11); RCW 42.56.030. To be clear, the PRA's "mandate of liberal construction requires the court to view with caution any interpretation of the statute that would frustrate its purpose." *Am. Civil Liberties Union v. Blaine Sch. Dist. No. 503*, 86 Wn. App. 688, 693, 937 P.2d 1176 (1997).

SJCC 2.108.130's administrative exhaustion requirement is not authorized by any provision of the PRA, undermines the PRA's purposes, and is contrary to the PRA model rules. We therefore hold that the ordinance is invalid.

194 Wn.2d at 873-74.

Similarly, the King County in this case ordinances are an invalid attempt to create "internal barriers" to PRA compliance within the County itself. RCW 42.56.100 does *not* give the County the authority to adopt PRA ordinances that conflict with the PRA. The County ordinances that purport to break King County up into nine separate agencies are based on an erroneous, narrow interpretation of RCW 42.56.010. These ordinances undermine the purpose of the PRA by making it more difficult and time-

consuming to obtain public records, and more likely that responsive records will not be produced.<sup>3</sup>

The definition of agency in RCW 42.56.010 is broadly drafted to encompass all the different types of government agencies, specifically including “county” and any department or division of a county:

(1) “Agency” includes all state agencies and all local agencies. “State agency” includes every state office, department, division, bureau, board, commission, or other state agency. “Local agency” includes every county, city, town, municipal corporation, quasi-municipal corporation, or special purpose district, or any office, department, division, bureau, board, commission, or agency thereof, or other local public agency.

RCW 42.56.010. Interpreting this section liberally in favor of disclosure, as required by *Kilduff* and RCW 42.56.030, the “County” as a whole is an “agency” that must comply with the PRA. Under *Kilduff* the County has no authority to adopt a narrow interpretation of RCW 42.56.010(1) under which the whole County is not an “agency.” KCC 2.12.005(A) and KCC 2.12.230(B) are invalid.

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<sup>3</sup> The county ordinances are also contrary to the AGO model rules as originally adopted in 2006. Prior to the 2018 revisions the AGO model rules clearly stated that entire counties were agencies under the PRA. WAC 44-14-01001 (2006) (“[T]he act defines the county as a whole as an “agency” subject to the act.”); **Appendix**. WAC 44-14-01001 was revised in 2018 in an attempt to make sense of *Koenig v. Pierce County*. The new rule suggests that a PRA request can be made to an entire county, and that, despite the language of *Koenig v. Pierce County*, counties with multiple PRA officers have an obligation to coordinate their responses to a PRA request. *Id.*

**B. *Koenig v. Pierce County*, 151 Wn. App. 221, 211 P.3d 423 (2009) directly conflicts with both *Kilduff, supra*, and the *Yousoufian V* penalty factors.**

The County also relies on *Koenig v. Pierce County*, 151 Wn. App. 221, 211 P.3d 423 (2009), for the proposition that the Prosecutor is a different agency from the other parts of King County. In that case the Pierce County prosecutor refused to produce a witness statement based on the prosecutor's erroneous assertion that the requestor could obtain the same record from the sheriff. The requestor had explicitly asked the prosecutor and sheriff to coordinate their responses to ensure that all records were provided. But the prosecuting attorneys representing the prosecutor and sheriff refused to do so. 151 Wn. App. 227-228.

Only after being sued and submitting discovery to the requestor did Pierce County finally realize that the sheriff had *not* provided the missing witness statement, and that other responsive records were in another file that the county had failed to locate. 151 Wn. App. at 229. The Court of Appeals should have recognized that Pierce County was intentionally violating its duty to comply with the PRA. Instead, the court proceeded from its own erroneous assumption that the sheriff and prosecutor were separate agencies under the PRA, and then faulted the requestor for trying to impose new duties on those allegedly-separate agencies. 151 Wn. App. at 232-33.

By incorrectly assuming that the prosecutor and sheriff were separate agencies under the PRA, *Koenig v. Pierce County* encouraged other agencies to break themselves up into separate agencies to which separate PRA requests must be made and which have no duty to work together to provide the “fullest assistance” required by RCW 42.56.100. Nor did the court suggest any limits on the ability of agencies to break themselves up into numerous separate agencies with separate PRA officers. The court’s erroneous analysis of “agency” in *Koenig v. Pierce County* suggests that King County could further Balkanize both the Sheriff and Prosecutor into several separate “divisions” in order to further frustrate PRA requestors.<sup>4</sup>

But as explained above, Pierce County had no such authority. The Court of Appeals failed to adopt the correct liberal interpretation of RCW 42.56.010(1), required by *Kilduff* and RCW 42.56.030, under which an entire county is one agency under the PRA.<sup>5</sup>

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<sup>4</sup> The definition of agency in RCW 42.56.010(1) includes “divisions.” The King County Sheriff is organized into four “divisions:” Office of the Sheriff, Criminal Investigation, Patrol Operations, and Technical Services. See <https://www.kingcounty.gov/depts/sheriff/about-us/organization.aspx> (last visited September 3, 2020). The King County Prosecutor is organized into four “divisions:” Civil, Criminal, Child and Family Support and Juvenile. <https://www.kingcounty.gov/depts/prosecutor.aspx> (last visited September 3, 2020).

<sup>5</sup> The *Koenig* court made the same error in narrowly construing RCW 42.56.580 to not require the appointment of a public records officer for the entire county. *Koenig v. Pierce County*, 151 Wn. App. 221, 233, 211 P.3d 423 (2009).

The incorrect interpretation of “agency” in *Koenig v. Pierce County* led directly to the miscarriage of justice in this case. King County essentially admits that its prosecutors intentionally withheld records from Diamond, but argues that those prosecutors had no duty to respond to a PRA request to the County as a whole. The Court should take this opportunity to correct its mistake in *Koenig v. Pierce County*, which is erroneous in light of *Kilduff, supra*.

The requestor in *Koenig v. Pierce County* also cited *Yousoufian v. King County Executive*, 114 Wash. App. 836, 846, 60 P.3d 667 (2003) (*Yousoufian I*), *rev'd on other grounds*, 152 Wn.2d 421, 98 P.3d 463 (2005) (*Yousoufian II*), noting that the trial court’s unchallenged findings of fact faulted the county for, *inter alia*, “poor communication between County departments.” 151 Wn. App. at 232; *see Yousoufian I*, 114 Wn. App. at 846. The *Koenig v. Pierce County* opinion erroneously dismissed *Yousoufian I*’s analysis of the county’s PRA violations as merely the trial court’s description of the PRA violation. 151 Wn. App. at 232. But the actual opinion of the Court of Appeals in *Yousoufian I* unambiguously agreed with the trial court, and blamed the county for failing to properly coordinate the PRA responses of various county departments:

More disturbing is the response of the finance department to Yousoufian’s records request. Yousoufian’s attorney requested financial records from finance after the deputy

prosecutor representing Sims' office indicated that a separate records request should be sent there. The same prosecuting attorney responded to Yousoufian's request with a letter indicating that finance had no records responsive to Yousoufian's request...

In the final analysis, it seems clear that the County's violation of the PDA was due to poor training, failed communication, and bureaucratic ineptitude rather than a desire to hide some dark secret contained within its files. We therefore agree with the trial court's characterization of the County's conduct as grossly negligent, but not intentional, withholding of public records...

*Yousoufian I*, 114 Wn. App. at 846.

After *Koenig v. Pierce County* was issued the Supreme Court issued its final opinion in *Yousoufian v. Office of Ron Sims*, 168 Wn.2d 444, 229 P.3d 735 (2010) (*Yousoufian V*).<sup>6</sup> Summarizing the trial court's unchallenged findings of fact the Supreme Court noted that various public officials, prosecuting attorneys and departments of King County gave Yousoufian inaccurate and conflicting responses, and that the County as a whole failed to produce responsive records. 168 Wn.2d at 451-455. Based on these findings the Court blamed and penalized King County **as a whole** for its violations of the PRA:

It is fair to say that the unchallenged findings of fact

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<sup>6</sup> *Yousoufian v. Office of Ron Sims*, 137 Wp. App. 69, 151 P.3d 243 (2007) (*Yousoufian III*) was issued in February 2007, and affirmed in part and reversed in part on January 15, 2009 in 165 Wash.2d 439, 200 P.3d 232 (*Yousoufian IV*). But the *Yousoufian IV* opinion was withdrawn by the Supreme Court on June 12, 2009, before the opinion in *Koenig v. Pierce County* was issued. See *Yousoufian V*, 168 Wn.2d at 450 n.2. *Yousoufian V* was issued in March 2010, after the Court of Appeals issued its opinion in *Koenig v. Pierce County*.



demonstrate that over a period of several years the county repeatedly failed to meet its responsibilities under the PRA with regard to Yousoufian's request. Specifically, the county told Yousoufian that it had produced all the requested documents, when in fact it had not. The county also told Yousoufian that archives were being searched and records compiled, when that was not correct. In addition, the county told Yousoufian that information was located elsewhere, when in fact that was not the case. After years of delay and misrepresentation on the part of the county, Yousoufian found it necessary to file suit against the county in order to obtain all of the requested documents. Nevertheless, it would still take another year for the county to completely and accurately respond to Yousoufian's request.

*Yousoufian V*, 168 Wn.2d at 456. Based on these violations of the PRA the Supreme Court imposed a penalty of \$371,340 on King County, one of the largest PRA awards ever made. *Id.* at 470.

The Supreme Court's analysis of the duties of King County as a whole cannot be reconciled with the erroneous opinion in *Koenig v. Pierce County* that county departments are separate agencies with no duty to coordinate their responses to PRA requests. *Koenig v. Pierce County* was wrong when it was issued, and is simply bad law after *Yousoufian V*.

**C. *Koenig v. Pierce County*, 151 Wn. App. 221, 211 P.3d 423 (2009) is erroneous for several other reasons.**

In addition to directly conflicting with the Supreme Court's opinions in *Kilduff* and *Yousoufian V*, there are several other reasons why *Koenig v. Pierce County* was and is erroneous, and should not be followed.

First, In 2009, when *Koenig v. Pierce County* was decided, the Attorney General’s recently-adopted model rules agreed with the requestor (Koenig) that Pierce County was one agency under the PRA:

Some agencies, most notably counties, are a collection of separate quasi-autonomous departments which are governed by different elected officials (such as a county assessor and prosecuting attorney). However, the act defines the county as a whole as an “agency” subject to the act. RCW 42.17.020(2). An agency should coordinate responses to records requests across departmental lines. RCW 42.17.253(1) (agency’s public records officer must “oversee the agency’s compliance” with act).

WAC 44-14-01001 (2006); WSR 06-04-079 (January 31, 2006) ;

**Appendix.**

Sometimes more than one agency holds the same record. When more than one agency holds a record, and a requestor makes a request to the first agency, the first agency cannot respond to the request by telling the requestor to obtain the record from the second agency. Instead, an agency must provide access to a record it holds regardless of its availability from another agency.

