No. 97643-1

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

MICHAEL W. WILLIAMS,
APPELLANT/PETITIONER,

v.

DEPT. OF CORRECTIONS,
RESPONDANT/DEFENDANT

MOTION FOR DISCRETIONARY REVIEW

Michael W. Williams DOC# 882945
Appellant/Petitioner, Pro Se
Coyote Ridge Corrections Center
PO Box 769: FB-35
Connell, WA. 99326-0769

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v.	
Department of Corr., Respondant/Defendant.	MOTION FOR DISCRETIONARY REVIEW

I. IDENTITY OF APPELLANT

1.1 Michael W. Williams is the Appellant/Petitioner in the above referenced action. He seeks review of the dismissal of his 2nd Appeal After Remand because: (1) The dismissal is based on actions and orders of the Clerk of the Court of Appeals, Divison II that are in conflict with published decisions of the Washington Supreme Court (2) The case poses significant questions of statutory law of the State of Washington. And (3) It involves an issues of great public interest that should be determined by the Supreme Court given the stated purpose of the Public Records Act and errors of law and fact by the trial judge and Court of Appeals staff.

II. CITATION TO THE COURT OF APPEALS DECISION

Mr Williams now requests that the Washington Supreme Court

review the order by the Clerk of the Court of Appeals, Division II, dated May 21 2019 imposing sanctions and seeking dismissal and/or further sanctions, (attached as Exhibit A), because it is based on actions by the Clerk that are in conflict of the Supreme Court's long-standing, published rulings regarding placing substance over form and substantial compliance with the Rules on Appeal. It involves significant questions of law under the PRA, and of great public interest given the stated purpose of the Public Records Act, the history of the case, actions of the Respondant, and by the Court of Appeals staff in conflict with well-established rules, violating the appearance of fairness doctrine because no resonably disinterested third party with knowledge of the law (the PRA), the Rules on Appeal and prevailing rulings by the Washinton Supreme Court could find that Mr Williams had fair treatment at the hands of the Court Clerk s Office, such that the Clerk s sanctions and dismissal of Mr Willimas' meritorious appeal necessitate the revisory powers of the Supreme Court in the interest of justice.

Furthermore Mr Williams requests that the Supreme Court review the Commissioner's Conditional Ruling of Dismissal dated June 17, 2019 (See Motion to Modify Commissioner's Ruling, Ex.10) because it is predicated on the Court Clerk s actions taken in violation of long-standing Supreme Court Rulings as was the panel of judge s order of denial without findings of fact or

conclusions of law dated August 30, 2019 and constitute a manifest injustice.

III. ISSUES PRESENTED FOR REVIEW

3.1 Should the Washington Supreme Court use it's revisory powers and set aside the Court of Appeals sanctions and dismissal of Mr Williams' 2nd appeal after remand in the interest of justice and to serve the public good?

3.2 Should the Washington Supreme Court retain this action and in the interest of justice and judicial economy make ruling on the issues of: (1) explanation of withholdings by an agency; (2) Bad Faith; (3) award of daily penalties; and (4) Award Mr Williams all costs and fees he has incurred at all judicial level in asserting his rights under the Public Records Act?

3.3 Should the Washington Supreme Court retain this action and make declaratory judgement on the issue of the appelication CR 68 offers of judgement when agency action is unreasonable and the current prevailing caselaw as applied to the PRA is in violation of the long-standing Common Law Forfeiture Doctrine because it allows an agency to benefit from it s own wrongdoing and penalizes citizens for seeking relief congruent with the PRA and its stated purpose?

V. STATEMENT OF THE CASE

4.1 Appellant Michael W. Williams made a PRA request to the DOC's Public Records Unit ("PRU") seeking a copy of the contract the DOC had entered into with "J-Pay". The PRU made a 5-day response on 3/22/2016 setting a date for disclosure.

4.2 Simultaneous to its response letter the PRU requested a copy of the J-Pay Contract from the DOC's Contracts Department and received it back the same day from Contracts but waited until May 4, 2016 when it spent aprox. 1/2-hour to make redactions including supervisor review.

4.3 On May 6, 2016 the DOC's PRU made disclosure of the responsive records and asked for payment.

4.4 The PRU provided Mr Williams with a copy of the J-Pay Contract containing 64 redacted provisions including two provisions (Appendices 2.01 and 2.01.1) that were identical but redacted in two different way allowing for comparison. Along with an exemption log with generic exemptions identifying as "20" and "27" with a bare citation to the underlying claimed statutory exemptions of RCW 42.56.240(1); .420(2); and .270(11) without explaining how the statute applied or related to the specific provisions withheld by redaction.

4.5 Mr Williams filed a PRA action in the Thurston County Superior Court which was assigned Case No. 16-2-07248-34. On 1/27/2017 a Show Cause hearing was held, Judge Christopher Lanese presiding. The trial court issued an order of dismissal finding no violation of the Act.

4.6 The DOC has removed all treatises and other reference on how to file an appeal, except the RAPs which are not listed in the computer reference directory requiring a party to already know what a RAP is and how to reference them via a reverse search of the legal database. This has caused difficulties for Mr Williams in filing the above referenced appeals. Mr Williams did file a timely appeal to the COA Divsion II which was accepted and assigned the Case No.50079-5-II

4.7 Mr Williams paid filing fees, ordered and paid for Clerk s Papers from the Superior Court Clerk who provided a set to the Court of Appeals but not Mr Williams.

4.8 Mr Williams filed extensive pleading in Case No. 50079-5-II that substantially complied with the RAPs and made reference to the record itself but not the Clerk s Papers. The reviewing court accepted his pleadings and was able to come to a decision on the merits making a statutory construction analysis and comparison of Appendices 2.01 and 2.01.1

4.9 On Feb. 21 2018 a 3-judge panel from the Court of Appeals Division II made a ruling on the merits using Mr Williams pleadings that were in substantial compliance with the rules on appeal. The panel made two rulings pertinent to this discretionary review. First, the COA used the correct process and made a statutory contruction analysis of the redacted provisions of Appendices 2.01 and 2.01.1 comparing the two and finding that the Dept. of Corrections violated the PRA, Secondly the court held that the DOC provided a sufficient brief explanation.

4.10 Mr Williams entered into good faith negotiations with the DOC regarding settlement for its violation of the PRA when negotiations broke down Mr Williams filed a late Cost Bill on grounds that normally allow equitable tolling. The Cost Bill was based on well-accepted processes and amounts including $2 per page for original documents submitted to the court per the Supreme Court s ruling in In re the Matter of $2 per page. The Cost Bill was granted by the Commissioner with the DOC s pleadings and Commissioner s Order crossing in the mail. The DOC filed a Motion to Modify, the panel of judges made what amounted to no ruling but remanded it back to the Commissioner with directions to consider the additional pleadings. Over a year later the Commissioner has not dealt with the remand effectively denying Mr Williams recovery of the costs, creating a financial barrier to him accessing the courts for this second appeal after

remand to the trial court.

4.11 On April 11 2018 the DOC made a post-loss CR 68 Offer of Judgement making Mr Williams an offer of $10 plus recovery of awardable costs and fees for its 662 days of unlawfull withholding. (See Motion to Modify Commissioner's Ruling, Ex.1).

