No. 36252-0-II

COURT OF APPEALS DIVISION II
FOR THE STATE OF WASHINGTON

ARTHUR WEST,

Appellant

v.

THURSTON COUNTY, MICHAEL PATTERSON,
LEE, SMART, COOK, MARTIN and PATTERSON,

Respondents,

Appeal of the rulings of the Honorable Toni Sheldon,
of the Mason County Superior Court

REPLY BRIEF OF APPELLANT WEST

P.M. 11-24-2007

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES AND RULES

RCW 42.56.290

CR 26(b)(1)

CR 33(b)

CR 6(b)

CONSTITUTIONAL PROVISIONS, ETC.

Article I, section 1 of the Washington State Constitution

Article I, section 5 of the Washington State Constitution

Encyclopedia of English and American Law, 417, et sequ..

Restatement (Second) of Agency 268, comment C (1958)

4 L. Orland, Wash. Prac., Rules Practice, 5305 (3d ed. 1983)

PRELIMINARY OBJECTION- NO SINGLE RESPONDENT HAS PROPERLY APPEARED IN THIS APPEAL

As a preliminary consideration, appellant requests that notice be taken of the complete failure of respondents Lee Smart or Michael Patterson to argue or file a brief in this matter. The only respondent's brief filed is entitled and submitted solely on behalf of Thurston County, without any reference on its face to Lee Smart or Mr. Patterson as respondents at all. This default in any proper appearance or attempt at argument by Lee Smart and Patterson removes all question as to the propriety of this court granting all relief requested by plaintiff against these non-appearing respondents.

Then there is the undisputed evidence in the record that counsel Patterson is not legally authorized to appear for Thurston County or lawfully appointed under the mandatory terms of RCW Title 36.32. 200. Neither the County nor Mr. Patterson have controverted clear evidence in the record appearing at CP 54-58 that Mr. Patterson is not lawfully authorized to represent Thurston County either as a Deputy Prosecutor or a lawful judicial appointee under the mandatory terms of RCW 36.32.200.

Even without consideration of the conflict of interest posed by Patterson representing Thurston County when he is also properly a respondent, Thurston County, as a public entity, may not properly

represent the interests of private parties such as Patterson or Lee Smart. Faced with these defaults, the relief requested against these non-appearing respondents should be granted by this Court.

Based upon the complete failure of any of the respondents to appear in any lawful manner, the brief submitted by Mr. Patterson for the County in violation of RCW 36.32.200 should be stricken, and the relief requested by appellant should be granted. Under these circumstances it is difficult even to create a proper nomenclature for respondent, which will henceforth be denominated "Patterson County".

INTRODUCTION

This case presents the issue of whether the public's interest in open, accountable government includes disclosure and an accounting of attorney invoices for counsel representing a public agency such as Thurston County, and whether it was appropriate for the Mason County Superior court to deny disclosure of Hundreds of pages of such invoices, on an all or nothing basis, sight unseen, without inspection or any pretense of review, based upon the alleged preclusive effect of an order issued in a different proceeding entirely in which the appellant was not afforded an opportunity to participate.

It is apparent from the PRA, the Laws of 2007-and from the very exemption of RCW 42.56.290cited by the Court and the pretrial discovery and evidence rules it purports to incorporate-that the guiding policy of both the PRA and the pretrial discovery process is to insure broad disclosure of information subject to only narrowly construed specific claims of privilege.

In ruling that the Broyles invoices were privileged in their entirety under RCW 42.56.290 without any citation of specific exemption or any consideration whether it was appropriate, the Superior Court completely abdicated its responsibility under both the PRA and the discovery rules to promote broad discovery of information and adjudicative facts and to allow exemptions to this public policy only upon specifically asserted, carefully weighed, and narrowly construed applicable claims of privilege.