WAC 44-14-04004(4)(a) (2006); WSR 06-04-079 (January 31, 2006);

**Appendix.** As interpreted in the AGO model rules, Pierce County’s conduct in *Koenig v. Pierce County*, like King County’s conduct in this case, was a violation of the PRA.

The requestor brought these model rules to the attention of the Court of Appeals. 151 Wn. App. 233. But the Court of Appeals dismissed these rules as “nonbinding” without any attempt to explain why the rules were

wrong or why the Court of Appeals would reject the AGO's liberal interpretation of the PRA. *Id.* Although the AGO model rules are nonbinding, such rules are still considered when interpreting the PRA. *Kilduff*, 194 Wn.2d at 873. If the Court of Appeals had given due consideration to the AGO's correct interpretation of "agency" and the requirement of liberal interpretation, the court would have rejected the argument that the prosecutor and sheriff were separate agencies.<sup>7</sup>

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<sup>7</sup> The AGO model rules were revised in 2018. These revisions included changes to WAC 44-14-01001 and WAC 44-14-04004 that attempted to make sense of *Koenig v. Pierce County*. The revised rules cited the case, but did not entirely agree with the Court of Appeals opinion. Revised WAC 44-14-01001 indicates that a PRA request can be made to an entire county, and that, despite the language of *Koenig v. Pierce County*, counties with multiple PRA officers have an obligation to coordinate their responses to a PRA request:

Some agencies, most notably counties, are a collection of separate quasi-autonomous departments which are governed by different elected officials (such as a county assessor and prosecuting attorney). The act includes a county "office" as an agency. RCW 42.56.010(1). However, the act ~~((defines))~~ also includes the county as a whole as an "agency" subject to the act. ~~((RCW 42.17.020(2). An agency should coordinate responses to records requests across departmental lines. RCW 42.17.253(1))~~ *Id.* (local agency includes every county and local office). Therefore, some counties may have one public records officer for the entire county; others may have public records officers for each county official or department. The act does not require a public agency that has a records request directed to it to coordinate its response with other public agencies; however, for example, if a request is directed to an entire county, then coordination in some manner among county offices or departments may be necessary.[3] Regardless, public records officers must be publicly identified. RCW 42.56.580 (2) and (3) (agency's public records officer must "oversee the agency's compliance" with act)...

WAC 44-14-01001 (2018); WSR 18-06-051, § 44-14-01001, filed 3/2/18, effective 4/2/18; *see also* WAC 44-14-01001 (2018); WSR 18-06-051, § 44-14-04004, filed 3/2/18, effective 4/2/18; **Appendix.**

Second, the Court of Appeals erroneously relied on its own incorrect assessment of the policy of the PRA, which was based on the court's underlying incorrect assumption that Pierce County was not a single agency under the PRA:

If we were to hold that the prosecutor's office has a duty to inquire with other Pierce County departments concerning a record request directed only to the prosecutor's office, the effect would be that no department within the state or municipal government could deny a request for public records without having first canvassed all the other departments within that unit of government.

151 Wn. App. at 233. The Supreme Court has noted that courts and judges are no more qualified than agencies when interpreting the PRA. *See Progressive Animal Welfare Society v. UW (PAWS II)*, 125 Wn.2d 243, 259-260, 884 P.2d 592 (1994). The Court of Appeals in *Koenig v. Pierce County* should have interpreted "agency" broadly, as required by RCW 42.56.030, instead of expressing its own opinion about how the PRA should to work.

Finally, *Koenig v. Pierce County* took a bit of dicta from a footnote in *Limstrom v. Ladenburg*, 136 Wn.2d 595, 604 n.3, 963 P.2d 869 (1998) out of context to support its erroneous assumption that Pierce County was not a single agency under the PRA:

The Public Records Act "does not require ... an agency to go outside its own records and resources to try to identify or locate the record requested." *Limstrom*, 136 Wash.2d at 604 n. 3, 963 P.2d 869.

151 Wn. App. at 233. By cherry-picking this footnote from *Limstrom* the Court of Appeals erroneously assumed that the “agency” in *Limstrom* was the prosecuting attorney and that other parts of the same county would be “outside” that agency.

But *Limstrom* does not support the court’s erroneous assumption that an entire county is not a single agency under the PRA. *Limstrom* only involved a request for records of the prosecuting attorney, and its holding that the prosecutor’s records were work product had nothing to do with the question of whether an entire county is an “agency.” The cited footnote did not even address the legal issue in *Limstrom* but merely noted that *Limstrom*’s requests were unclear. *Limstrom*, 136 Wn.2d at 604 n.3. The portion of the *Limstrom* footnote cited in *Koenig v. Pierce County* is vague, gratuitous dicta that did not support the proposition for which it was cited.<sup>8</sup>

In sum, the Court of Appeals opinion in *Koenig v. Pierce County* was incorrect when it was issued, and is no longer good law in light of *Kilduff* and *Yousoufian V.*

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<sup>8</sup> Subsequent cases have cited the *Limstrom* footnote for the more narrow proposition that a county is not required to obtain records from parts of a county that are not agencies under the PRA. See *Cortland v. Lewis County*, 2020 Wash. App. LEXIS 253; 2020 WL 556398 (county not required to obtain records from a judicial branch agency); *Cortland v. Lewis County*, 2020 Wash. App. LEXIS 447, 2020 WL 902555 (same).

**D. Diamond’s PRA lawsuit was not “premature.” This Court should expressly disapprove the erroneous dicta in *Hobbs v. State*, 183 Wn. App. 925, 335 P.3d 104 (2014).**

More than three years after this lawsuit was filed the County argued that Diamond’s lawsuit was “premature” under *Hobbs v. State*, 183 Wn. App. 925, 335 P.3d 104 (2014) because the County was still producing installments. CP 1101. The County takes dicta from *Hobbs* to argue that no PRA case can be brought while the agency is still producing records, even if the agency is clearly dragging its feet, failing to conduct an adequate search, improperly redacting documents and/or failing to produce proper exemption logs. *Id.* This absurd interpretation of *Hobbs*, under which agencies can effectively block judicial review by endlessly dribbling out records, was already rejected in *Cedar Grove Composting, Inc. v. City of Marysville*, 188 Wn. App. 695, 354 P.2d 249 (2015). A similar argument was rejected in *Kilduff*, 194 Wn.2d at 869.

Nonetheless, the County repeats this meritless argument on appeal, suggesting that Diamond’s entire case should have been dismissed because the County is still not done, regardless of whether the County has already repeatedly violated the PRA. *Resp. Br.* at 20. This Court should take this opportunity to expressly disapprove the erroneous dicta in *Hobbs*.

In *Hobbs*, the requestor sued the agency almost immediately after receiving the first installment. The superior court concluded that the

agency's exemption claims complied with the PRA, and that the agency did not violate the PRA. 183 Wn. App. 934-35. The Court of Appeals could have and should have affirmed that determination in an unpublished opinion. But the Court of Appeals, Division II, elected to frame its published opinion in terms of final agency action, holding that a PRA case may not be brought until the agency engages in some final action. 183 Wn. App. at 936. Unfortunately, the *Hobbs* opinion included erroneous dicta about when a PRA case may be brought:

Thus, *Hobbs* takes the position that a requestor is permitted to initiate a lawsuit prior to an agency's denial and closure of a public records request. The PRA allows no such thing. Under the PRA, a requestor may only initiate a lawsuit to compel compliance with the PRA after the agency has engaged in some final action denying access to a record.

*Hobbs*, 183 Wn. App. at 935-936. This language erroneously conflates "denial and closure of a public records request" with "final action." **"Final action" and the closure of a PRA request are *not* the same thing.** This *Hobbs* language erroneously suggests that an agency must be allowed to complete its response to a PRA request before the requestor can sue, even if the agency has already taken final action in violation of the PRA. According to the *Hobbs dicta*, an agency can intentionally violate the PRA in response to a PRA request, delay judicial review by producing additional records, and then correct its intentional violation before the requestor sues.

The agencies did not wait long before attempting to exploit the unfortunate dicta in *Hobbs*. In *Cedar Grove, supra*, the agency erroneously redacted emails based on a claim of privilege. Months later, after the requestor retained an attorney who threatened to sue, the agency produced the emails. *Cedar Grove*, 188 Wn. App. at 704-705. On appeal the agency cited *Hobbs* for the proposition that the requestor had no cause of action with respect to the emails. Division One disagreed, holding that the city's improper exemption claim was final action for purposes of RCW 42.56.520. *Id.* at 715. In *Hikel v. City of Lynnwood*, 197 Wn. App. 366, 380, 389 P.3d 677 (2016), Division One rejected the argument, under *Hobbs*, that the agency could not be liable for a PRA violation if the agency had "cured" the violation before taking final action to deny the requested records. The appellate court stated: "We disapprove of this view to the extent that it denies fees for procedural violations." *Id.*

Despite the criticism of *Hobbs* by Division One of the Court of Appeals, Division Two has continued to recycle its *Hobbs* dicta, erroneously implying that a PRA case cannot be brought until an agency has completed its response to a PRA request. In *John Doe L. v. Pierce County*, 7 Wn. App. 2d. 157, 196-197, 433 P.3d 838 (2018), Division II cited *Hobbs* for the following erroneous statement of the law:



**The PRA does not allow a requester “to initiate a lawsuit prior to an agency’s denial and closure of a public records request.”** *Hobbs*, 183 Wn. App. at 935. “Under the PRA, a requester may only initiate a lawsuit to compel compliance with the PRA after the agency has engaged in some final action denying access to a record.” *Hobbs*, 183 Wn. App. at 935-36. **When an agency produces records in installments, the agency does not “deny” access to the records until it finishes producing all responsive documents.** *Hobbs*, 183 Wn. App. at 936-37. (Emphasis added).

The middle (non-highlighted) sentence correctly states that an agency must engage in some sort of final action. But the first and third sentences erroneously state that an agency cannot be sued under the PRA until the agency has actually completed its response to a PRA request. Subsequently, in *Freedom Foundation v. DSHS*, \_\_\_ Wn. App. \_\_\_, No. 51498-2-II, 2019 LEXIS 2054; 2019 WL 3562020 (2019), Division II cited *Hobbs* again:

**In an action challenging an agency’s denial of a records request, a requester cannot initiate a lawsuit until the agency has denied and closed the request at issue.** *John Doe L v. Pierce County*, 7 Wn. App. 2d 157, 197, 433 P.3d 838 (2018), review denied 193 Wn.2d 1015 (2019). If an agency has not yet produced the requested records but has not stated that it will refuse to produce them, the agency has not denied access to the records for purposes of judicial review. See *Hobbs v. State Auditor's Office*, 183 Wn. App. 925, 936-37, 335 P.3d 1004 (2014) (**holding that requester could not initiate a lawsuit while the agency was still providing installments of responsive records**). (Emphasis added).