4.12 Consistent with the PRA and the Court of Appeals' ruling of violation the DOC sent Mr Williams an unredacted copy of the J Pay Contract which he received on 2/27/2018 by Institutional Legal Mail Establishing the penalty period as starting May 6, 2016 and ending February 27, 2018 a total of 662 days. It also demonstrates that none of the claimed statutory exemptions apply to any of the 64 redacted provisions. Mr Williams submitted a copy of the unredacted record to the trial court with his Opening Brief on Remand as Exhibit 2 and a copy of the redacted copy as Exhibit 3.

4.13 In his Opening Brief on Remand Mr Williams asked Judge Lanese to reverse his award of $200 in costs to the DOC because it was in error (See pages 6-7, 23). Mr Williams also properly submitted a Cost Bill to the Court for the original trial (See Exhibit 7; Transcript Pg.6, lines 20-25).

4.14 On July 13 2019 Judge Lanese held a hearing on remand

from the Court of Appeals. No testimony was taken and only documents were submitted. Again, predicated on his personal belief that no violation of the PRA happened despite the Court of Appeals ruling and the unredacted record, Judge Lanese continued to believe there was no violation of the PRA and thus would not make a finding of bad faith or award of penalties and costs. (See Transcript pg 7 lines 13-19).

4.15 What the flat word of the transcript does not convey is Judge Lanese s unjudicial tone and tenor during the remand hearing which very well may constitute violation of the Appearance of Fairness Doctrine because no reasonably disinterested person having knowledge of the facts of the case and the Public Records Act could come to a conclusion that Mr Williams received a fair hearing in front of judge Lanese.

4.16 Mr Williams was forced to file a second appeal and incurred a second filing fee, paid for a second set of Clerk s Papers which again were provided to the Court of Appeals but not Mr Williams by the trial court, and a transcript along with other costs to appeal, many of which the Respondant generates a profit on such as photocopies and typing supplies.

4.17 On October 1, 2018 the Thurston County Superior Court forwarded a copy of the Clerk s Papers to the Court of Appeals

Division II but only provided Mr Williams the index sheet. (See Motion to modify Commissioner's Ruling, Ex.2).

4.18 The Court of Appeals misfiled the Clerk s Papers in the predessor case file, (50079-5-II). On January 15 2019 the Court of Appeals sent Mr Williams a letter threatening sanctions for not perfecting the appeal by filing a set of Clerk s Papers. (See Motion To Modify Commissioner's Ruling, Ex.3)

4.19 Mr Williams contacted the Court of Appeals and reminded them that this was a second appeal and suggested they had misfiled the Clerk s Papers with the original appeal. (See Motion to Modify Commissioner s Ruling, Ex.4).

4.20 On February 7, 2019 the Court of Appeals sent Mr Williams a letter acknowledging the misfiling of the Clerk s Papers. (See Motion to Modify Commissioner s Ruling, Ex.5).

4.21 On March 28, 2019 by Institutional Legal Mail in accordance with GR 3.1 including a Declaration of Mailing and dulpicating the method of substantial compliance he utilized in the original appeal (50079-5-II), which had been accepted by and ruled on the merits in his favor, Mr Williams filed his Opening Brief with the Court of Appeals which substantially complied with the court rules. (See Motion to Modify Commissioner's Ruling Ex.6).

4.22 Mr Williams received a letter of deficiences from the court of appeals. (See Motion to Modify Commissioner's Ruling, Ex.4).

4.23 Mr Williams not having a copy of the Clerk's Papers (See Motion to Modify Commissioner's Ruling, Ex.4), on April 14, 2019 filed a New Opening Brief, substantially complying with court rules and containing all the information via exhibits necessary for a panel of judges to come to a ruling on the merits. (See Motion to Modify Commissioner's Ruling, Ex.4,7).

4.24 Mr Williams received a letter dated April 30, 2019 threatening sanctions stating:

> "The brief you submitted to this Court in this matter does not conform to the content and form requirements set out in the Rules of Appellate Procedure for one or more of the following reaseons:
> * Brief does not cite to the record. RAP 10.3(a)(5).
> * Title of the brief should be Opening Brief of Appellant.
> * There is no proof of servie to Washington Dept. of Corrections.
> The Court will not file the brief as part of the offical record but will stamp it and place it in the pouch without filing. Therefore, you must re-serve a corrected brief by May 15, 2019."

(See Motion to Modify Commissioner's Ruling, Ex.8).

4.25 On 5/3/2019 Mr Williams made a pre paid call to the Court of Appeals, Division II from the CRCC in order to try to clarify exactly what the case manager "Jodie" actually wanted but the call was refused by the Court Office. Mr Williams called back

later and talked with "Jodie" who insisted that referring to the record means citing to the Clerk s Papers exclusively. She offered to provide a set if he paid a fee of $96 70 for copies and postage. The DOC phone system s security disconected the call. (See Motion to Modify Commissioner's Ruling, Ex.4).

4.26 Having depleated his resources advancing this protracted meritorious action incurring aprox $2000 in costs off his inmate spendable account Mr Williams sought help from a friend (Jane Murphy), who made multiple attempts to pay for the Clerk s Papers on Mr Williams' behalf but the Clerk s Office repeatedly rejected the $96 70 from her and returned the money only notifying him after the third time payment was rejected. (See Motion to Modify Comm rs Ruling Ex.4; 9)

4.27 On May 21 2019 after refusing Ms Murphy s payment on Mr Williams behalf the Clerk s Office sent another letter threatening sanctions after creating a situation where he could not comply with their demands (See Motion to Modify Commr s Ruling Ex.4).

4.28 Based on the Clerk s actions and Motion, on June 17 2019 the Court Commissioner issued a Conditional Ruling of Dismissal predicated and initiated by the Court of Appeals' Clerk s Office. (See Motion to Modify Commr's Ruling, Ex.4; 10)

4.29 Mr Williams filed a Motion to Modify the Commissioner s Rulings on July 29 2019 It was accepted for review by a panel of judges with a response scheduled for July 29, 2019 with Mr Williams having seven days to file his reply (See Motion to Modify & Reconsideration Ex.1).

4 30 The A.G's Office filed a nonconforming Response Brief on July 24 2019 by electronic submission to the court but served Mr Williams by mail. (See Motion to Modify & Reconsideration, Ex.2). The Response was delivered to him on July 29 2019 by Institutional Legal Mail. Mr Williams filed a timely Reply Brief in accordance with GR 3.1 on August 5, 2019

4.31 The Clerk wrongfully determined Mr Williams' Reply Brief to be untimely in violation of Supreme Court Rulings on service by mail and CR5(b)(2)

4 32 On August 30 2019 a panel of judges denied Mr Williams Motion to Modify Commissioner's Ruling without making findings of fact or conclusions of law for Mr Williams to appeal

V. ARGUEMENT & PRESENTMENT OF LAW

Appellant/Petiitioner Michael W Williams alleges and

incorporates by reference all facts and allegations contained inparagraphs 1.1 through 4.32 inclusive, the pleadings submitted in the underlying actions, and attached Exhibits containing Memoranda of Law as if fully argued herein. Furthermore, Mr Williams alledges that:

(1) The Standard of Review Is De Novo

(See Ex.B 1-2), because the sanctions and dismissal of Mr Williams' appeal was based on the Clerk's faulty analysis of the Rules of Appeal and should be reanlyzed using standard rules of statutory construction (See Ex.B pgs 2-3), giving no deference to the Court of Appeals' rulings against Mr Williams. First, the plain language analysis demonstrate the Clerk's erroroneous claim that no reference to the record was made.