While an "all or nothing" ruling based upon the determination of a different magistrate in a different proceeding is possibly convenient for the Court, the public and litigants are not well served when the actual determination to grant or deny disclosure of public records is made in an artificial ex parte manner without a meaningful opportunity to participate or argue before the court where the actual determinative and preclusive ruling is made.

In regard to the issues of the propriety of private counsel such as Mr. Patterson attempting to straddle the dividing line between public and private representation, it is apparent from the circumstances of this case that the egregious conflicts of interest and contravention of sound public policy stemming from Mr. Patterson's conflicting roles of Public Disclosure Officer, Ex officio De facto Prosecuting Attorney, private corporate counsel and individual respondent profiteer are so contrary to sound government as to render his representation a travesty. While private corporate counsel are allowed to contravene te clear terms of law in order to usurp legitimate governmental functions in regard to disclosure of records, the intent of the PRA that the people retain control of the agencies that serve them has already become meaningless. In this case, the selfsame individual was allowed to pose as a County Prosecutor to rack up a multimillion dollar bill, then pose as a disclosure officer to deny disclosure, and then pose as a private counsel representing the County to again to seek sanctions from a citizen under color of County authority for having the temerity to seek to inspect the invoices.

In this case the legal fiction presented by Patterson County strikes at the heart of the intention of the Act.

> (T)he people insist on remaining informed so that they may maintain control over the instruments that they have created. The public records subdivisions of this chapter shall be liberally construed an d its exemptions narrowly construed to promote this public policy. RCW 42.56.030

Mr. Patterson's actions and position in this case reject the very fundamental precepts that separate our democratic republic from those of a totalitarian regime. Where private corporations and the public State merge, there is no democracy, but only totalitarianism and fascism. Three hunderd Years Ago, Lois the XIV stated "L'etat c'est Moi". In 2007, Respondents maintain "L'etat c'est Mike". The statement is just as offensive now as it was 3 centuries ago. The County is not properly Michael Patterson, and Michael Patterson is not properly the County-especially not without a lawful appointment under RCW 36.32.290

ARGUMENT

PATTERSON COUNTY PROCEDURAL ISSUES CONTROVERT CLEAR LETTER OF CR 54.

On the very first page of its response brief, in conformity with a pattern of misrepresenting the Court Rules on appeal[1], Patterson County attempts to raise completely spurious procedural issues regarding an interlocutory order of March 12 . This argument, that appeal of the March 12 order is time barred since Appellant did not file an appeal within 30 days of March 12, is completely and shamelessly at variance with the clear language of CR 54, which states in pertinent part,

> When more than one claim for relief is presented in an action,.. or when multiple parties are involved, the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination in the judgment, supported by written findings, that there is no just reason for delay and upon an express direction for the entry of judgment. ...In the absence of such findings,...any order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties...

Since the March 12 order did not resolve all claims as to all parties, it was not a final order under CR 54, and the appeal of the March 12 decision was properly combined with the appeal of the final order issued on March 26. This second attempt by Patterson County to attempt to misrepresent the clear language of the court rules is a waste of this courts time and resources for which a motion for sanctions would be appropriate if appellants main concern was not for disclosure of records.

Respondent Patterson County does not and cannot cite to any Court Rule that stands for the proposition that the April 25 Notice of Appeal was untimely or improperly filed in any way, shape, or manner. Their repeated spurious and pedantic pleadings do not relate to any material issue and are submitted for the improper purpose of unreasonably protracting and complicating this case without any meritorious basis.

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[1] Patterson County attempted to argue that RAP 8.1 prohibited a narrative transcript in all cases unless the transcripts were unavailable. This argument was rejected by the court, but not before appellant was required to pay for an unnecessary transcript.