Again, the middle (non-highlighted) sentence is correct; if an agency has not actually stated that it will not produce a particular record then the agency

has not denied access to such a record for purposes of judicial review. But the first sentence and the parenthetical citation to *Hobbs* are both incorrect, erroneously stating that an agency cannot be sued under the PRA until the agency has completed its response.

Diemond's PRA case was *not* "premature." This Court should expressly disapprove of the erroneous dicta in *Hobbs*, *John Doe L.*, and *Freedom Foundation*. The Court should clearly state (i) that "final action" under RCW 42.56.520(4) and the closure of a PRA request are *not* the same thing, and (ii) that any agency action in violation of the PRA becomes "final action" in two business days regardless of whether the agency continues to produce installments of records.

#### **IV. CONCLUSION**

For all these reasons the Court should reject the County's argument that the Prosecutor and Sheriff are separate agencies, overrule *Koenig v. Pierce County*, and hold that KCC 2.12.005(A) and KCC 2.12.230(B) are invalid. This Court should expressly disapprove the erroneous dicta in *Hobbs v. State*, 183 Wn. App. 925.


This Court should reverse the order of the trial court and remand this matter to that court for further proceedings.

#### **V. APPENDICES**

**Appendix** Portion of WSR 18-06-051 (3/2/18)

RESPECTFULLY SUBMITTED this 3rd day of September, 2020.

By:



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## CERTIFICATE OF SERVICE


The undersigned certifies that on the 3rd day of September, 2020, true and correct copies of this amicus brief and the *Motion for Leave to File Brief of Amicus Curiae* were served on the parties as follows:

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# RULE-MAKING ORDER PERMANENT RULE ONLY

## CR-103P (December 2017) (Implements RCW 34.05.360)

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER  
STATE OF WASHINGTON  
FILED

DATE: March 02, 2018

TIME: 12:05 PM

WSR 18-06-051

Agency: Office of the Attorney General

**Effective date of rule:**

**Permanent Rules**

31 days after filing.

Other (specify) \_\_\_\_\_ (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

**Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?**

Yes  No If Yes, explain:

**Purpose:** The Office of the Attorney General is amending several advisory Public Records Act (PRA) Model Rules (Model Rules) in chapter 44-14 WAC, and is repealing one advisory Model Rule (WAC 44-14-07003). The purpose is to update the Model Rules to reflect developments in statutes, case law and technology since the rules were last revised in 2007.

**Citation of rules affected by this order:**

New:

Repealed: WAC 44-14-07003

Amended: WAC 44-14-00001, WAC 44-14-00002, WAC 44-14-00003, WAC 44-14-00004, WAC 44-14-00005, WAC 44-14-00006, WAC 44-14-010, WAC 44-14-01001, WAC 44-14-01002, WAC 44-14-01003, WAC 44-14-020, WAC 44-14-02001, WAC 44-14-02002, WAC 44-14-030, WAC 44-14-03001, WAC 44-14-03002, WAC 44-14-03003, WAC 44-14-03004, WAC 44-14-03005, WAC 44-14-03006, WAC 44-14-040, WAC 44-14-04001, WAC 44-14-04002, WAC 44-14-04003, WAC 44-14-04004, WAC 44-14-04005, WAC 44-14-04006, WAC 44-14-050, WAC 44-14-05001, WAC 44-14-05002, WAC 44-14-05003, WAC 44-14-05004, WAC 44-14-05005, WAC 44-14-06001, WAC 44-14-06002, WAC 44-14-070, WAC 44-14-07001, WAC 44-14-07004, WAC 44-14-07005, WAC 44-14-07006, WAC 44-14-080, WAC 44-14-08001, WAC 44-14-08002, WAC 44-14-08004

Suspended:

**Statutory authority for adoption:** RCW 42.56.570

**Other authority:**

**PERMANENT RULE (Including Expedited Rule Making)**

Adopted under notice filed as WSR 17-17-157 on August 23, 2017 (date).

Describe any changes other than editing from proposed to adopted version:

In adopting these final advisory Model Rules, the Office has made several minor insubstantial changes from the proposed rules to clarify the language, correct citations or formatting, and to provide additional references to statutes and Model Rules.

In addition, the Office made two substantial changes based on public comments.

The first change is the removal of proposed language with respect to an agency initiating and assigning a priority/category to a records request, as was proposed in WAC 44-14-040 and WAC 44-14-04003 (and in internal references to that proposed language in other rules). This change was based on public comment received. The commenters either requested the proposed language not proceed, or had concerns if the proposed language did proceed. While the Office recognizes public agencies may process requests in various ways in order to enable them to handle simple as well as complex requests, and some local agencies have adopted a categorization approach that works for them, it was not determined to be feasible at this time to provide possible standard language in Model Rules. Therefore, that proposed language is not included in the final rules.

The second change is the removal of most of the judicial review discussion in WAC 44-14-08004. This removal is also based on public comment received, which described in part that the Model Rules do not govern court proceedings, and that many court cases describe various elements of judicial review. In addition, the Office's online *Open Government*



*Resource Manual* links to the PRA judicial review statutes at RCW 42.56.550 and RCW 42.56.540, and provides links to many of those court decisions. Therefore, like the amendments that reduce the scope of the Model Rules' discussion of exemptions (see amendments to WAC 44-14-06002), the discussion of judicial review is similarly significantly reduced in the final rules.

More information on comments received on the proposed amendments and the reasons for the changes in the adopted final rules is available in the Concise Explanatory Statement, which will be made available on the Office's website on the rulemaking web page at <http://www.atg.wa.gov/rulemaking-activity>.

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting:

Name:  
 Address:  
 Phone:  
 Fax:  
 TTY:  
 Email:  
 Web site:  
 Other:

**Note: If any category is left blank, it will be calculated as zero.  
 No descriptive text.**

Count by whole WAC sections only, from the WAC number through the history note.  
 A section may be counted in more than one category.

**The number of sections adopted in order to comply with:**

Federal statute:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
Federal rules or standards:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
Recently enacted state statutes:	New	<u>0</u>	Amended	<u>44</u>	Repealed	<u>1</u>

**The number of sections adopted at the request of a nongovernmental entity:**

New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
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**The number of sections adopted on the agency's own initiative:**

New	<u>0</u>	Amended	<u>44</u>	Repealed	<u>1</u>
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**The number of sections adopted in order to clarify, streamline, or reform agency procedures:**

New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
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**The number of sections adopted using:**

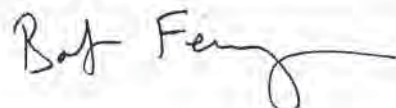
Negotiated rule making:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
Pilot rule making:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
Other alternative rule making:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>

Date Adopted: March 2, 2018

Name: Bob Ferguson

Title: Attorney General

Signature:





AMENDATORY SECTION (Amending WSR 06-04-079, filed 1/31/06, effective 3/3/06)

**WAC 44-14-010 Authority and purpose.** (1) RCW (~~((42.17.260(1)/))~~) 42.56.070(1) requires each agency to make available for inspection and copying nonexempt "public records" in accordance with published rules. The act defines "public record" at RCW 42.56.010(3) to include any "writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained" by the agency. RCW 42.56.010(3) excludes from the definition of "public record" the records of volunteers that are not otherwise required to be retained by the agency and which are held by volunteers who do not serve in an administrative capacity; have not been appointed by the agency to an agency board, commission or internship; and do not have a supervisory role or delegated authority. RCW (~~((42.17.260(2)/))~~) 42.56.070(2) requires each agency to set forth "for informational purposes" every law, in addition to the Public Records Act, that exempts or prohibits the disclosure of public records held by that agency.

(2) The purpose of these rules is to establish the procedures (name of agency) will follow in order to provide full access to public records. These rules provide information to persons wishing to request access to public records of the (name of agency) and establish processes for both requestors and (name of agency) staff that are designed to best assist members of the public in obtaining such access.

(3) The purpose of the act is to provide the public full access to information concerning the conduct of government, mindful of individuals' privacy rights and the desirability of the efficient administration of government. The act and these rules will be interpreted in favor of disclosure. In carrying out its responsibilities under the act, the (name of agency) will be guided by the provisions of the act describing its purposes and interpretation.

AMENDATORY SECTION (Amending WSR 06-04-079, filed 1/31/06, effective 3/3/06)

**WAC 44-14-01001 Scope of coverage of Public Records Act.** The act applies to an "agency." RCW (~~((42.17.260(1)/))~~) 42.56.070(1). "'Agency' includes all state agencies and all local agencies. 'State agency' includes every state office, department, division, bureau, board, commission, or other state agency. 'Local agency' includes every county, city, town, municipal corporation, quasi-municipal corporation, or special purpose district, or any office, department, division, bureau, board, commission, or agency thereof, or other local public agency." RCW (~~((42.17.020(2)/))~~) 42.56.010(1).

Court (~~((files and))~~) records, judges' files, and the records of judicial branch agencies are not subject to the act.<sup>1</sup> Access to these records is governed by court rules and common law. The model rules, therefore, do not address access to court or judicial branch records.

An entity which is not an "agency" can still be subject to the act when it is the functional equivalent of an agency. Courts have applied a four-factor, case-by-case test. The factors are:



- (1) Whether the entity performs a government function;
- (2) The level of government funding;
- (3) The extent of government involvement or regulation; and
- (4) Whether the entity was created by the government (~~(Op. Att'y Gen. 2 (2002))~~).<sup>2</sup>

Some agencies, most notably counties, are a collection of separate quasi-autonomous departments which are governed by different elected officials (such as a county assessor and prosecuting attorney). The act includes a county "office" as an agency. RCW 42.56.010(1). However, the act ((defines)) also includes the county as a whole as an "agency" subject to the act. ((RCW 42.17.020(2). An agency should coordinate responses to records requests across departmental lines. RCW 42.17.253(1))) Id. (local agency includes every county and local office). Therefore, some counties may have one public records officer for the entire county; others may have public records officers for each county official or department. The act does not require a public agency that has a records request directed to it to coordinate its response with other public agencies; however, for example, if a request is directed to an entire county, then coordination in some manner among county offices or departments may be necessary.<sup>3</sup> Regardless, public records officers must be publicly identified. RCW 42.56.580 (2) and (3) (agency's public records officer must "oversee the agency's compliance" with act).

Notes:

<sup>1</sup>*Nast v. Michels*, 107 Wn.2d 300, 730 P.2d 54 (1986); *West v. Washington State Assoc. of District and Municipal Court Judges*, 190 Wn. App. 931, 361 P.3d 210 (2015). See the courts' General Rule 31 and 31.1 regarding access to court records.