RAP 10.3(a)(5), as provided to Mr Williams by the Respondant specifically says: "Statement of the Case. A fair statement of the facts and procedure relevent to the issues presented for review without argument. Reference to the record must be included for each factual statement." Since RAP 10.3(a)(5) makes no reference to Clerk's Papers and there are other forms of "record" other than Clerk's Papers, including reference to the actual pleadings, reference to Clerk's Papers cannot be required under RAP 10.3(a)(5). Thus, when Mr Williams made reference to

the record in the same manner that he did in case No. 50079-5-II he substantially comlied with the rules on appeal.

Secondly the Titling error where Mr Williams clearly in his brief submitted April 14 2019 was clearly titled as an "Opening Brief". Thirdly, the Clerk errored that Mr Williams submitted no proof of service when he filed in Opening Brief according to GR 3.1 including the appropriate Declaration of Mailing, (See Ex.C pgs 1-3; Motion to Modify Commr s Ruling Ex 7). Fourthly, this Court should take into consideration the Clerk s other errors including (1) Refusing payment of $96 70 made for Mr Williams benefit to purchase a copy of the clerk s papers, (See Motion to Modify Commr s Ruling Ex 9); (2) The Clerk s threats of sanction and dismissal when the Clerk s Papers had been ordered by Mr Williams but misfiled by the Clerk s Office with case no. 50079-5-II (3) The Clerk s wrongful refusal to file Mr Williams timely Reply Brief on the misinterpretation of deadlines under CR 5(b)(2)(A) where the Clerk unlawfully shortened Mr Williams time to reply (See Ex C pgs 1 3); Motion to Modify & Reconsideration Ex.1)

Finally the Clerk s blantant disregard of long-standing Washington Supreme Court rulings on substantial compliance with the rules on appeal, (See Ex B pgs 3-4). Because, our Supreme Court has said "A technical violation of the rules will not

ordinarily bar appellate review where judical efficiency and justice can be better served by reaching the merits." See Green River Cmty Coll Dist No.10 v. Higher Educ Pers Bd 107 Wn2d 427, 431. (1986). The appellate court may "decied the case on the merits promoting substance over form." State v Olson 74 WnApp 126 129. (1994), aff d 126 Wn2d 315. (1995); State Farm Mut auto Ins Co. v Avery, 114 WnApp 299. 310 (2002), nonetheless, we may address legal and factual issues that are improperly briefed when the basis for the claim is apparent State v. Young 89 Wn2d 613 625 (1978)(quoting De Herr v Seattle Post Intelligencer 60 Wn2d 122 126 (1962)(basis for error apparent without further research).

In total the Clerk s actions require the application of the "Appearance of Fairness Doctrine", (See Ex.D), and require this Court to determine if the Clerk's actions were quasi-judicial or ministrial. Either way though in the interest of justice and public confidence in the courts, this Court should use its revisory powers and allow Mr Williams Opening Brief submitted April 14 2019 to move forward to a ruling on the merits.

(2) This Court Should Retain This Case And Make Ruling On Bad Fiath Daily Penalties, Recovery of Costs, And Application Of CR 68

As in Yousoufian v Office of Ron Sims, King County Exec. 168 Wn2d 444 468 69 (2010) (Yousoufian IV), this court in dealing with trial court errors said

> "[T]he usual procedure is to remand to the trial court for imposition of the appropriate penalty. Nonetheless, in light of the unique circumstances and procedural history of this case, we are inclind to set the daily penalty amount in the ordedr to bring this dispute to a close."

Likewise, the case at hand poses a unique procedural history and set of facts that demonstrate that Mr Williams is unlikely to recieve fair, impartial, or judicial treatment in the trial court or court of appeals should the Supreme Court of Washington not retain this action and make ruling on the merits regarding these issues of extreme public importance under the PRA. In doing so this Court should either order additional briefing on the following subjects and/or taking into consideration Mr Williams' Openign Brief submitted April 14 2019 and this pleading and attached Memoranda of law.

(A) The Court Should Declare The Violation Was Done In Bad Faith

See, (Ex.E pgs 1-4), the DOC committed willful or wanton acts or omissions amounting to bad faith when knowing it had a statutory duty to only withhold "statutorially exempt records withheld 64 non-exempt" records in violation of the PRA for 662 days, and dispite that the DOC knew or should have know the records were non-exempt forced Mr Williams to go through lengthly proceedings in the trial court and the court of appeals to enforce his rights

under the PRA, all the while continually asserting the records were exempt actions which in hindsight amount to probable fraud on the court but at minimum amount to bad faith for purposes of RCW 42.56.565(1), facts that are virtually indistinguishable from those noted in Faulkner, 183 WnApp at 105 citing Francis, 178 WnApp at 63

(B) This Court, Given The Facts & Procedural History Should Award Mr Williams Maximum Daily Penalties And Recovery of Costs

See, (Ex.F; Ex.F); Opening Brief (amended) submitted April 14 2019, pgs 24-33. Mr Williams believes the most equitable manner to calculate daily penalties is on a per record, per day basis in line with Wade's Eastside Gun Shop v Dept of L&I, 185 Wn2d 270 (2010). Setting a dailyt amount in the range of $5-10 per record per day for each of the 662 days of unlawfull withholding. This takes into account the fact that the DOC reduces or evades its liability for violation of Washington Statute under the PRA by taking deductions from the judgement or settlements of inmate requesters whole rights under the PRA have been violated by the state, obtaining a benefit from its own wrongdoing in violation of the Common Law Doctrine of Forfeiture by Wrongdoing. (See Ex.H).

In the alternative this Court should make daclaration that because of the Doctrine of Forfeiture by Wrongdoing the DOC cannot take deductions from the awards or settlements of inmate requesters then, the most equitable resolution would be to set an award amount of $100/day for each of the 662 days in violation. This COurt should also grant Mr Williams recovery of all costs and fees he has incurred at all levels, and for purposes of clarification Declare that all original documents will be recoverable at a rate of $2 per page and all dulpicate copies of documents are recoverable at a rate of 20¢ per page because the DOC is inmates sole source of copies has set a rate of 20¢ per page under DOC 590.500. Mr Williams should also be allowed to recover all other costs and fees at rates incurred by him including resonable attorney fees.

(C) Application of CR 68

While division III, in Ruflin v. City of Seattle, 199 WnApp 348, 360-63 (2017) said: "agencies may make a CR 68 offer of judgement in a PRA action." Divison Three's ill concienved ruling encourages misconduct by state agecnies against citizen requesters, such as in this case. The court focused on the reasaonableness factor of RCW 42.56.550(4), but disregarded that there are times when CR 68 offers of judgement are not reasonable. Those include when the agency gives an offensive

offer given agency action and when it drags out proceedings resisting its known guilt. These times are in conflict with other rulings by the court. See e.g., Kitsap Cnty Pros. Attorny's Guild v.Kitap Cnty, 156 WnApp 110 118 (2010)("State agencies may not resist disclosure of public records until suit is filed and then avoid paying penalties by disclosing them voluntarily theeafter. Spokane Reasearch & Def. Fund, 103 Wn2d at 103."). It also violates the Common Law Doctrine of Forfeiture by Wrongdoing to allow an agency to benefit from its statutory violations by awarding them costs when the agency violated the PRA. (See Ex.H).