APRIL 25 APPEAL OF MARCH 26 FINAL ORDER WAS TIMELY AND PRESERVED ALL ISSUES NOTWITHSTANDING RESPONDENTS INCOMPREHENSIBLE, INTERNALLY INCONSISTENT, AND SPURIOUS ARGUMENT REGARDING FINALITY OF MARCH 12 ORDER

Respondents own brief even acknowledges that the interlocutory order of March 12 was taken **"reserving.. The public records act claim against Thurston County**" CP 61-62." No CR 54 findings authorizing immediate appeal were made. As such, by respondents own citation, and the clear language of CR 54, the March 12 order was interlocutory in nature and any appeal of its terms would have been impossible to begin with until a final order was entered.

RAP 2.2 authorizes and requires appeal to be taken of the final order resolving all issues, in this case, the order of March 26, which resolved all claims against all parties in a final order. Since Respondents admit an appeal was taken in a timely manner of the March 26 order, there is no bona fide dispute that all of the issues are properly before the court. Again, while this blatantly false argument presents a proper case for terms, appellant seeks to have the court concentrate on the substantive issue of disclosure of the records at issue.

PATTERSON COUNTY'S UNDISPUTED FACTS ARE NOT UNDISPUTED OR FACTS

Just as Mr. Patterson does not properly represent the County and the County does not properly represent Lee-Smart or Patterson, respondents "undisputed facts" are not undisputed or facts. Respondent asserts...

> "The County only possesses attorney fee invoices related to the first $250,000.00 of the representation, which is the insurance deductible, and any invoice beyond this amount is not in the County's possession and is therefore not the Countys' public records." (sic)

This is a completely misleading representation of both fact and law. Since Mr. Patterson is an integral portion of respondent Paterson County, and since he is the one that issued or directed the preparation of the invoices to begin with, there can be no dispute that Thurston County, through its de facto officer Michael Patterson is in possession of the invoices that he, himself, sent out. As an agent

of the principal, Patterson is under the direction and control of the County, and so are his invoices, under the clearly established doctrine of Agent and Principal See Weightman v. Washington, 1 Black(U.S.) 39, See Title Agency I, Encyclopedia of English and American Law, 417, et sequ. Chilcot v. Washington State colonization Board 45Wash. 148, 88 Pac. 113.

As a general rule, the knowledge of the agent will be imputed to the principal where it is relevant to the agency and the matters entrusted to the agent. Restatement (Second) of Agency 268, comment C (1958), cited in Roderick Timber v. Wilapa Harbor Center, 29 Wn. App. 311, 627 P.2d 1352 (1981)

. Therefore, it is beyond any possible argument that the knowledge and invoices of Patterson are known and controlled by the County.

The jaundiced legal shell game played by Patterson County to evade responsibility for invoices sent out by the same individual who asserts to lack access to them illustrates better than anything the improper and abusive nature of the whole concept of Patterson County. A public entity such as Thurston County should not be able to veil its public functions and records behind a duplicitous cloak of falsely claimed private status.

Michael Patterson responded to appellant West's original public records request, despite the fact that the request was directed to the County. **Michael Patterson prepared** or directed the preparation of the invoices in question. **Michael Patterson openly acted** as a de facto officer of Thurston County subject to its direction and control. For Michael Patterson to falsely assert that he, as the representative Thurston County does not have the invoices that he himself prepared goes beyond misrepresentation into actual deliberate deception under the guise of a transparent and fraudulent legal technicality. As acting de facto public records officer for the County, Michael Patterson cannot bald-facedly maintain that he does not have his own invoices or refuse to disclose them based upon his lack of control over them. It is significant to not in this vein that Mr, Patterson is attempting to argue in

another case presently before this Court that Thurston County Lacks authority to Control even the duly elected County prosecutor Ed Holm. This pattern of attempted evasion of public responsibility subverts the democratic system and should be rejected by this Court.

