SERVICE	
Matthew B. Folensbee mattfolensbee@washapp.org wapofficemail@washapp.org	Service was electronic, or if no email address appears at left, via U.S. Mail. I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct. DATED July 2, 2025, Port Orchard, WA _____ **Original to Supreme Court; Copy as listed at left.**

IN THE SUPREME COURT OF WASHINGTON

THE STATE OF WASHINGTON, Respondent, v. DANE MARCUS FORSS, Appellant.	No. 103960-3 STATE'S RESPONSE TO MOTION TO STRIKE RAP 17.3

I. IDENTITY OF MOVING PARTY

The respondent, STATE OF WASHINGTON, asks this Court for the relief designated in Part II of this motion.

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II. STATEMENT OF RELIEF SOUGHT

The State respectfully requests that Forss's motion to strike be denied.

III. FACTS RELEVANT TO MOTION

As it did below, the State asked the Court to take judicial notice of its own files included in its official statewide database.

Forss has moved to strike that reference.

IV. GROUNDS FOR RELIEF AND ARGUMENT

Forss first argues that the "Court of Appeals already rejected this maneuver by the State regarding precisely the same outside-the-record materials the State now tries to weave into its Answer. *See* Slip op. at 7." Motion, 2. First, Forss overstates the holding of the Court of Appeals, which actually merely said there was no record evidence regarding counsel's past representation of Glasby, and that Forss had failed to meet his burden of producing such evidence:

> As evidence of the concurrent representation, Forss points to counsel's comment

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> at the beginning of trial. While counsel suggested that she currently represented Glasby, she did not attempt to further develop the record. There is nothing in the record related to the nature of the representation pertaining to Glasby, whether it was related to Forss's charges, and whether the representation was current or had terminated. On appeal, the State maintains that Glasby was not a current client, but rather a former client, and the attorney represented Glasby on unrelated misdemeanor charges that had resolved prior to Forss's trial. While there is no evidence to support the State's assertion, the State did not have the burden of showing that an actual conflict existed. Forss had the burden.

Opinion, 7.

Moreover, to the extent that the Court of Appeals's opinion could be read that it could not, as opposed to having chosen not, to take judicial notice of the DISCIS database, it would be incorrect.[1] As the State noted below, citing *State v. Cross*, 156 Wn. App. 568, 234 P.3d 288 (2010), an appellate

[1] Either way, this Court is not bound by that ruling. *State v. Michielli*, 132 Wn.2d 229, 242, 937 P.2d 587 (1997); *Hoflin v. City of Ocean Shores*, 121 Wn.2d 113, 134, 847 P.2d 428 (1993).

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court may take judicial notice of records of the official court database.

Forss argues that *Cross* does not apply because that case cited a trial court evidentiary rule. But *Cross* cited to ER 201 "by analogy":

> We note that the JIS and DISCIS system are electronic databases and that the sentencing court itself could easily and quickly verify from the bench the accuracy of any printouts presented if there are specific questions as to its accuracy. We draw an analogy to a trial court's ability to take judicial notice of records where the information is readily verifiable by sources whose accuracy cannot reasonably be questioned as in its own files. ER 201(b)(2).

Cross, 156 Wn. App. 568, 589 n.14, 234 P.3d 288 (2010), *review granted on other grounds,* 172 Wn.2d 1009 (2011).

To the extent that the applicability of the *Cross* holding could be seen as ambiguous as applied in the appellate context, the State would point to this Court's very recent decision in *Vet Voice Found. v. Hobbs*, 4 Wn.3d 383, 564 P.3d 978 (2025), where this Court took judicial notice of the Secretary of State's

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election records. As the Court explained:

> [C]ourts may take judicial notice of evidence that is "capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." ER 201(b)(2). Given that Vet Voice drew this evidence from the secretary of state's election's records and given that the defendants do not dispute its accuracy, we take judicial notice of the 2024 ballot rejection rate.

4 Wn.3d at 390 n.3. Surely if this Court can take judicial notice of the executive branch's records, it can take notice of information contained in its own official JIS databases.

Finally, although the State did attach DISCIS printouts to its brief, in arguing that the State failed to comply with RAP 9.11, Forss misapprehends its purpose in doing so. The State did not purport to offer the printout as "evidence" but as a demonstrative aid. The "evidence" was the database itself, of which, as discussed above both this Court and the Court of Appeals may properly take judicial notice.

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V. CONCLUSION

For the foregoing reasons, Forss's motion to strike should be denied.

VI. CERTIFICATION

This document contains 739 words, excluding the parts of the document exempted from the word count by RAP 18.17.

DATED this July 2, 2025.

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