VI. CONCLUSION

6.1 This Court should set aside the Court of Appeals' sanctions of Mr Williams and Dismissal of his appeal and use his Opening Brief submitted April 14, 2019 ruling on the merits, and retain this case for purposes of ruling on the issues of bad faith, daily penalties, recovery of costs, and application of CR 68 to PRA actions.

6.2 The Court should Declare that the DOC violated the PRA in bad faith and award Mr Williams daily penalties and all costs and fees he incurred at all levels of the action including $2/page for origianl documents and 20¢/page for duplicates.

6 3 The Court should Declare under what circumstances that

CR 68 Offers of Judgement are reasonable in PRA actions, and award Mr Williams daily penalties on a per record basis of $5-10 per day for each of the 64 redacted records or as a low-end alternative, award $100 per day for each of the 662 days the records were unlawfully denied.

6 4 This Court should Declare that the DOC's practice of taking deductions from PRA settlements and judgements violates the intent of the PRA and allows the state to benefit from violating the PRA contrary to the Common Law Doctrine of Forfeiture by Wrongdoing, and overturn the award of Costs in the amount of $200 to the DOC from the original trial.

6 7 This Court should award Mr Williams any other form of relief it feels is in the interest of justice or equity and necessary to advance the purpose of the Public Records Act.

VII. OATH

I, Michael W. Williams declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge.
Dated this 8th day of October, 2019 at Connell, Washington.

Respectfully submitted.

Michael W. Williams DOC# 882945

EXHIBIT

A

(Exhibit A)

Washington State Court of Appeals
Division Two

950 Broadway, Suite 300, Tacoma, Washington 98402-4454
Derek Byrne, Clerk/Administrator (253) 593-2970 (253) 593-2806 (Fax)
General Orders, Calendar Dates, and General Information at http://www.courts.wa.gov/courts OFFICE HOURS: 9-12, 1-4.

May 21, 2019

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Michael W. Williams
DOC#882945
Coyote Ridge Corrections Center
PO Box 769
Connell, WA 99326-0769

CASE #: 52395-7-II: Michael W. Williams v. WA State Dept of Corrections
Case Manager: Jodie

Mr. Williams:

Our records indicate you have failed to timely perfect the above-referenced appeal by not filing the Appellant's Opening Brief due May 15, 2019.

Accordingly, we will impose a sanction of $200 against you unless you file the Appellant's Opening Brief with this Court on or before fifteen days from the date of this letter. If you do not, a check for the amount of the sanction, payable to the State of Washington, will be due. Once a sanction becomes due, we will accept no further filings from you until you pay that sanction in full.

Further, we have scheduled a Motion for Dismissal and/or Further Sanctions because of your failure to timely file the Appellant's Opening Brief. A Commissioner will consider this motion, without oral argument, if you do not file the Appellant's Opening Brief by June 5, 2019. We will strike the Clerk's motion if you cure the defect before that date. Please note, however, that even if we strike the Clerk's motion, you will not be released from paying the sanction imposed on June 5, 2019, unless you file your response before that date.

Very truly yours,

Derek M. Byrne
Court Clerk

DMB:jlt

EXHIBIT

B

(Exhibit B)

IN THE SUPREME COURT OF WASHINGTON

Michael W. Williams,
Appellant/Petitioner,

v.

Department of Corr.,
Respondant/Defendant.

No. 97643-1 Referencing
COA Nos. 52395-7-II/50079-5-II

MEMORANDUM OF LAW
RE: INTERPETATION OF COURT RULES

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(1) The Standard Of Review For Interpretation Of Court Rules Is De Novo Using Standard Rules of Stateutory Construction

See e.g., Maytown Sand & Gravel, LLC v. Thurston County, 191 Wn2d 392 445 (2018)("'[t]he interpretation of a court rule presents a question of law that we review de novo.' State v. Stump, 185 Wn2d 454, 458... (2016)(citing Jafar v. Webb, 177 Wn2d 520 526 (2013))."). See also e.g., Busn. Servs. of Am.II, Inc. v. WaferTech, LLC, 174 Wn2d 304 307 (2012),

> "Interpretation of a court rule is a question of law we review de novo. State v. Schwab, 163 Wn2d 664 671 (2008)(citing City Collage Place v. Staudinmair, 110 WnApp 841 845. (2002)). Court rules are interpreted in the same manner as statutes and are construed in accord with their purpose. State v Wittenbarger, 124 Wn2d 467, 484. (1994). This starting point is thus the plain language and ordinary meaning. See State v J.P., 149 Wn2d 444 450. (2003)(citing Nat'l Elec. COntractors Ass'n v. Riveland 138 Wn2d 9, 19 (1999))."

See also, City of Seattle v. Holifield, 170 Wn2d 230 236-37 (2010),

> "We review a lower court s interpretation of a court rule de novo. Spokane Cnty v. Specialty Auto & Truck Painting, Inc., 153 Wn2d 238, 244 (2004)(citing CIty of Seattle v Guay 150 Wn2d 288. (2003)). Our interpretation of a court rule relies on principles of statutory construction. Id. at 249 To interpret a statute, we first look to its plain language. State v. Gonzalez, 168 Wn2d 256, 271. (2010)(citing State v. Armendariz, 160 Wn2d 106 110 (2007)). If the plain language is subject to one interpretation only our inquiry ends because plain language does not require construction. Id."

(a) Rules Of Statutory Construction Are Well Established

Cannons of statutory construction prohibit a court from reading language into a statute that the leglislature expressly omitted and from rendering any portion of a statute superfluous. Moreover, an interpretation must be consistent with existing precedent and avoid absurd results. See e.g., Perez Crisantos v. State Farm Fire & Cas. CO., 187 Wn2d 669 (2017); State v. Larson, 184 Wn2d 843 851 (2015); Lowey v. PeaceHealth, 174 Wn2d 769 779 (2012)(collecting cases). See also, Anderson v. Dept of Corr., 159 Wn2d 849, 864 (2007)(citing Davis v. Dept. of Licensing, 137 Wn2d 957, 971. (1999)(when interpreting statutes, we should avoid absurd results or strained consequences); See also State v. Alvarado, 164 Wn2d 556 562 (2008)("Common Sense informs our analysis, as we avoid absurd results in statutory

interpetation."). These principles would than likewise apply toanalysis of court rules.

(b) The Long-Standing Controlling Precedent Requires Appellate Courts To Prioritize Substance Over Form Regarding Compliance With Court Rules

See e.g., In re Pers. Restraint of Fero, 190 Wn2d 1 13 (2018), in dealing with interpreting the RAPs to have substance prevail over form said:

> "RAP 1.2(a) is of critical importance. this rules governs our interpretation of the [RAPs] and exlains:
>
> > These rules are to be liberally interpreted to promote the ends of 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 ddemands
>
> RAP 1.2(c) provides that [t]he 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)."