THE "ALL OR NOTHING" RULING OF THE TRIAL COURT DENIED PUBLIC DISCLOSURE WITHOUT ANY REASONABLE REVIEW OR CONSIDERATION OF ANY SPECIFIC EXEMPTION

This case concerns the propriety of a March 26 ruling denying disclosure of Thurston County attorney fee invoices. The record in this case demonstrates that the **"all or nothing"** analysis the Superior Court applied on March 26 was incorrectly based solely upon the perceived preclusive effect of a ruling made "without prejudice" in a separate case that the appellant had no notice of, or opportunity to appear in.

The transcript of the March 26 hearing, (and respondent Patterson County's exhibits) show that the trial court based its ruling entirely upon a January 12, 2007 order in Mason County cause No. O4-2-00411-3 without any independent analysis at all. As the transcript states on Page 1, line 6- Page 2 line 14...

> **The Court sees that RCW 42.56.290 reads: records that are relevant to a controversy to which an agency is a party, but which records would not be available under the rules of pretrial discovery for causes pending in the Superior Courts are exempt from this chapter.**
>
> **And in applying this, more often than not we're looking at a case where we're trying to guess what a trial judge would do in another case. We don't have to do that here. There was a motion to compel those exact records that are being asked for today and we know what the trial judge did with that motion; he denied it. And so, it fits squarely within the exemption under RCW 42.56.290, and the Court will deny the request.**
>
> **The fact that the government agency has chosen to disclose some of those records doesn't waive the the balance of those records, and they may disclose as many or as few as they wish. They are not required to disclose any under that exemption.**
>
> **With regard to the request for an ion camera hearing...the Court sees no reason for an in camera review in this particular case...It's basically an all or nothing case and the court finds that it all falls within RCW 42.56.290.**

By basing its "all or nothing" ruling upon the preclusive effect of a determination made in a different case that Appellant West was not a party to, the Court on March 26 failed to afford a full and fair chance for adjudication of the application of the exemption-or any actual independent consideration of the propriety of the exemption at all.

By ruling on an "All or nothing" "Blind justice" basis, the Court failed to construe exemptions narrowly or require any particular exemption to be asserted, since it excluded the entirety of the requested records from the public's oversight and review without any consideration of any particular claim of privilege.

THE "ALL OR NOTHING" MIND SET OF THE TRIAL COURT OVER BROADLY CONSTRUED AN EXEMPTION IN A MANNER AT VARIANCE WITH THE RULES OF PRETRIAL DISCOVERY THAT REQUIRE BROAD DISCOVERY WITH ONLY NARROW EXEMPTIONS

The Court's "All or nothing" application of the exemption contained in RCW 42.56.290 incorrectly created a broad exemption where none actually exists in the rules of pretrial discovery.

The trial Court correctly cited RCW 42.56.290 to state:

> "(R)ecords that are relevant to a controversy to which an agency is a party, but which records would not be available under the rules of pretrial discovery for causes pending in the Superior Courts are exempt from this chapter."

However, the Court completely failed to conduct any actual analysis of the rules of pretrial discovery it based it ruling upon or provide any direct basis why they might apply. This is all the more objectionable in that the pretrial discovery rules which were construed to limit disclosure are actually a broad mandate compelling disclosure absent the assertion of any limited specific statutory exemption. As the Supreme Court ruled in Barfield v. Seattle, 100 Wn.2d 878, 676 P.2d 438, (1984)...

CR 26 has been labeled as the "General Provisions Governing Discovery." Section (b) states as follows:

(b) Scope of Discovery. Unless otherwise limited by order of the court in accordance with these rules,

the scope of discovery is as follows: The general rule addressing the scope of discovery is CR 26(b)(1), which states:

> " Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action . . . including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things ... It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

This rule is designed to permit a broad scope of discovery. Bushman v. New Holland Div., 83 Wn.2d 429, 434, 518 P.2d 1078 (1974). See Lurus v. Bristol Laboratories, Inc. , 89 Wn.2d 632, 574 P.2d 391 (1978); 4 L. Orland, Wash. Prac., Rules Practice, 5305 (3d ed. 1983)." As the Court further noted... "The threshold issue is whether the (records) are privileged. "Privilege, within the meaning of the Rule, is privilege as it exists in the law of evidence." 4 L. Orland, at 23." CR 33(b) states that:

> "[i]nterrogatories may relate to any matters which can be inquired into under Rule 6(b), . . ." The Washington rules were patterned after the Federal Rules of Civil Procedure which were established to permit broad discovery. Harris v. Nelson, 394 U.S. 286, 22 L. Ed. 2d 281, 89 S. Ct. 1082 (1969). The only limitation is relevancy to the subject matter involved in the action, not to the precise issues framed by the pleadings; and inquiry as to any matter which is or may become relevant to the subject matter of the action should be allowed, subject only to the objection of privilege. Felix A. Thillet, Inc. v. Kelly-Springfield Tire Co., 41 F.R.D. 55 (D.P.R. 1966).
>
> As stated by the Supreme Court over 60 years ago...
>
> [T]he deposition-discovery rules are to be accorded a broad and liberal treatment. No longer can the time-honored cry of "fishing expedition" serve to preclude a party from inquiring into the facts underlying his opponent's case. Mutual knowledge of all the relevant facts gathered by both parties is essential to proper litigation. To that end, either party may compel the other to disgorge whatever facts he has in his possession. Hickman v. Taylor, 329 U.S. 495, 507, 91 L. Ed. 451, 67 S. Ct. 385 (1947):

It is therefore clear that the rules of pretrial discovery, like the PRA itself, compel broad disclosure of any relevant evidence, **subject only to the objection of privilege**. Even without the clarification of law made in HB 1897, **no reasonable construction of the rules of pretrial discovery has ever allowed the wholesale concealment of relevant evidence** such as attorney fee

invoices absent specifically asserted narrowly construed claims of privilege interpreted in light of the broad policy favoring full discovery of all potentially relevant evidence as essential to proper litigation.

THE CIVIL COURT AND EVIDENCE RULES REQUIRING BROAD DISCOVERY AND DO NOT CREATE ADDITIONAL PRIVILEGE NOT ALREADY EXISTING IN STATUTE AND COMMON LAW

Specific examination of the actual rules of evidence demonstrate incontrovertibly that they support a broad policy of disclosure with only narrowly drawn and specifically asserted exemptions.

Under ER 401 "Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

ER 402 provides...

All relevant evidence is admissible, except as limited by constitutional requirements or as otherwise provided by statute, by these rules, or by other rules or regulations applicable in the courts of this state. Evidence which is not relevant is not admissible.

ER 501 states in pertinent part...

The following citations are to certain statutes and case law that make reference to privileges or privileged communications. This list is not intended to create any privilege, nor to abrogate any privilege by implication or omission.

It was error for the trial court to over broadly construe RCW 42.56.290 in a manner that created a broad new privilege in direct contradiction with the actual rules that the statutory exemption was purportedly based upon.

THE LAWS OF WASHINGTON 2007, CHAPTER 391 ARE REMEDIAL AND RETROACTIVE IN THEIR EXPLICIT TERMS AND REQUIRE DISCLOSURE OF PUBLIC ATTORNEY INVOICES SUBJECT TO ONLY NARROWLY DRAWN AND SPECIFIC LY ASSERTED EXEMPTIONS IN THE SAME MANNER AS A FAIR READING OF THE PRETRIAL DISCOVERY RULES

From the clear language of the laws of 2007, Chapter 391, it is beyond question that the intent of the legislature was to require disclosure of public attorney fee invoices in a retroactive and remedial manner.

In addition, it is apparent in the proceedings before the Local Government and Indian Affairs committee that the intent of the law was to require disclosure of the precise records at issue in this case, since the scandal created by the County's attempt to conceal even these billings outraged a broad spectrum of Media, Government, Lawyers, Trade Associations, and citizens such as appellant West, who all testified for the bill.