<sup>2</sup>((See also)) *Telford v. Thurston County Bd. of Comm'rs*, 95 Wn. App. 149, 162, 974 P.2d 886((~~review denied~~, 138 Wn.2d 1015, 989 P.2d 1143)) (1999); *Fortgang v. Woodland Park Zoo*, 187 Wn.2d 509, 387 P.3d 690 (2017). See also Op. Att'y Gen. 2 (2002) and Op. Att'y Gen. 5 (1991).

<sup>3</sup>*Koenig v. Pierce County*, 151 Wn. App. 221, 211 P.3d 423 (2009).

AMENDATORY SECTION (Amending WSR 06-04-079, filed 1/31/06, effective 3/3/06)

**WAC 44-14-01002 Requirement that agencies adopt reasonable regulations for public records requests.** The act provides that state agencies are to publish a rule in the Washington Administrative Code (WAC) and local agencies are to make publicly available at the central office guidance for the public that includes where the public may obtain information and make submittals and requests. RCW 42.56.040.

The act provides: "Agencies shall adopt and enforce reasonable rules and regulations... to provide full public access to public records, to protect public records from damage or disorganization, and to prevent excessive interference with other essential functions of the agency.... Such rules and regulations shall provide for the fullest assistance to inquirers and the most timely possible action on requests for information." RCW ((42.17.290/)) 42.56.100. Therefore, an agency must adopt "reasonable" regulations providing for the "fullest assistance" to requestors and the "most timely possible action on requests."<sup>1</sup>

At the same time, an agency's regulations must "protect public records from damage or disorganization" and "prevent excessive interference" with other essential agency functions. Another provision of the act states that providing public records should not "unreasonably disrupt the operations of the agency." RCW ((42.17.270/)) 42.56.080.



((and)), provide a brief explanation of the circumstances, and provide the nonexempt records with a written explanation of any redacted or withheld records.

(14) Maintaining a log. Effective July 23, 2017, the agency must maintain a log of public records requests to include the identity of the requestor if provided by the requestor, the date the request was received, the text of the original request, a description of the records redacted or withheld and the reasons therefor, and the date of the final disposition of the request. RCW 40.14.026(4).

Notes:

<sup>1</sup>See also Op. Att'y Gen. 2 (1998).

<sup>2</sup>See *Hobbs v. State*, 183 Wn. App. 925, 335 P.3d 1004, n.12 (2014) (Court of Appeals encouraged requestors to communicate with agencies about issues related to their records requests).

<sup>3</sup>See *Smith v. Okanogan County*, 100 Wn. App. 7, 13, 994 P.2d 857 (2000) ("When an agency fails to respond as provided in RCW 42.17.320 (42.56.520), it violates the act and the individual requesting the public record is entitled to a statutory penalty."); *West v. State Dep't of Natural Res.*, 163 Wn. App. 235, 243, 258 P.3d 78 (2011) (failure to respond within five business days); *Ruffin v. City of Seattle*, 199 Wn. App. 348, 398 P.3d 1237 (2017) (failure to respond within five business days entitles plaintiff to seek attorneys' fees but not penalties).

<sup>4</sup>While an agency can fulfill requests out of order, an agency is not allowed to ignore a large request while it is exclusively fulfilling smaller requests. The agency should strike a balance between fulfilling small and large requests.

<sup>4</sup>*Smith*, 100 Wn. App. at 14.

<sup>5</sup>*Fisher Broadcasting v. City of Seattle*, 180 Wn.2d 515, 326 P.3d 688 (2014).

<sup>6</sup>*Ockerman v. King County Dep't of Dev. & Envtl. Servs.*, 102 Wn. App. 212, 214, 6 P.3d 1215 (2000) (agency is not required to provide a written explanation of its reasonable estimate of time when it does not provide records within five days of the request).

<sup>7</sup>*Andrews v. Wash. State Patrol*, 183 Wn. App. 644, 334 P.3d 94 (2014) (the act recognizes that agencies may need more time than initially anticipated to locate records).

<sup>8</sup>An exception is some state-agency employee personnel records. RCW ((42.17.295f)) 42.56.110.

<sup>9</sup>(*Daines v. Spokane County*, 111 Wn. App. 342, 349, 44 P.3d 909 (2002) ("an applicant need not exhaust his or her own ingenuity to 'ferret out' records through some combination of 'intuition and diligent research'").

<sup>7</sup>) <sup>9</sup>*Neighborhood Alliance v. Spokane County*, 172 Wn.2d 702, 261 P.3d 119 (2011); *Forbes v. City of Gold Bar*, 171 Wn. App. 857, 288 P.3d 384 (2012).

<sup>10</sup>*O'Neill v. City of Shoreline*, 170 Wn.2d 138, 240 P.3d 1149 (2010); *Nissen v. Pierce County*, 182 Wn.2d 363, 357 P.3d 45 (2015); *West v. Vermillion*, 196 Wn. App. 627, 384 P.3d 634 (2016).

<sup>11</sup>*Yousoufian v. Office of Ron Sims*, 168 Wn.2d 444, 229 P.3d 735 (2010); *Neighborhood Alliance*, 172 Wn.2d at 728.

<sup>12</sup>*Neighborhood Alliance*, 172 Wn.2d at 722.

<sup>13</sup>*Andrews v. Wash. State Patrol*, 183 Wn. App. 644 at 653; *Hikel v. Lynnwood*, 197 Wn. App. 366, 389 P.3d 677 (2016).

<sup>14</sup>The agency holding the record can also file a RCW ((42.17.330f)) 42.56.540 injunctive action to establish that it is not required to release the record or portion of it. An agency can also file an action under the Uniform Declaratory Judgments Act at chapter 7.24 RCW. *Benton County v. Zink*, 191 Wn. App. 194, 361 P.2d 283 (2015).

AMENDATORY SECTION (Amending WSR 07-13-058, filed 6/15/07, effective 7/16/07)

#### **WAC 44-14-04004 Responsibilities of agency in providing records.**

(1) **General.** An agency may simply provide the records or make them available within the five-business day period of the initial response. When it does so, an agency should also provide the requestor a written cover letter or email briefly describing the records provided and informing the requestor that the request has been closed. This assists the agency in later proving that it provided the specified records on a certain date and told the requestor that the request had been closed. However, a cover letter or email might not be practical in some circumstances, such as when the agency provides a small number of records or fulfills routine requests.

An agency can, of course, provide the records sooner than five business days. Providing the "fullest assistance" to a requestor would mean providing a readily available record as soon as possible. For example, an agency might routinely prepare a premeeting packet of documents three days in advance of a city council meeting. The packet is readily available so the agency should provide it to a requestor on the same day of the request so he or she can have it for the council meeting.



(2) **Means of providing access.** An agency must make nonexempt public records "available" for inspection or provide a copy. RCW ((42.17.270/)) 42.56.080. An agency is only required to make records "available" and has no duty to explain the meaning of public records.<sup>1</sup> Making records available is often called "access."

Access to a public record can be provided by allowing inspection of the record, providing a copy, or posting the record on the agency's web site and assisting the requestor in finding it (if necessary). An agency must mail a copy of records if requested and if the requestor pays the actual cost of postage and the mailing container.<sup>2</sup> The requestor can specify which method of access (or combination, such as inspection and then copying) he or she prefers. Different processes apply to requests for inspection versus copying (such as copy charges) so an agency should clarify with a requestor whether he or she seeks to inspect or copy a public record.

An agency can provide access to a public record by posting it on its public internet web site. Once an agency provides a requestor an internet address and link on the agency's web site to the specific records requested, the agency has provided the records, and at no cost to the requestor. RCW 42.56.520. If requested, an agency should provide reasonable assistance to a requestor in finding a public record posted on its web site. If the requestor does not have internet access, the agency may provide access to the record by allowing the requestor to view the record on a specific computer terminal at the agency open to the public. An agency ~~((is not required to do so. Despite the availability of the record on the agency's web site, a requestor can still make a public records request and inspect the record or obtain a copy of it by paying the appropriate per page copying charge))~~ shall not impose copying charges for access to or downloading records that the agency routinely posts on its web site prior to receipt of a request unless the requestor has specifically requested that the agency provide copies of such records through other means. RCW 42.56.120 (2) (e).

(3) **Providing records in installments.** The act ((new)) provides that an agency must provide records "if applicable, on a partial or installment basis as records that are part of a larger set of requested records are assembled or made ready for inspection or disclosure." RCW ((42.17.270/)) 42.56.080. An installment can include links to records on the agency's internet web site. The purpose of this installments provision is to allow requestors to obtain records in installments as they are assembled and to allow agencies to provide records in logical batches. The provision is also designed to allow an agency to only assemble the first installment and then see if the requestor claims or reviews it before assembling the next installments. An agency can assess charges per installment for copies made for the requestor, unless it is using the up to two-dollar flat fee charge. RCW 42.56.120(4).

Not all requests should be provided in installments. For example, a request for a small number of documents which are located at nearly the same time should be provided all at once. Installments are useful for large requests when, for example, an agency can provide the first box of records as an installment. An agency has wide discretion to determine when providing records in installments is "applicable." However, an agency cannot use installments to delay access by, for example, calling a small number of documents an "installment" and sending out separate notifications for each one. The agency must provide the



"fullest assistance" and the "most timely possible action on requests" when processing requests. RCW ((42.17.290/)) 42.56.100.

(4) **Failure to provide records.** A "denial" of a request can occur when an agency:

((Does not have the record;))  
Fails to respond to a request;  
Claims an exemption of the entire record or a portion of it;  
((or))

Without justification, fails to provide the record after the reasonable estimate of time to respond expires((-

~~(a) When the agency does not have the record~~); or  
Determines the request is an improper "bot" request. An agency is only required to provide access to public records it has or has used.<sup>3</sup> An agency is not required to create a public record in response to a request.

An agency must only provide access to public records in existence at the time of the request. An agency is not obligated to supplement responses. Therefore, if a public record is created or comes into the possession of the agency after the request is received by the agency, it is not responsive to the request and need not be provided. A requestor must make a new request to obtain subsequently created public records.

Sometimes more than one agency holds the same record. When more than one agency holds a record, and a requestor makes a request to the first agency (agency A), ((the first)) agency A cannot respond to the request by telling the requestor to obtain the record from the second agency (agency B). Instead, an agency must provide access to a record it holds regardless of its availability from another agency.<sup>4</sup>

However, an agency is not required to go outside its own public records to respond to a request.<sup>5</sup> If agency A never prepared, owned, used or retained a record, but the record is available at agency B, the requestor must make the request to agency B, not agency A.

An agency is not required to provide access to records that were not requested. An agency does not "deny" a request when it does not provide records that are outside the scope of the request because they were never asked for.