See also, (to like effect), Shumway v Payne, 136 Wn2d 383 394 (1998)(citing RAPs 1 2(a) and (c), 18.8(b) and (c)). Since all filings to date have been timely the provisions of RAP 18 8 do not apply to to the case at hand as noted by the Clerk of the Supreme Court in directing these actions. See also e.g., Fero, 190 Wn2d at 13; Shumway 136 Wn2d at 394 See also e.g., In re Det. of Turay 139 Wn2d 379, 390-91 (1999) saying in pertinent

part:

> "When the court made major revisions in the rules of civil procedure in 1967, it had as a goal the elimination of 'many procedural traps now existing in Washington practice' and minimization of technical miscarriages of justice inherent in archaic procedural concepts onces characterized by Venderbilt as 'the sporting theory of justice.' Curtis Lumber Co. v. Sortor, 83 Wn2d 764 766, 767 (1974)(quoted in part FORWARD TO CIVIL RULES FOR SUPERIOR COURT, 71 Wn2d xxii, xxiv (1967)). In keeping with this mandate, Washington s appellate court have strived to elevate substance over form and decide cases on their merits. See Vaughn v. Chung, 119 Wn2d 273 280. . (1992)(holding 'that the civil rules contain a perference for deciding cases on their merits rather than on procedural technicalites'); Weeks v. Chief of State Patrol, 96 Wn2d 893 895 (1982)(stating the present rules were designed to allow some flexibility in order to avoid harsh results); First Fed. Sav. & Loan Ass n v Ekanger 93 Wn2d 777, 781 (1980)(holding that whenever possible the rules of civil procedure should be applied in such a way that substance will prevail over form"). Furthermore, in In re Smaltis, 94 Wn2nd 889, 896 (1980), we held that substantial compliance with procedural rules is sufficient because 'delay and even loss of lawsuits by unnecessarily complex and vagrant procedural technicalities.' (alterations in original)(quoting Curtis Lumber, 83 Wn2d at 767)."

See also Burt v. Dept of Corr., 141 WnApp 573 578 (2007)("Pleadings are sufficient. court[s] avoid[] any technical deciciency by. [utilizing] procedure favoring substance over form")

I, Michael W. Williams declare under penalty of perjury, under the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge

Dated this 2nd day of October, 2019 in Connell, Washington

Respectfully submitted

Michael W Williams DOC# 882945

Appellant/Petitioner Pro Se
Coyote Ridge Corrections Center
PO Box 769: FB-35
Connell, WA 99326-0769

EXHIBIT

C

(Exhibit C)

IN THE SUPREME COURT OF WASHINGTON

Michael W. Williams,
Appellant/Petitioner,

v.

Department of Corr.,
Respondant/Defendant.

No. 97643-1 Referencing
COA Nos. 52395-7-II/50079-5-II

MEMORANDUM OF LAW
RE: SERVICE BY MAIL & DEADLINES

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(1) Service By Mail
And Deadlines Derived Therefrom
Are Controlled By CR5(b)(2)

See e g Seto v Am Elevator Inc., 159 Wn2d 767, 776 77 (2007),

> "Allowing service by mail affords a convenience to the server: it should not penalize the party receiving the service by mail by shortening the period for response.
>
> CR5(b)(2) provides for service by mail. It describes both how service must be made and permissible forms of proof of service by mail. It also specifically provides:
>
> The service shall be deemed complete upon the thrid day following the day upon which they are place in the mail unless the third day fall upon a Saturday, Sunday, or legal holiday in which event service shall be deemed complete on the first day other than a Saturday Sunday, or legal holiday following the third day. Cr5(b)(2)(A). Thus, there is a presumption that service by mail is not complete until the third day after mailing. Jones v Stebbins, 122 Wn2d 471 477 (1993)."

See also e.g., Alverez v. Banach, 153 Wn2d 834 838 (2005)("Proof

of servie by mail is not deemed complete until the third day after mailing. CR5(b)(2)(A)."); Citizens Interested in Transformation of Yesteryear v. Bd. of Regents, 86 Wn2d 323, 330 (1976)("Unless otherwise admitted or reflected inthe record, the presumption is that service by mail is not deemed complete until the third day following the date of mailing CR5(b)(2)(A)."); Moore v. Wentz, 11 WnApp 796, 798-99... (1974).").

(2) However Inmate Service & Filing Is COntrolled By GR 3.1 Given Their Unique Circumstances

See e.g., McKee v. Dept. of Corr., 160 WnApp 437, 441 n.2 (2011)("Under GR 3.1 an inmate complaint is filed the day it is deposited in the prisoner s mail system."). See also e.g., In re Pers. Restraint of Quinn, 154 WnApp 816, 828 n.9 (2010)(citing GR 3.1 sections (a-d) inclusive). See also e.g., In Re Pers. Restraint of Bailey

> "Under GR 3.1(b), when a inmate serves a document on the a party by mail, the document is deemed mailed at the time of deposit in the institution s internal mail system If the document is deposited in the internal mail system within the time permitted for filing. It is considered timely filed. GR 3.1(a)").

(3) Application Of CR5 & GR 3.1 Are Reviewed Using Standard Rules of Statutory Construction

See e.g., Maytown Sand & Gravel, LLC v. Thurston County, 191, Wn2d 392 445 (2018)("'[t]he interpretation of a court rule presents a question of law that we review de novo State v. Stump, 185 WnApp 454, 458 . (2016)(citing Jafar v. Webb, 177 Wn2d 520 526 (2013)."). Se also e.g., State v. Carson, 128 Wn2d 805 812 (1996)("When interpreting court rules, the court approaches the rules as through they had been drafted by the Legislature. We thus apply principles of statutory construction in interpreting [them] ") See also e.g., In re Det. of Peterson, 138 Wn2d 70 92 (1999)(Under the usual rule of statutory construction, [c]ourts should not construe statutes to render any language superfluous.' State v. Riles, 135 Wn2d 326, 340. (1998).')). Reading the text in the same manner which avoid absurd results. See e.g. Univ. of Wash. v. City of Seattle, 188 Wn2d 823, 834 (2017)("We may resist a plain meaning interpretation that would lead to absurd results. Burns, 161 Wn2d at 150 "); In re Det. of Marcum 189 Wn2d 1 19 (2017)(We assume that the legislature does not intend an absurd result")(citations omitted).

I, Michael W. Williams declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge.

Dated this 1st day of October, 2019 in Connell, Washington.

Respectfully submitted,

Michael W Williams DOC# 882945

Appellant/Petitioner Pro Se
Coyote Ridge Corrections Center
PO Box 769: FB-35
Connell, WA. 99326-0769

EXHIBIT

D

(Exhibit D)

IN THE SUPREME COURT OF WASHINGTON

Michael W Williams,
Appellant/Petitioner,

v.

Department of Corr.,
Respondant/Defendant.

No. 97643-1 Referencing
COA Nos. 52395-7-II/50079-5-II

MEMORANDUM OF LAW
RE: APPEARANCE OF FAIRNESS DOCTRINE

---

(1) Under The Appearance Of Fairness Doctrine Judical Proceedings Are Invalid If They Do Not Appear To Be Fair

See e.g., State v. Solis-Diaz, 187 Wn2d 535 540 (2017),

> "Pursuant to the appearance of fairness doctrine, a judicial procciding is valid if a reasonably prudent, diinterested observer would conclude that the parties received a fair, impartial, and neutral. State v. Gamble, 168 Wn2d 161 187 (2010). The law requires more than an impartial judge; it requires that the judge also appear to be impartial. Id. The party asserting a violation of the appearance of fairness must show a judge's actual or potential bias. Id. at 187-88 The test for determining whether the judge's impartiality might reasonably be questioned is an objective test that assumes a reasonable observer knows and understands all the relevant facts. Sherman v. State 128 Wn2d 164 206 (1995)."