In applying the Laws of Washington, 2007, Chapter 391 in the manner that it was clearly intended, it is not necessary to break new legal ground. It is merely necessary to realize that the pretrial discovery process, just as the Public Disclosure Act, is founded upon a broad policy full disclosure of relevant evidence with only a small number of possible exclusions based upon narrowly construed exemptions. Indeed, when one compares the burgeoning number of exemptions tacked onto the PRA to the brief list of applicable privilege exemptions in ER 501, an argument could be made for the position that the rules of pretrial discovery require a higher standard of disclosure than the PRA, and that the scope of exemption of RCW 42.56.290 is less than that of the PRA.

Had these concerns been argued to the Court that actually issued the pretrial order in Cause No. 04-2-00411-3 that forms the basis of the March 26 ruling, it is almost certain a different result would have been incorporated into the order of January 22, 2007. However, West was denied this opportunity.

REJECTION OF THE CONTRACTUAL RULE OF LAW AND THE MERGER OF THE PRIVATE CORPORATION WITH THE STATE IS THE HALLMARK OF TOTALITARIAN SOCIAL ORDER

Additionally, in regard to the "contract" that Patterson County denies, he obviously is unfamiliar with the founding contract of our American Republic or the State of Washington. As the Declaration of Independence states...

"We hold these truths to be self evident... That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed...

Similarly, the Washington State Constitution provides...

"All political power is inherent in the people, and governments derive their just powers from the consent of the governed, and are established to protect and maintain individual rights."

As a common law doctrine breach of contract sounds in equity and includes natural and inherent rights, the same rights protected in Article I, section 1 of the Washington State Constitution. It is this basic and primordial contract of submission to the law by both the government and the people that the entire concept of Patterson County stands in diametric opposition to. By refusing to acknowledge his true role as a public officer for the County, (not to mention refusing to obtain the lawful appointment required by Title 36.32. 200 for his representation not to constitute a crime) Michael Patterson has breached the fundamental "social contract"of civil society that all of the rest of the structure of democracy is founded upon.

For an officer of the Government, (even in a de facto capacity) to maintain that he has no duty to follow the law or abide by any standards of conduct in reference to the citizenry who he is appointed to protect and represent goes beyond the ludicrous into the frightening.

The "Patterson County Line" that is being covertly advanced in this case, that an undisputable public agency can hide behind the fiction of private entity to evade all the requirements of law, is one of the most dangerous threats to democracy and sound public policy in this State. All members of our society are contractually bound to follow the laws that our representatives promulgate, of which the requirements of RCW 42.56 are only one portion.

RESPONDENT'S CONTRACT ARGUMENT IGNORES THE EXPLICIT CONTRACT REQUIRED OF PUBLIC OFFICERS IN THEIR OATH OF OFFICE TO UPHOLD THE LAWS

In contracting to perform governmental duties, public officers are required to execute an oath of office, swearing to uphold the constitution and laws of Washington and the United States. In this Circuit, the public and opposing parties are entitled to conscientious service by government counsel as a clearly established right. In Meza v. DSHS, the 9th Circuit Court of appeals established that the public and opposing parties have a right to conscientious service by Government counsel. It does not take any rigorous analysis to establish that this clearly established right has been violated in this case, since Patterson County denies that such a right exists to begin with.

It must be observed that **nowhere does respondent Patterson or any other respondent in any way deny that that patterson's representation of the County is illegal under the unambiguous terms of RCW 36.32.200.** While it is perhaps possible to maintain that there is no legal contract per se, the admittedly illegal nature of counsel's actions plows new ground in contractual violation of public policy. Appellant's initial confusion in this regard was not negligent, for governmental officers are presumed to be acting lawfully until unlawful action is shown.