((b)) (5) **Claiming exemptions.**

((i)) (a) **Redactions.** If a portion of a record is exempt from disclosure, but the remainder is not, an agency generally is required to redact (black out) the exempt portion and then provide the remainder. RCW ((42.17.310(2)/)) 42.56.210(1). There are a few exceptions. ((5)) <sup>6</sup> Withholding an entire record where only a portion of it is exempt violates the act. ((6)) <sup>7</sup> Some records are almost entirely exempt but small portions remain nonexempt. For example, information revealing the identity of a crime victim is exempt from disclosure if certain conditions are met. RCW ((42.17.310(1)(e)/)) 42.56.240(2). If a requestor requested a police report in a case in which charges have been filed, and the conditions of RCW 42.56.240(2) are met, the agency must redact the victim's identifying information but provide the rest of the report.

Statistical information "not descriptive of any readily identifiable person or persons" is generally not subject to redaction or withholding. RCW ((42.17.310(2)/)) 42.56.210(1). For example, if a statute exempted the identity of a person who had been assessed a particular kind of penalty, and an agency record showed the amount of penalties assessed against various persons, the agency must provide the record



with the names of the persons redacted but with the penalty amounts remaining.

Originals should not be redacted. For paper records, an agency should redact materials by first copying the record and then either using a black marker on the copy or covering the exempt portions with copying tape, and then making a copy. Another approach is to scan the paper record and redact it electronically. It is often a good practice to keep the initial copies which were redacted in case there is a need to make additional copies for disclosure or to show what was redacted; in addition, an agency is required under its records retention schedules to keep responses to a public records request for a defined period of time. For electronic records such as databases, an agency can sometimes redact a field of exempt information by excluding it from the set of fields to be copied. For other electronic records, an agency may use software that permits it to electronically redact on the copy of the record. However, in some instances electronic redaction might not be feasible and a paper copy of the record with traditional redaction might be the only way to provide the redacted record. If a record is redacted electronically, by deleting a field of data or in any other way, the agency must identify the redaction and state the basis for the claimed exemption as required by RCW 42.56.210(3). ((See (b)(ii) of this subsection.

(ii))

**(b) Brief explanation of withholding.** When an agency claims an exemption for an entire record or portion of one, it must inform the requestor of the statutory exemption and provide a brief explanation of how the exemption applies to the record or portion withheld. RCW ((42.17.310(4)/) 42.56.210(3). The brief explanation should cite the statute the agency claims grants an exemption from disclosure. The brief explanation should provide enough information for a requestor to make a threshold determination of whether the claimed exemption is proper. Nonspecific claims of exemption such as "proprietary" or "privacy" are insufficient.

One way to properly provide a brief explanation of the withheld record or redaction is for the agency to provide a withholding ((~~index~~ It)) log, along with the statutory citation permitting withholding, and a description of how the exemption applies to the information withheld. The log identifies the type of record, its date and number of pages, and the author or recipient of the record (unless their identity is exempt).<sup>((7)) 8</sup> The withholding ((~~index~~)) log need not be elaborate but should allow a requestor to make a threshold determination of whether the agency has properly invoked the exemption.

Another way to properly provide a brief explanation is to use another format, such as a letter providing the required exemption citations, description of records, and brief explanations. Another way to properly provide a brief explanation is to have a code for each statutory exemption, place that code on the redacted information, and attach a list of codes and the brief explanations with the agency's response.

((+5)) **(6) Notifying requestor that records are available.** If the requestor sought to inspect the records, the agency should notify him or her that the entire request or an installment is available for inspection and ask the requestor to contact the agency to arrange for a mutually agreeable time for inspection.<sup>((8)) 9</sup> The notification should recite that if the requestor fails to inspect or copy the records or make other arrangements within thirty days of the date of the



notification that the agency will close the request and refile the records. An agency might consider on a case-by-case basis sending the notification by certified mail to document that the requestor received it.

If the requestor sought copies, the agency should notify him or her of the projected costs and whether a copying deposit is required before the copies will be made. Such notice by the agency with a summary of applicable estimated charges is required when the requestor asks for an estimate. RCW 42.56.120 (2)(f). The notification can be oral to provide the most timely possible response, although it is recommended that the agency document that conversation in its file or in a follow-up email or letter.

~~((+6))~~ (7) Documenting compliance. An agency should have a process to identify which records were provided to a requestor and the date of production. An agency may wish to apply a "read receipt" rule to emails to requestors or ask the requestor to confirm if he/she received the email from the agency. In some cases, an agency may wish to number-stamp or number-label paper records provided to a requestor to document which records were provided. The agency could also keep a copy of the numbered records so either the agency or requestor can later determine which records were or were not provided; and, an agency is required to keep copies of its response to a request for the time period set out in its records retention schedule. However, the agency should balance the benefits of stamping or labeling the documents and making extra copies against the costs and burdens of doing so. For example, it may not be necessary to affix a number on the pages of records provided in response to a small request.

If memorializing which specific documents were offered for inspection is impractical, an agency might consider documenting which records were provided for inspection by making ~~((an index or))~~ a list of the files or records made available for inspection.

Notes:

<sup>1</sup>*Bonamy v. City of Seattle*, 92 Wn. App. 403, 409, 960 P.2d 447 (1998) ~~((review denied, 137 Wn.2d 1012, 978 P.2d 1099 (1999)))~~.

<sup>2</sup>*Am. Civil Liberties Union v. Blaine Sch. Dist. No. 503*, 86 Wn. App. 688, 695, 937 P.2d 1176 (1997); RCW 42.56.120.

<sup>3</sup>*Sperr v. City of Spokane*, 123 Wn. App. 132, 136-37, 96 P.3d 1012 (2004).

<sup>4</sup>*Hearst Corp. v. Hoppe*, 90 Wn.2d 123, 132, 580 P.2d 246 (1978).

<sup>5</sup>*Limstrom v. Ladenburg (Limstrom II)*, 136 Wn.2d 595, 963 P.2d 896 (1998) n.3 ("On its face the Act does not require, and we do not interpret it to require, an agency to go outside its own records and resources to try to identify or locate the record requested."); *Koenig v. Pierce County*, 151 Wn. App. 221, 232-33, 211 P.3d 423 (2009) (agency has no duty to coordinate responses with other agencies, citing to and quoting *Limstrom II*).

<sup>6</sup>The two main exceptions to the redaction requirement are state "tax information" (RCW 82.32.330 (1)(c)) and law enforcement case files in active cases ~~((Newman v. King County, 133 Wn.2d 565, 574, 947 P.2d 712 (1997)))~~ *Sargent v. Seattle Police Dep't*, 179 Wn.2d 376, 314 P.3d 1093 (2013). Neither of these two kinds of records must be redacted but rather may be withheld in their entirety.

<sup>(6)</sup> *Seattle Firefighters Union Local No. 27 v. Hollister*, 48 Wn. App. 129, 132, 737 P.2d 1302 (1987).

<sup>(7)</sup> *Progressive Animal Welfare Soc'y. v. Univ. of Wash.*, 125 Wn.2d 243, 271, n.18, 884 P.2d 592 (1994) ("PAWS II").

<sup>(8)</sup> For smaller requests, the agency might simply provide them with the initial response or earlier so no notification is necessary.

AMENDATORY SECTION (Amending WSR 06-04-079, filed 1/31/06, effective 3/3/06)

**WAC 44-14-04005 Inspection of records. (1) Obligation of requestor to claim or review records.** After the agency notifies the requestor that the records or an installment of them ~~((are))~~ is ready for inspection or copying, the requestor must claim or review the records or the installment. RCW ~~((42.17.300/))~~ 42.56.120. If the requestor cannot claim or review the records him or herself, a representative may do so within the thirty-day period.<sup>1</sup> Other arrangements can be mutually agreed to between the requestor and the agency.

**WILLIAM JOHN CRITTENDEN**

**September 03, 2020 - 12:35 PM**

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# Appendix F

**No. 81420-6-I**

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION ONE

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CHRISTY DIEMOND,

Appellant,

v.

KING COUNTY,

Respondent.

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**BRIEF OF AMICUS CURIAE WE THE GOVERNED**

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*“It is no less good morals and good law that the Government should turn square corners in dealing with the people than that the people should turn square corners in dealing with their Government.”<sup>1</sup>*

## **I. Identity and Interest of Amicus Curiae**

Organized in 2016, We the Governed, LLC (WTG), is a citizen’s run media organization which is dedicated to promoting governmental accountability and transparency through investigative journalism. WTG’s mission is to identify and expose waste, misconduct, and overreaching on the part of state and local governmental entities throughout the State of Washington.

WTG believes that protecting an open, transparent and accountable government is a necessary foundation for good government. WTG works to tell the stories of “ordinary” citizens and seeks to present a voice dedicated to preserving and protecting individual rights including the fundamental rights of citizens to monitor governmental conduct.

WTG has demonstrated a long-standing interest in transparency of government in the State of Washington. WTG maintains an active website at <http://wethegoverned.com> that in addition to its in-depth reporting provides resources and support for citizen whistleblowers. WTG’s director has testified before the Legislature on numerous matters regarding governmental transparency, accountability, waste and fraud.

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<sup>1</sup> *St. Regis Paper Co. v. United States*, 368 U.S. 208 (1961). J. Black, (dissenting).

WTG further recognizes the asymmetry in resources between members of the public and the government and works to ensure that this disparity is not leveraged by the government in order to overreach and violate the rights of citizens. Because of this asymmetry, and particularly the inherent disadvantages that *pro se* litigants face when litigating against the government, WTG believes that courts should treat *pro se* litigants with special care in order to avoid inadvertent forfeiture of legal rights. Protecting *pro se* litigants from inadvertent forfeiture when litigating against resource rich subdivisions of the state would further a legal environment where individuals can monitor their government.

## **II. Statement of the Case**

The trial court's grant of summary judgment to King County over Ms. Diamond's request for a continuance and its further denial of her motion for reconsideration and CR 60 motion and motion for judicial reassignment are in error, and this Court should rectify these errors so as to afford Ms. Diamond a chance at justice. WTG joins Appellant's and Amicus Curiae Washington Coalition for Open Government's ("WCOG") substantive arguments but focuses its briefing on the procedural circumstances of this case. In particular, WTG is concerned with the highly questionable application of deadlines rules that worked to Ms. Diamond's profound disadvantage.

Abruptly left without a lawyer, Ms. Diamond, the record is clear, attempted to prosecute her case as best she knew how. Indeed, she made

the eminently reasonable request that the motion for summary judgment hearing be continued so she would have time to obtain new counsel and had earlier informed her opposing counsel, King County Prosecutors, that if the case did not settle, that she would need a few months to secure a lawyer to respond to the County's threatened summary judgment motion. CP 175-176 at ¶34. She also filed a Notice of Unavailability for the day of the summary judgment hearing.