(2) The Appearance of Fairness Docrtine Also Applies To Quasi-Judicial Proeedings

See e.g., State v. Finch, 137 Wn2d 792 808 (1999)("The appearance of fairness doctrine. only applies to judicial or quasi-judicial decision makers")(citations omitted). See also e.g., IN re Disciplinary Proceeding Against Petersen, 180 Wn2d 768, 785 (2014),

> "We apply the appearance of fairness doctrine to quasi-judicial proceedings in two circumstances: '(1) when an agency has employed procedures that created the appearance of unfairness and (2) when one or more of the acting memebers of the decision making bodies have apparent conflicts of interest creating an appearance of unfairness." (ciatitons omitted).

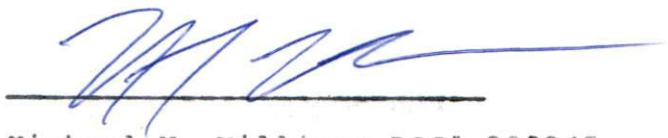
(3) The Appearance of Fairness Doctrine Applies To Court Staff

See e.g., Regan v. McLachlan, 163 WnApp 171 (2011)(holding that court clerks are covered by quasi-judicial immunity from civil liability in most cases), and going on to say at 179 that "Quasi judicial immunity protects a court clerk from liability when the clerk is acting as an 'arm of the court and performing court-ordered functions. Reddy v. Karr, 102 WnApp 742 749. . (2000); see also Babcock v State, 116 Wn2d 596 (1991); 15A Am Jur.2d Clerks of Court § 31 (2000)." The question becomes if that clerk's actions are discretinary act or purely ministarial in nature.

I, Michael W. Williams declare under penalty of perjury, under the laws of the State of Washington, that the foregoing is true and correct to the best of my knowledge.

Dated this 2nd day of October, 2019 in Connell, Washington.

Respectfully submitted,



Michael W. Williams DOC# 882945

Appellant/Petitioner Pro Se
Coyote Ridge Corrections Center
PO Box 769: FB-35
Connell, WA. 99326-0769

EXHIBIT

E

(Exhibit E)

IN THE SUPREME COURT OF WASHINGTON

Michael W. Williams,
Appellant/Petitioner,

v.

Department of Corr.,
Respondant/Defendant.

No. 97643-1 Referencing
COA Nos. 52395-7-II/50079-5-II

MEMORANDUM OF LAW
RE BAD FAITH UNDER THE PRA

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1. A Court Must Find Bad Faith
In Order To Award Daily Penalties
To Inmates Requestors Under The PRA

See e g Hoffman v. Kittatas County, 4 WnApp 2d 489, 422 P.3d 466, 471 (2018), saying in pertinent part:

> "Under RCW 42 56 565(1), a court is prohibited from awarding PRA penalties to an incarcerated person unless the court makes a specific finding of bad faith. Given the singular importance of bad faith in the context of incarcerated persons, our courts have appropriately analyzed the contours of what constitute bad faith in the context of RCW 42.56 565(1). See Faulkner v. Deparment of Corr., 183 WnApp 93.. (2014); Francis v. Dept of Corr., 178 Wnapp 42. (2013)."

See also (to like effect), Adams v. Dept of Corr., 189 WnApp 925, 938. (2015)("Under RCW 42.56.565(1), A court shall not award penalties under RCW 42.56 550(4) to a person serving a criminal sentence. . on the date of the request. unless the court finds that the agency acted in bad faith in denying the person the opportunity to inspect or copy a public record.").

(2) But The Appellate Courts Have Found Many Ways To Arrive At Bad Faith

(a) Failure To Conduct A Reasonable Search For Responsive Records

See e.g. Francis 178 WnApp at 62 63 saying:

> "The legislative history of RCW 42 56 565(1), its statutory context, and the purposes of the PRA and this particular provision require a broader reading of bad faith' than the Department [of Corrections] purpose. To be more consistent with those sources of authority, we hold that a failure to conduct a reasonable search for requested records also supports a finding of bad faith for purposes of awarding PRA penalties to incarcerated requestors.

What constitutes a reasonable search for records in the PRA context has already been determined by the Washington Supreme Court in Neighborhood Alliance of Spokane County v Spokane County 172 Wn.2d 702 720 (2011)(The adequacy of a search is judged by a standard of reasonableness that is, the search must be reasonably calculated to uncover all relevent documents)

(b) Gross Negligence Can Also be Bad Faith

Bad faith is more than mere negligence or a mistake, but it need not be intentional. Faulkner 183 WnApp at 102. But the Francis court 178 WnApp at 56 67 points out that under Washington precedent gross negligence can be bad faith, saying:

> "Furthermore, over a century ago, our Supreme Court, in interpreting a statute governing the certification of a statment of facts on appeal recognized that gross negligence

could rise to the level of bad faith. State v Steiner 51 Wash. 239, 240-41 (1908)."

(c) Division Three Used Obscure Language To Provide A Generic Definition Of Bad Faith

See e.g., Faulkner, 183 WnApp 93, 103-04

> "We hold that to establish bad faith, an inmate must demonstrate a wanton or willful act or omission by the agency. Wanton is defined as [u]nreasonably or maliciously risking harm while being utterly indifferent to the consequences. Furthermore, [w]anton differs from reckless both as to the actual state of mind and as to the degree of culpability. One who is acting recklessly is fully aware of the unreasonable risk he is creating, but may be trying and hoping to avoid any harm. One acting wantonly may be creating no greater risk of harm, but he is not trying to avoid it and is indifferent to whether harm results or not." (internal citations omitted)

While the courts focus on the active bad faith in the PRA context using the "wanton or willful act or omission" standard can also be passive, since bad faith need not be intentional, Faulkner, 183 WnApp at 102 so using the same sources of authority as the Faulkner court passive ommissions can constitute bad faith. See e.g.(Black's Law Dictionary (10th ed, 2014), pg. 1260 saying: "Omission n. (14c). 1 A failure to do something; esp. neglect of a duty 2. the act of leaving something out"; Webster's Third New Int'l Dictionary pg.1574 "1a. apathy toward or neglect of a duty: lack of action. 1b: something neglected or left undone.")

(d) Failure To Perform A Known Duty Under The PRA Also Constitutes Bad Faith

The Faulkner court, 183 WnApp at 105 incorporated the Francis decision into the willful and wanton act or omissions framework saying:

> "Francis is an exemple of a wanton act made in bad faith the agency knew it had a duty to conduct an adequate search for requested records but instead perform a cursory search and delayed disclosure well short of even a generous reading of what is reasonable under the PRA. Francis, 178 WnApp at 63."

(e) Bad Faith Therefore Exists Every Time An Agency Action Defeats The Purpose Of The PRA

See eg., Adams v. Dept of Corr., 189 WnApp 925 938 (2015)("By incorporating the bad faith requirement the legislature allows penalties for inmates. when the conduct of the agency defeats the purpose of the PRA.")(citing Faulkner 183 WnApp at 106)

I, Michael W. Williams declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge.