Despite the eminent reasonableness of her request for a continuance, the trial court nevertheless forged ahead on the date Ms. Diemond had indicated she was unavailable and made determinations on the merits with neither Ms. Diemond's presence or the consideration of her written submissions. As pointed out by Appellant in her brief, the trial court written order granting summary judgment in favor of King County did not identify Ms. Diemond's motion for a continuance or Notice of Unavailability nor any of her submissions in opposition to summary judgment as material on which the judge relied. The Order was further devoid of any findings or indication as to the basis of its reasoning as to why it made its decision. Oddly, the Superior Court further claimed the dispositive hearing was not recorded.

The same day she became aware that an adverse decision had been rendered by the trial court despite her Notice of Unavailability, Ms. Diemond filed a motion for reconsideration. As soon as Ms. Diemond hired new counsel, her new counsel took steps to rectify any alleged technical

deficiencies in the *pro se* Diamond's pleadings and requested reconsideration and other relief from the trial court. See, Br. of Appellant at 34-38.

In contrast to Ms. Diamond's good-faith perseverance, the government (both Appellee King County and the Snohomish County Superior Court) made only the most anemic attempts to apprise Ms. Diamond of key events in the litigation.

First, evidently capitalizing on Ms. Diamond's sudden lack of representation, King County opportunistically deviated from what had been the practice of the parties to serve process by email and commenced to provide service exclusively by drop off to the UPS Mailbox Store where Ms. Diamond had a mailbox. CP 174-175 at ¶¶30, 32. King County's messenger dropped a stack of papers on the counter at the store without a note or addressee. *Id.* King County's attorneys, who were in contact with Ms. Diamond both before and after this "service,"<sup>2</sup> failed to tell Ms. Diamond of the filing or the service and did not provide a copy by email. CP 174-175 at ¶¶30, 32. (When the UPS Mailbox Store eventually figured out who the stack of papers dropped on its counter belonged to, and put them in Ms. Diamond's box, Ms. Diamond discovered them and promptly filed her Motion for Continuance, Notice of Unavailability, and accompanying Declaration explained as best she could in the short period of time allowed that the County had not, in fact, produced all responsive

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<sup>2</sup> See, e.g., CP 175 at ¶32.

material to her and why summary judgment for the County was inappropriate. CP 174-175 at ¶¶30, 32-33; CP 56-65, 707-715.<sup>3</sup>

Second, Ms. Diemond did not receive any notice from the Court that a hearing was held despite her Notice of Unavailability and that an order granting summary judgment and denying her motion for continuance had been issued until at least 17 days after the order indicates that it was signed when the Snohomish County Clerk mailed her a copy of the Orders in an envelope postmarked November 6, 2018—17 days after the Order had been signed. CP 177 at ¶37; CP 539. King County never notified Ms. Diemond of the hearing or Orders, although its representative, attorney, Mari Isaacson who defends King County in this appeal, is listed as having attended the attorney in person. Court Docket and CP 73 The consequence of such a delay of Notice of the Orders is that it entirely frustrated Ms. Diemond’s ability to comply with the deadlines that were triggered by those orders thereby denying her the possibility of timely lodging a reconsideration order if the triggering event is the date the Orders were signed, and not the date she received notice orders had been signed.

In sum, the record shows that there was every indication: (1) That Ms. Diemond fully intended to continue to litigate her case; (2) That Ms.

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<sup>3</sup>Diemond filed her Notice of Unavailability, Motion for Continuance, and opposition to summary judgment on October 12, 2018, as the file stamp on the original shows—see CP 56-65, 707—but the Snohomish Superior Court Clerk inexplicably listed the file date of the Motion to Continue on the docket as October 15, 2018. See Docket and Index to Clerks Papers, Vol. 4 (Dkt. #50).

Diemond was not provided effective notice and opportunity to respond to King County's dispositive Motion; (3) That Ms. Diemond was not provided effective notice of the order entered with respect to the trial court's issuance of summary judgment; (4) That Ms. Diemond had revealed through her PRA requests that King County had denied her crucial information that she should have been provided during her criminal prosecution; (5) That King County had failed to adequately respond to her records request; and, (6) That no undue prejudice would result to King County were Ms. Diemond allowed to litigate the merits of her claim as she undoubtedly would have been able to except for the unexpected withdrawal of her former counsel.

### **III. Argument**

It cannot be reasonably disputed that Ms. Diemond has exposed serious governmental misconduct by King County in its operation of its Regional Animal Services ("RASKC"). Nor can it be reasonably disputed that Ms. Diemond, by filing her Public Records Act lawsuit, located significant exculpatory information that would have been instrumental to her defense in the State's criminal prosecution of her. Ms. Diemond has now been twice denied justice by King County, and this Court should allow Ms. Diemond her day in court to present her case on the merits.

Indeed, Ms. Diemond certainly would have prevailed on her PRA claim but for the circumstances that befell her when she attempted to manage her case *pro se* subsequent to her counsel withdrawing for medical reasons. The record is clear that Ms. Diemond made a good-faith effort to



pursue her claims and timely request reconsideration of the trial court's dismissal of her case as well as the present appeal.

The circumstances pertaining to the notice provided Ms. Diemond with respect to the Court's consideration and decision of King County's summary judgment motion requires reversal of the trial court's order on summary judgment and denying her motion for a continuance.

To the extent Ms. Diemond did not timely perfect her request for reconsideration the Court should find any neglect was excusable, that such did not materially prejudice King County, and did not result in unreasonable delay.

As a starting point, it needs to be remembered that Washington's Canon of Judicial Conduct recognizes that judges may make allowances for *pro se* litigants. "It is not a violation of this rule [impartiality and fairness] to make reasonable accommodations to ensure *pro se* litigants the opportunity to have their matters fairly heard." CJC, Rule 2.2, Comment 4. This is precisely what Amicus is advocating this Court do.

Moreover, the King County prosecutors that litigated against Ms. Diemond both in her criminal prosecution and in the subsequent PRA litigation have heightened ethical duties when it comes to litigating against unrepresented parties. For example, RPC 3.8(d) and (g) requires prosecutors to disclose *Brady*<sup>4</sup> materials even when such are discovered *after* a conviction. Likewise, RPC 3.8(c) requires that prosecutors "not seek

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<sup>4</sup> *Brady v. Maryland*, 373 U.S. 83, 83 S. Ct. 1194, 10 L.Ed.2d 215 (1963).

to obtain from an unrepresented accused a waiver of important pretrial rights....”

Whether fortuitous or not, it is clear that Ms. Diemond was not afforded any reasonable accommodation with respect to her case. Citizens deserve more from their courts and prosecutors.

Courts have long recognized the unique burdens that *pro se* litigants bear when it comes to compliance with procedural rules. Recognizing such disadvantage, in *Haines v. Kerner*, 404 U.S. 519, 520-21, 92 S.Ct. 594, 30 L.Ed.2d 652 (1972), the United States Supreme Court held that *pro se* litigants are to be afforded more leniency with respect to the construction of their pleadings than those for formal pleadings drafted by attorneys.

Washington courts have yet to recognize -- formally, at least -- the salubrious effect of such leniency and have consistently ruled that *pro se* litigants must comply with all procedural rules to the same extent that a represented party must. See, *Westberg v. All-Purpose Structures Inc.*, 86 Wn.App. 405, 411, 936 P.2d 1175 (Div. II, 1997). See also, *In re Marriage of Olson*, 69 Wn. App. 621, 626, 850 P.2d 527 (Div. I, 1993).

Unlike Washington, federal courts have gone further to afford substantial flexibility for litigants when deadlines are missed and will relieve a litigant when a deadline is not met because of “excusable neglect”. “The determination of whether neglect is excusable “`is at bottom an equitable one, taking account of all relevant circumstances surrounding the party's omission.” *Lemoge v. United States*, 587 F.3d 1188, 1192 (9th

Cir. 2009) (quoting *Pioneer Inv. Servs. Co. v. Brunswick Associates Ltd. P'ship*, 507 U.S. 380, 395 (1993)).

To determine whether neglect is excusable, a court must consider at least four factors: "(1) the danger of prejudice to the opposing party; (2) the length of the delay and its potential impact on the proceedings; (3) the reason for the delay; and (4) whether the movant acted in good faith." *Bateman v. U.S. Postal Serv.*, 231 F.3d 1220, 1223-24 (9th Cir. 2000); accord *Briones v. Riviera Hotel & Casino*, 116 F.3d 379, 382 (9th Cir. 1997).

In the instant case, there is no unreasonable prejudice to King County in having the merits of this case reviewed. Rather, what King County fears is the exposition of its failings when it comes both to how it responds to public records requests but also in how it managed its criminal prosecution of Ms. Diamond, and how it ran its animal welfare programs.

It is clear that Ms. Diamond immediately moved to have the trial court reconsider its dismissal of her case the same day she learned of the summary judgment order. Likewise, the reason for Ms. Diamond's arguably untimely motion for appeal is due to the court's delay in providing her its order on summary judgment and for continuance. It is unreasonable to expect lay litigants to perform daily docket searches to learn whether or not a decision has been rendered in their case. That neither the Court nor the prosecuting attorneys notified her of the Court's decision until after the

time for the filing a motion for reconsideration had run should not be ignored.

It is beyond time for Washington to reexamine its dogmatic adherence to formalistic rules and afford *pro se* litigants greater latitude so as to accomplish substantial justice.

The present case is emblematic of violence that is done by Washington's strict enforcement of deadlines on *pro se* litigants. This Court should review this case and rectify the inadvertent forfeiture of valid claims by a *pro se* litigant.

Strict enforcement of procedural rules on *pro se* litigants disproportionately disadvantages them when they are engaged in litigation against well-funded and well represented government entities. Federal courts have recognized that the summary judgment stage of proceedings – since it might forever dispose of a *pro se* litigant's claim – requires particular notice and warning to *pro se* litigants. "District courts must take care to insure that *pro se* litigants are provided with proper notice regarding the complex procedural issues involved in summary judgment proceedings."; *Timms v. Frank*, 953 F.2d 281, 283-84 (7th Cir. 1992).

It is noteworthy that the pool of *pro se* litigants is disproportionately comprised of women, minorities and the poor – groups historically subject to unfavorable treatment and to whom the courts have provided legal protections and avenues of redress.

Though state level data is sparse, one study of federal litigants in employment civil rights cases found that African Americans are 2.5 times more likely to file employment discrimination *pro se* compared to their white counterparts. See, Race and Representation: Racial disparities in Legal Representation for Employment Civil Rights Cases, Amy Myrick, Robert L. Nelson and Laura Beth Nielsen, *New York University Journal of Legislation and Public Policy*, Vol. 15:3 at 715 (2012). Similarly, a class consisting of women, the poor, and (non-African American) minorities were 1.9 times likely to be self-represented than their white male counterparts. *Id.*

As the authors presciently advised: “Judges should make efforts to explain requirements, invite questions, and give plaintiffs leeway where appropriate, **especially when setting and enforcing deadlines.** Recognizing the racial disparity in *pro se* filing makes this especially imperative; otherwise, courts may function to reinforce substandard treatment that minority groups experience in other social domains.” *Id.* at 757. (Emphasis supplied; internal footnotes omitted).

In the Washington State’s Supreme Court’s historic June 4, 2020 open letter crafted in response to the turmoil sparked by the extrajudicial killing of George Floyd, it recognized that “we can administer justice and support court rules in a way that brings greater racial justice to our system as a whole” and that “we must recognize the harms that are caused when

meritorious claims go unaddressed due to systemic inequities or the lack of financial, personal, or systemic support.”

The Supreme Court recognized that changes must be made. It wrote: “Too often in the legal profession, we feel bound by tradition and the way things have “always” been. We must remember that even the most venerable precedents must be struck down when it is incorrect and harmful.” Id.

During her criminal prosecution which led to Ms. Diemond’s interest in the public records at issue in this case, Ms. Diemond had been found to be indigent and had been appointed counsel. Ms. Diemond is a representative of the class of indigent *pro se* litigants all too often disadvantaged by strict adherence to rules, without adequate warnings and notice, when litigating against the government. Even a cursory review of the materials not provided to Ms. Diemond by King County at the time of the summary judgment hearing, shows that Ms. Diemond has established that she has serious and meritorious claims against King County that deserve to be considered by this Court.

It is time for this Court to reexamine prior rulings that require *pro se* litigants to so strictly comply with procedural rules and for the Court to look to a more just and equitable approach such as that followed in the federal system.

For the reasons stated, Amicus Curiae WTG urges this Court to make a determination on the merits in favor of Ms. Diemond in this appeal.

Respectfully submitted this 8<sup>th</sup> day of September 2020.

THE LAW OFFICE OF NICHOLAS POWER

By: s/Nicholas Power  
Nicholas Power WSBA No. 45974

**LAW OFFICE OF NICHOLAS POWER**

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# Appendix G

NO. 81420-6-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

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CHRISTY DIEMOND,

Appellant,

v.

KING COUNTY,

Respondent.

---

APPEAL FROM THE SUPERIOR COURT FOR

SNOHOMISH COUNTY

---

**KING COUNTY'S ANSWER TO WCOG'S AMICUS BRIEF**

---

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## I. INTRODUCTION

Amicus Washington Coalition for Open Government (WCOG) argues King County may not define separate branches of King County government as distinct agencies under the Public Records Act (PRA). WCOG's argument should be rejected because this issue was not raised in the trial court and King County's designation of distinct agencies is authorized under the PRA.

## II. STATEMENT OF THE CASE

As explained in the Brief of Respondent, this case was properly dismissed on King County's motion for summary judgment; Diemond filed no substantive brief in response to the County's motion.<sup>1</sup>

The only issue properly before this Court is the trial court's denial of Diemond's CR 60 motion. In this motion Diemond's main arguments are that the trial judge should have recused herself and that Diemond was treated unfairly as a pro se litigant. Diemond's CR 60 motion did not argue that the County was prohibited from defining its separate branches as distinct agencies under the PRA.

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<sup>1</sup> King County incorporates by reference the facts in its Brief of Respondent filed on July 24, 2020.

WCOG's statement of the case incorrectly claims that the "records at issue in this PRA case include *Brady* materials that should have been provided to Diamond in her criminal case." This assertion is devoid of factual support and has nothing to do with this lawsuit. There is no evidence before this Court regarding Diamond's public records requests to the King County Prosecuting Attorney's Office (PAO).

### III. ARGUMENT

1. Amicus' arguments regarding the King County Code were never considered by the trial court.

Generally, "an argument neither pleaded nor argued to the trial court cannot be raised for the first time on appeal."

*Washington Fed. Sav. v. Klein*, 177 Wn. App. 22, 29, 311 P.3d 53, 56 (2013). RAP 2.5(a) authorizes this Court to refuse to review any alleged error that was not raised in the trial court.

The rule limits the issues that may presumptively be raised for the first time on appeal to (1) lack of trial court jurisdiction, (2) failure to establish facts upon which relief can be granted, and (3) manifest error affecting a constitutional right. RAP 2.5(a). None of these exceptions apply here, and WCOG does not argue that this case meets any of the exceptions.

Even if WCOG had attempted to shoehorn this case into one of the enumerated exceptions, they would have failed. The main issue addressed by WCOG's briefing – whether King County may establish distinct agencies for responding to public records requests – is one of statutory interpretation. It does not satisfy any of the limited exceptions warranting review.

Diamond did not raise this issue in her complaint, her response to the County's summary judgment motion, or her CR 60 motion. The trial court had no opportunity to review this issue and the County had no opportunity to respond to this argument before the trial court. This Court should refuse to review this issue on appeal.

2. Even if this issue had been before the trial court, the result in Diamond's case would be the same.

King County's Code organizes the County into nine distinct agencies under the PRA. These agencies are the executive branch, the legislative branch, the department of public safety, the department of assessments, the office of the prosecuting attorney, the department of elections, the forecast council and office of economic and financial analysis, the board of appeals, and the personnel board. King County Code (KCC) 2.12.005.A.1. A request



to one agency does not constitute a request to any other agency. KCC 2.12.230.B. This structure was approved in *Koenig v. Pierce County*, 151 Wn. App. 221, 232-34, 211 P.3d 423 (2009).

- a. *Koenig* correctly held that separately elected officials do not have a duty to coordinate responses under the PRA.

In *Koenig*, the requester argued that the county as a whole owed a duty to respond to his records requests. *Id.* at 231-34. This Court reviewed the statutory definition of “agency” and disagreed. *Id.* The PRA defines “agency” as follows:

Agency includes all state agencies and all local agencies. "State agency" includes every state office, department, division, bureau, board, commission, or other state agency. "Local agency" includes every county, city, town, municipal corporation, quasi-municipal corporation, or special purpose district, or any office, department, division, bureau, board, commission, or agency thereof, or other local public agency.

RCW 42.56.010(1).

In rejecting *Koenig*'s argument, the court noted that the plain language of the statute “equally defines various governmental entities as agencies without establishing any obligatory relationships between them.” *Id.* at 232. Moreover, reading the definition of “agency” to mean that the County as a whole has a duty to respond to PRA requests would improperly make the language “or any office,

department, division, bureau, board, commission, or agency thereof” in that definition meaningless.

Reasoning that the PRA does not impose a burden on a county prosecutor’s office to inquire about records with the county sheriff’s office when a request is directed only to the prosecutor’s office, the court noted that the effect of holding otherwise would be that “no department within the state or municipal government could deny a request for public records without having first canvassed all the other departments within that unit of government.” *Id.* at 232. Our Supreme Court denied review of this decision. *Koenig v. Pierce Cty.*, 168 Wn.2d 1023, 228 P.3d 18 (2010).

With no persuasive authority, WCOG’s brief urges this Court to overturn its decision in *Koenig*. In *Koenig*, the requester’s theory of the case was that “the County improperly withheld records in the possession of the prosecuting attorney.” *Id.* at 234. Here, Diamond’s lawsuit has morphed from a meritless suit about the Executive and the Sheriff’s responses to her public records requests into a misguided attempt to criticize the PAO’s responses to her public records requests (there is no evidence in the record to inform the

court about those requests or the PAO's responses).<sup>2</sup> WCOG's request to overturn *Koenig* should be rejected.

- b. *Kilduff v. San Juan County* involved an ordinance that contained an impermissible condition precedent for a requester to seek judicial review of agency actions.

In *Kilduff v. San Juan County*, San Juan County adopted an ordinance that established a prerequisite for filing a PRA lawsuit. 194 Wn.2d 859, 865, 453 P.3d 719 (2019). The ordinance required dissatisfied records requesters to submit a written appeal to the prosecuting attorney as a condition precedent to filing a lawsuit. *Id.*

The Supreme Court found that the ordinance directly conflicted with RCW 42.56.520(4) by redefining "final agency action" for purposes of judicial review. *Id.* at 872. Further, the ordinance created an internal barrier to judicial review that "undermines the purpose of the PRA." *Id.* 874.

Turning to this case, WCOG's assertion that *Kilduff* invalidates King County's ordinance is wrong. *Kilduff* involved a requester's ability to seek judicial review, not a County's structure for receiving PRA requests. The County's structure for receiving

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<sup>2</sup> WCOG erroneously states that "King County essentially admits its prosecutors withheld records from Diamond, but argues that those prosecutors had no duty to respond to a PRA request to the County as a whole." *Brief of Amicus Curiae* at 8. This statement is unsupported by the facts before the court and is false.

and responding to public records requests is authorized by the PRA's definition of "agency" and confirmed by the holding in *Koenig*.

Moreover, there is no evidence before this Court that the County's structure has impeded access to public records.<sup>3</sup> There is also nothing in the record to aid this Court in deciding whether distinct agencies in a large county like King County provides more efficient access to public records. The San Juan County ordinance clearly undermined the purposes of the PRA, but King County's code defining nine distinct agencies under the PRA is nothing like the ordinance interfering with the specific, statutory option to sue that was at issue in *Kilduff*.

c. *Yousoufian V* did not hold that King County is one agency.

WCOG incorrectly argues that the Supreme Court's ruling in *Yousoufian v. Office of Ron Sims*, 168 Wn.2d 444, 229 P.3d 735 (2010) (*Yousoufian V*) overturned this Court's decision in *Koenig*. To the contrary, the Supreme Court denied review of the *Koenig* case *after* its decision in *Yousoufian V* (*Yousoufian V* was decided March

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<sup>3</sup> Nothing in the record suggests Diamond is confused about how to make public records requests to various County agencies. To underscore this point, Diamond's lawsuit involves requests to two King County agencies, the Executive and the Sheriff.

25, 2010, while review of *Koenig* was denied on March 31, 2010). *Id.*; *Koenig v. Pierce Cty.*, 168 Wn.2d 1023, 228 P.3d 18 (2010). If the Supreme Court saw an inconsistency between this Court's decision in *Koenig* and *Yousoufian V*, presumably it would have accepted review of *Koenig*.

Moreover, *Yousoufian V* does not hold that King County is one agency under the PRA. In that case, the County failed to provide records from departments *within* the Executive Branch: the Executive's Office, the Department of Stadium Administration, the archives, and the finance department.<sup>4</sup> *Id.* at 450-56. The court held that the County had a duty to coordinate among Executive departments. *Id.* at 455-56. The County has now enshrined this requirement in its Code – departments within each agency (Executive Branch, Sheriff's Office, PAO, etc.) are required to coordinate responses to public records requests. See KCC 2.12.220.