Dated this 30th day of September 2019 in Connell Washington.

Respectfully submitted,

Michael W. Williams DOC# 882945

Appellant/Petitioner Pro Se
Coyote Ridge Corrections Center
PO Box 769: FB-35
Connell, WA. 99326-0769

EXHIBIT

F

(Exhibit F)

IN THE SUPREME COURT OF WASHINGTON

Michael W. Williams,
appellant/Petitioner,

v.

Department of Corr.,
Respondant/Defendant

No. 97643-1 Referencing
COA Nos. 52395-7-II/50079-5-II

MEMORANDUM OF LAW
RE: PRA PENALTIES

(A) Assessing PRA Penalties Is A Multi-Stage Process

See e.g., Cedar Grove COmposting v. City of Marysville, 188 WnApp 695, 724 (2015),

> "Determining the appropriate PRA penalty involves two steps: (1) calculating the number of days the agency improperly denied access to the records and (2) deetermining the appropriate daily penalty, depending on agency actions." (footnotes omitted).

(1) Days In Violation

In Neighborhood Alliance of Spokane v Spokane County 172 Wn2d 702 726-27 (2011), our Supreme Court said,("the harm [under the PRA] occurs when the record is wrongfully withheld wich usually happens at the time of response or disclosure.").

response or disclosure." See also Andrews v. Wash. State Patrol, 183 WnApp 644, 651 (2014), review denied, 182 Wn2d 1011 (2015). Regarding the instant case, the point of harm occurred on May 6, 2016 when the DOC disclosed and offered to Appellant Williams unlawafully redacted records contingent on his making a payment.

The harm continued until Appellant Williams received the unredacted record on 2/17/2018 by Institutional Legal Mail at the CRCC. This fixed the days in violation, subject to daily penalties at 662 days. See e.g., Cedar Grove, 188 WnApp at 713-14.

> "In Neighborhood Alliance,. the court held that '[s]ubsequent events do not affect the wrongfullness of the agency s initial action to withhold the records if the records were wrongfully withheld at that time, and that 'the remedial provisions of the PRA are triggered when an agency fails to properly disclose and produce records, and any interveining disclosure only serves to stop the clock of daily penalties, rather than to eviserate the remedial provisions altogether." (footnotes omitted).

See also Bartz v. Dept of Corr., 173 WnApp 522, 539 (2013)(citing Neighborhood Alliance). See also, (to like effect), Kitsap County Prosecuting Attornies Guild v. Kitsap County, 156 WnApp 110, 118 (2010)("State agencies may not resist disclosure of public records until a suit is filed and then avoid paying penalties by disclosing them voluntarily thereafter. Spokane Research & Def. Fund, 155 Wn2d at 103.").

(2) Calculating Daily Penalties

(a) How Many Records Were Withheld?

The PRA's penalty provision reads:

> "Any person who prevail in ancy action in the courts seeking the right to inspect or copy any public record. shall be awarded all costs. In addition, it shall be within the discretion of the court to award such person [a penalty] for each day that he or she was denied the right to inspect or copy said public record."

RCW 42.56.550(4) (emphasis added).

In Wade's Eastside Gun Shop v. Dept of L&I, 185 Wn2d 270 (2016), the Washington Supreme Court analyzed the expansive nature of what consituted a "record" for purposes of awarding daily penalties for violation of the PRA. The Sixty four (64) provisions of the J-Pay contrct that the DOC made invalid claims of exemption to unlawfully withhold via redaction fit well within the contours of a "record" as described by our Supreme Court in Wade's.

Thus, it is well within the sound discretion of the court to award Appellant Williams a daily penalty of up to $100/ day for each of the 64 provisions unlawfully withheld via redaction for

each of the 662 days the records were withheld.

(b) Applying The Yousoufian Factors

"In Yousoufian v. Office of Ron Sims, our Supreme Court adopted a multifactor test for determining the daily penalty amount". Cedar Grove Composting 188 WnApp at 724 (footnotes omitted). See also e.g., Adams v Dept. of Corr., 189 WnApp 925 953 (2015),

> "In Yousoufian 2010 our Supreme Court outlined a multifactor analysis to provide[] guidance to trial courts, more predictability toprties, and a framework for meaningful appellate review,' identifying seven mitigating factors and nine aggravating factors to be considered by a court imposing a penalty under the PRA, penalty amount necessary to deter future misconduct by the agency considering the size of the agency and the fact of the case.'Id. (emphasis added). In announcing the multi factor analysis for arriving at an appropriate penalty the Yousoufian 2010 court 'emphasize[d] that the factors may overlap, are offered only as guidance, may not apply equally or at all in every case, and are not an exclusive list of appropriate considerations. Additionally no one factor should control these factors should not infringe upon the considerable discretion of the trial court to determine PRA penalties. Id A trial court nonetheless abuses its discretion if it fails entirely to conduct its penalty analysis within the Yousoufian 2010 framework Sargent. 179 Wn2d at 398 " (footnotes omitted).

appellant's request was clear, the DOC made no request for clarification. The DOC failed to strictly comply with the PRA's requirements regarding exemptions and the agency s failure to properly supervise its Public Records Staff regarding exemptions.

The DOC having made no, much less a reasonable explanation for its noncompliance, and the DOC making appellant to pursue legal actions thorugh the Appellate level fighting him all the way when the DOC and its attorneys at the A.G.'s Office knew or should have known from the very first day that the DOC had violated the Public Records Act, this court should go right to an aggrivating factor analysis.

(c) The Yousoufian Aggrevating Factors Applied To The Case At Hand

2. Appellant Williams is entitled to daily penalties under RCW 42 56 565(1) because of the DOC s willful or wanton acts or omissions it commited in bad faith because it knew it had a duty to only withhold exempt records but withheld 64 provisions of the contract, each constituting a seperate record and violation of the Act making claims of three statutory exemptions that applied to none of the withheld provisions. Then made assertions to the court to try to cover its wrongdoing and may very well constitute a fraud on the court.

3. Given the facts of the case filered through the Yousoufian factors Mr Williams is entitled to high end daily penalties.

4 It is in the interest of justice and necessary to get

the DOC to pay attention and effect change inits processes that the court award daily penalties on a per record basis in the amount of $5 to $10 per day for each of the 64 records improperly withheld for ech of the 662 days in violation

5 It would still be within the court s sound discretion to award plaintiff Williams a low end daily penalty for each of the 662 days of unlawful withholding if it chose to treat the entire violation as one PRA violation at $100/day

Other Non exclusive factors, This court should also note the the DOC in violation of the longstanding Common Law Doctrine in Equity (the forefeiture doctrine), the DOC benfits from its own wrongdoing by taking deductions from PRA settlements and awards resulting in the DOC reducing or eliminating its liability for the violation of Washington Statutory law when it doen t take deductions for violations of inmate civil rights brought under § 1983.

This court should also note that after its loss in the court of appeals but prior to remand the DOC made a highly offensive CR68 offer of judgement of $10 for its massive violation of the PRA demonstrating its arrogance and knowledge that Washington courts are loath to apply the rule of law to the State of Washington or its agencys.