Here, WCOG is asking for an expansion of *Yousoufian V* to require County agencies run by separately elected officials to

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<sup>4</sup> WCOG's citation to *Yousoufian I* includes a reference to the prosecutor's actions that implies King County is one agency. *Brief of Amicus Curiae* at 8-9. However, that case did not involve a records request to the PAO. *Yousoufian v. King County Executive*, 114 Wn. App. 836, 840-46, 60 P.3d 667 (2003). The prosecutor in that case was acting as the Executive's attorney.

coordinate responses to records requests. Unlike *Yousoufian V*, Diemond's case involves requests for records from distinct branches of King County government. WCOG does not argue that the King County Executive's or the King County Sheriff's responses to Diemond's records requests were deficient in any way. Because *Yousoufian V* stands for the need for coordination among County departments housed under *one* elected official, WCOG's argument should be rejected.

- d. Guidance in the Washington Administrative Code applies to requests made to an entire county, but Diemond made separate requests to the Executive and the Sheriff.

The County followed the Washington Administrative Code's guidance in responding to Diemond's requests. WAC 44-14-01001 provides the PRA "does not require a public agency that has a records request directed to it to coordinate its response with other public agencies; however, for example, if a request is *directed to an entire county*, then coordination in some manner among county offices or departments may be necessary." (emphasis supplied).

Here, Diemond made separate requests to distinct King County agencies. CP 843, 846, 851-52, 929-30, 977, 988-90. Her requests were not directed to King County in its entirety. Moreover,

there is no question that Diamond understands King County is divided into several agencies; she has made many records requests to the Executive, the Sheriff, and the PAO.

3. Hobbs was just one basis for the County's motion.

WCOG argues that the County's summary judgment motion was improperly granted under *Hobbs v. State*, 183 Wn. App. 925, 335 P.3d 104 (2014). As detailed in the County's Brief of Respondent, this contention should be rejected.

The County's summary judgment motion included several arguments: Diamond's lawsuit was premature under RCW 42.56.550(1), the County timely responded to Diamond's records requests under RCW 42.56.550(2), and Diamond abandoned her request to the Sheriff. CP 1099-1105. Diamond submitted no briefing in the trial court opposing the merits of the County's motion.

**IV. CONCLUSION**

This Court should refuse to consider WCOG's argument that King County is one agency under the PRA. This issue was not raised in the trial court and it has no merit.

///

///

///

DATED this 26<sup>th</sup> day of October, 2020.

DANIEL T. SATTERBERG  
King County Prosecuting Attorney

By: *Mari Isaacson*

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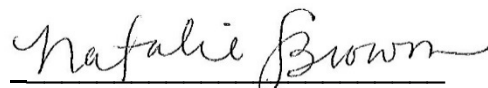
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Natalie Brown, Legal Assistant to  
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Done in Seattle, Washington

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# Appendix H

NO. 81420-6-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

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CHRISTY DIEMOND,

Appellant,

v.

KING COUNTY,

Respondent.

---

APPEAL FROM THE SUPERIOR COURT FOR

SNOHOMISH COUNTY

---

**KING COUNTY'S ANSWER TO WE THE GOVERNED'S  
AMICUS BRIEF**

---

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## I. INTRODUCTION

This Court should reject arguments of Amicus We the Governed (WTG) for applying lax rules of procedure to *pro se* litigants. This issue was not raised in the trial court and WTG offers no persuasive reasoning to change well-established Washington law that applies the same rules of procedure to all parties, whether they are represented by counsel or not.

## II. STATEMENT OF THE CASE

As explained in the Brief of Respondent, this case was properly dismissed on King County's motion for summary judgment.<sup>1</sup> Diamond received proper notice of the hearing and she filed no substantive brief in response to the County's motion for summary judgment.

## III. ARGUMENT

1. Amicus' arguments for adopting a lenient standard for *pro se* litigants were never considered by the trial court.

Generally, "an argument neither pleaded nor argued to the trial court cannot be raised for the first time on appeal."

*Washington Fed. Sav. v. Klein*, 177 Wn. App. 22, 29, 311 P.3d 53,

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<sup>1</sup> King County incorporates by reference the facts in its Brief of Respondent filed on July 24, 2020.



56 (2013). RAP 2.5(a) authorizes this Court to refuse to review any alleged error that was not raised in the trial court.

The rule limits the issues that may presumptively be raised for the first time on appeal to (1) lack of trial court jurisdiction, (2) failure to establish facts upon which relief can be granted, and (3) manifest error affecting a constitutional right. RAP 2.5(a). None of these exceptions apply here, and WTG does not argue that this case meets any of the exceptions.

Even if WTG had tried to explain why this case fits into one of the enumerated exceptions, they would have failed. The issue WTG raises here – whether Washington courts should adopt less stringent standards found in the federal rules of procedure for parties representing themselves in state court – involves a difference between procedural rules of federal and state court. The harms and benefits of the federal approach were not before the trial court. This Court should refuse to review this issue on appeal.

2. Even if this issue had been before the trial court, the result in Diamond's case would be the same.

It is well-settled in Washington law that self-represented litigants “are bound by the same rules of procedure and substantive law as attorneys.” *In re Marriage of Olson*, 69 Wn. App. 621, 626,

850 P.2d 527 (1993); *In re Marriage of Wherley*, 34 Wn. App. 344, 349, 661 P.2d 155, *review denied*, 100 Wash.2d 1013 (1983); *Pomaikai, LLC v. Povzner*, 11 Wn. App. 2d 1027, p. 1 (Division I) (2019) (unpublished).

Amicus cites two federal cases for the broad proposition that self-represented individuals should get special treatment in Washington's courts. Neither case controls the outcome of Diamond's lawsuit, and both are easily distinguishable from Diamond's lawsuit.

Amicus' first case, *Haines v. Kerner*, 404 U.S. 519, 520, 92 S. Ct. 594, 30 L. Ed. 2d 652 (1972), involved the U.S. Supreme Court's decision on an appeal of the district court's dismissal of an inmate's lawsuit under Rule 12(b)(6) of the Federal Rules of Civil Procedure for failing to state a claim upon which relief could be granted. *Id.* at 520. The Court noted that a *pro se* party's pleadings are held "to less stringent standards than formal pleadings drafted by lawyers." *Id.* The approach in *Haines* does not apply to Washington state courts. *Marriage of Olson*, 69 Wn. App. 621; *Marriage of Wherley*, 34 Wash.App. 344; *Pomaikai, LLC*, 11 Wn. App. 2d 1027 (unpublished).

Moreover, in federal court the laxness allowed in *Haines* is limited to interpreting *pro se* complaints and discovery requests; it does not apply to other stages of litigation. *Alley v. Vasquez*, 878 F.2d 385 (9th Cir. 1989); *Bettys v. Quigley*, 16-CV-5076 RJB-JRC, 2017 WL 8942552, at 9 (W.D. Wash. Mar. 2, 2017). Even in federal court, this “less stringent standard” does not apply to summary judgment proceedings. *Ellis v. SmithKline Beecham Corp.*, C07-5302RJB, 2008 WL 3166385, at 2 (W.D. Wash. Aug. 5, 2008), *aff’d*, 363 Fed. Appx. 481 (9th Cir. 2010).

Just as *Haines* does not apply to state courts, the idea of “excusable neglect” as a basis for seeking relief from a final judgment, order, or proceeding advocated for by WTG does not apply to state courts. The primary case WTG cites applying this rule, *Lemoge v. United States*, 587 F.3d 1188, 1192 (9th Cir. 2009), is based on Federal Rule of Civil Procedure 60(b)(1). This procedural rule in federal court is not binding on state courts and it is not the law in Washington.

WTG offers no compelling reason to depart from Washington’s jurisprudence requiring *pro se* litigants to follow the rules. Diamond’s Public Records Act case does not warrant consideration of this argument. This is particularly true where the


County diligently worked to fulfill Diamond's records requests, the County provided Diamond with installments of records on an ongoing basis, and for many months Diamond did not bother to collect the records the King County Sheriff's Office produced to her.

#### **IV. CONCLUSION**

This Court should decline WTG's invitation to change Washington law. This issue was not raised in the trial court and it has no merit.

DATED this 2<sup>nd</sup> day of November, 2020.

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Dated this 29th day of September, 2021 at Shoreline, Washington.



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Michele Earl-Hubbard

**ALLIED LAW GROUP LLC**

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- 814206\_Petition\_for\_Review\_20210929170221D1191943\_1898.pdf  
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Petition for Review  
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- paoappellateunitmail@kingcounty.gov

**Comments:**

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**September 29, 2021 - 6:57 PM**

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**Transmittal Information**

**Filed with Court:** Supreme Court  
**Appellate Court Case Number:** Case Initiation  
**Appellate Court Case Title:** Christy Diemond, Appellant v. King County, Respondent (814206)

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- PRV\_Other\_20210929185543SC421871\_6827.pdf  
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- PRV\_Petition\_for\_Review\_20210929185543SC421871\_9048.pdf  
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*The Original File Name was 2021-09-29 Amended Pet for rev w tables 6 pm Div One.pdf*

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**September 29, 2021 - 5:08 PM**

**Transmittal Information**

**Filed with Court:** Court of Appeals Division I  
**Appellate Court Case Number:** 81420-6  
**Appellate Court Case Title:** Christy Diemond, Appellant v. King County, Respondent  
**Superior Court Case Number:** 15-2-04073-0

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- 814206\_Other\_20210929170221D1191943\_7124.pdf  
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- 814206\_Petition\_for\_Review\_20210929170221D1191943\_1898.pdf  
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Petition for Review  
*The Original File Name was 2021-09-29 Petition for Review.pdf*

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- paoappellateunitmail@kingcounty.gov

**Comments:**

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**September 29, 2021 - 7:05 PM**

**Filing Petition for Review**

**Transmittal Information**

**Filed with Court:** Supreme Court  
**Appellate Court Case Number:** Case Initiation  
**Appellate Court Case Title:** Christy Diemond, Appellant v. King County, Respondent (814206)

**The following documents have been uploaded:**

- PRV\_Motion\_20210929190010SC858894\_8195.pdf  
This File Contains:  
Motion 1 - Extend Time to File  
*The Original File Name was 2021-09-29 649 pm Mtn for Extension of time to file Pet for review.pdf*
- PRV\_Petition\_for\_Review\_20210929190010SC858894\_5577.pdf  
This File Contains:  
Petition for Review  
*The Original File Name was 2021-09-29 508 pm Petition for Review Div One.pdf*

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- paoappellateunitmail@kingcounty.gov

**Comments:**

1. original Petition filed at 5:08 pm with Div. 1 on 9/29/21 (amended was filed at 6 pm with tables) 2. Motion for Extension of time to file Petition for Review (to allow for the 8 minute delay making the petition stamped as if filed on 9/30/21)

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Address:  
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**Note: The Filing Id is 20210929190010SC858894**