(C) Oath

I, Michael W. Williams declare under penalty of purjury under the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge.

Dated this 4th day of October, 2019 at Connell, Washington.

Respectfully submitted.

Michael W. Williams DOC$ 882945
Coyote Ridge Corrections Center
PO Box 769: FB-35
Connell, WA. 99326-0769

EXHIBIT

G

(Exhibit G)

IN THE SUPREME COURT OF WASHINGTON

Michael W. Williams,
appellant/Petitioner,

v.

Department of Corr.,
Respondant/Defendant

No. 97643-1 Referencing
COA Nos 52395 7-II/50079 5 II

MEMORANDUM OF LAW
RE RECOVERY OF COSTS RE: PRA

The language of RCW 42 56 550(4) makes the grant of attorneys fees and all costs mandatory because it uses the term "shall". See Amren v. City of Kalama, 131 Wn2d 25 35 (1997); See also ACLU v. Blaine Sch. DIst. NO.503 (ACLU I).

RCW 42 56 550(4) also requires the requesting party to be awarded "all costs. incurred in connection with such legal action", if it is the prevailing award. And, these costs are not limited to the statutory costs available under RCW 4 84 080 ACLU II, 95 WnApp 106 115 (1999). Rather, RCW 42 56 50(4) provides a more liberal recovery of costs than awaarded pursuant to RCW 4.84.080. Id. The Court in ACLU II concluded that the more liberal approach was justified by the difference in the working of the two statutes and because "permitting a liberal recovery of cost" under the Public Records Act is "consistent with the policy of the Act by making it financially feasible for private citizens to enforce the public s right to access public records. Id.

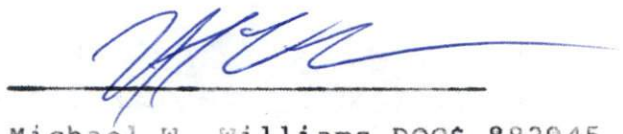
Consequently in a public records case the prevailing party is entitled to recover all of the reasonable expenses it incurred inconnection with the legal action. See ACLU II, 95 WnApp 106 117 (1999); see also Lindberg v Kitsap County 133 Wn2d 729, 749 (1997)(Durham C.J. concurring)(noting prevailing party entitled to all costs they have incurred inpursuing the action); DOE I v. Wash. State Patrol, 80 WnApp 296 (1996)(state Supreme Court affirmed the trial court's judgement that included costs for photocopying and travel expenses).

"[S]trict enforcement of these provisions when warranted should discourage improper denial of access to public records and adherence to the goals and procedures dictated by statute." Hearst Corp. v. Hoppe, 90 Wn2d 123 140 (1978); See also Yacobellis II, 64 WnApp 295 300 (1992)(same); PAWS II, 125 Wn2d 243 271 (1994)(same); Amren, 131 Wn2d 25 36 (1997) strict enforecement" of RCW 42 56 550(4) will "discourage improper denial of access to public records").

I, Michael W. Williams declare under penalty of purjury under the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge.

Dated this 4th day of October, 2019 at Connell Washington.

Respectfully submitted



Michael W Williams DOC$ 882945
Coyote Ridge Corrections Center
PO Box 769 FB 35
Connell WA 99326 0769

EXHIBIT

H

(Exhibit H)

IN THE SUPREME COURT OF WASHINGTON

Michael W. Williams, Appellant/Petitioner,	No. 97643-1 Referencing COA Nos. 52395-7-II/50079-5-II
v.	MEMORANDUM OF LAW RE: DOCTRINE OF FORFEITURE BY WRONGDOING
Dept. of Corr., Respondant/Defendant.	

(1) Under The Common Law Doctrine Of Forfeiture By Wrongdoing Parties Cannot Benefit From Their Own Wrongdoing

See e.g., Reynolds v. United States, 98 US 145 (8 Otto), 160 (1878)(adopting the common law forfeiture doctrine of forfeiture by wrongdoing). See also e.g., Int'l Union, United Auto v. NLRB, 459 F2d 1329, 1332 (DC Cir 1972)("If one takes the maxims of equity seriously, then the judiciary should not permit a party toprofit from its own wrongdoing. See e.g., Reynolds v. United States, 98 US (8 Otto) 145 160, 25 LEd 244 (1878)). See also e.g., United States v Cherry, 217 F.3d 811, 816 (10th Cir 2000)("'courts will not suffer a party to profit by his own wrongdoing.' Houlihan 92 F.3d at 1279; see also Balano, 618 F2d

at 629."). See also, United States v White, 838 F.Supp 618, 620 (1993), discussing the doctrine of forfeiture by wrnogdoing and saying:

> "The rationale underlying this rule of law is, quite logically that the law should not allow a person to take advantage of his own wrong. '[T]he Sixth Amendment does not stand as a shield to protect the accused from his own misconduct or chicanery.' [collecting cases]." (citations omitted)

(2) This Doctrine Has Been Adopted By The Washington Supreme Court

See e.g., State v. Mason, 160 Wn2d 910 924-25 (2007),

> "Every federal circuit has adopted the forfeiture doctrine, as have 21 states [including Washington]
>
> Justice Antonin Scalia has explained that the forfeiture doctrine is grounded in equity. '[T]he rule of forfeiture by wrongdoing (which we accept) extinguishes confrontation claims on essentially equitable grounds.' Crawford 541 US at 62 The high court reiterated its approval of the doctrine in Davis remanding Hammon v State, 829 NE2d 444 (Ind.2005), to the Indianna courts to consider if appropriate, the application of the doctrine.
>
> The doctrine is older than Crawford the supreme Court approved of it in the 1879 case of Reynolds v United States, 98 US (8 Otto) 145, 160, 25 LEd 244 (1878). More recently, and more bluntly an appellate court in Connecticut defended the doctrine with the quip, [t]hough justice may be blind it is not stupid.' State v Henry, 76 Conn.App 515, 533 820 A2d 1076 (2003)(quoting State v Altrui, 188 Conn 161 173 448 A2d 837 (1982))."

(3) But Even If Not Adopted By Washington It Would Still Apply To The States Under The Fourteenth Amendment

See e.g., Meyers v Nebraska, 262 US 390 (1923)(all common law doctrines established at he founding apply to the states through the Fourteenth Amendment).

I, Michael W. Williams, declare under the penalty of perjury under the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge.

Dated this 4th day of October, 2019 At Connell, Washington

Michael W Williams DOC# 882945
Coyote Ridge Corrections Center
PO Box 769: FB-35
Connell, WA. 99326-0769

DECLRATION OF MAILING
PURSUANT TO GR 3.1

I, Michael W. Williams declare that on October 9, 2019 I deposited the following documents: GR 3.1 Declaration of Mailing, and Motion for Discretionary Reivew or a copy thereof RE: Case No. 97643 1 in the internal legal mail system of the Coyote Ridge Corrections Center and made arraignments for postaged addressed to:

Attoaney General Of Washington
PO Box 40116
Olympia, WA. 98504-0116
Attn: AAG Marko Pavela
Corrections Division

Washington Supreme Court
PO Box 40929
Olympia, WA. 98504-0929
Attn: Susan Carlson
Clerk s Action Required

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge.

Dated this 9th day of October 2019 at Connell, Washington.

Michael W Williams DOC# 882945