MCKASSON AND TRASK ARE INAPPOSITE TO THE CIRCUMSTANCES OF THIS CASE WHERE COUNSEL DOES NOT DENY UNLAWFULLY ACTING AS AT BEST A DE FACTO OFFICER

The cases cited by Patterson County are inapposite as they both concern private counsel acting lawfully for their private clients. These circumstances have absolutely no relevance to the circumstances of this case where counsel was acting illegally as a de facto officer to begin with. Further, the County cannot represent Mr. Patterson. Had Mr. Patterson made this argument it would be possible to consider it, but Patterson County is without authority to represent or a purely private individual, rendering it not only frivolous but completely improper.

FAILURE OF TRIAL COURT TO GRANT LEAVE TO AMEND IN LIGHT OF RELEVATIONS OF COUNSELS UNLAWFUL CONDUCT WAS REVERSIBLE ERROR

As this very court has ruled in Honan v. Ristorante Italia, 66 Wn. App. 262, 832 P.2d 89, (1992) the failure to grant leave to amend is an abuse of discretion when the danger of prejudice is low. The failure of a the Mason County trial court to allow amendment of pleadings to assert an unconscionable contract in violation of public policy was an abuse of discretion, particularly in a complicated case involving a private citizen challenging Governmental action. In this case, appellant was initially unaware of counsels unlawful failure to secure a legal appointment. The public has a right to presume lawful action by government actors. Any failure by appellant to properly plead that the illegal failure to be duly certified was unconscionable contract void for violation of public duty must be excused by respondents' improper actions. Sanctions should also be barred in this respect due to respondents lack of clean hands.

RESPONDENTS FEE REQUEST FOR CLAIMS RELATED TO LEE SMART IS WHOLLY IMPROPER SINCE LEE SMART HAS NOT RESPONDED TO THE APPEAL AND CANNOT PROPERLY BE REPRESENTED BY THURSTON COUNTY

Appellant is uncertain what Patterson County refers to on page 35 of their brief when they seek to have fees awarded to "respondents" when only the County has responded. Even if there were a basis for an award to Lee-smart, Lee-smart has not filed any response in any way or incurred any expense. Thurston County cannot request or accept fees for a defense that was never made by Lee-Smart to begin with.

The vituperative knee-jerk request for fees when there is no basis in fact or law is abusive and wasteful of precious judicial resources. If it were possible to determine with certainty which of counsel's mutually incompatible capacities this improper and abusive request was made from, an award of sanctions would be appropriate.

However, the situation is so confused it is not certain whether the County should be sanctioned for an improper request for Lee-smart, whether lee-smart should be sanctioned for allowing Patterson to act in the guise of the county to make improper requests, or whether Patterson himself should be sanctioned for attempting to act in an evident conflict of interest to seek sanctions posing as a de facto officer from appellant for the offense of attempting to draw attention to the impropriety of these multiple conflicts of interest.

CONCLUSION

The public's interest in open, accountable government includes disclosure and an accounting of attorney invoices for counsel representing a public agency such as Thurston County. It was inappropriate for the Mason County Superior court to deny disclosure of Hundreds of pages of such invoices, sight unseen, without inspection or any pretense of review, based upon the alleged preclusive effect of an order issued in a different proceeding entirely in which the appellant and requestor of records was not afforded an opportunity to participate.

Disclosure of the invoices of those public officers exercising governmental powers entrusted to them by the soveriegn citizenry is indisputably necessary for the exercise of the public policy of reasonable public oversight over the officers of a just and democratic social order. While reasonable redactions, based upon narrowly asserted exemptions may be appropriate, this is not what occurred in the trial court. Such an action is in contrast to the requirements of both the law and the rules of pretrial discovery that respondents attempt to assert to evade the statutory mandate of disclosure.

The order of March 26 denied disclosure of hundreds of pages of attorney invoices in their entirety, without any review or analysis, or adherence to the broad scope of discovery in the evidence rules. The ruling was also defective since it was completely founded upon a ruling made in another court without or notice to appellant or opportunity to object.

In this case the legal fiction presented by Patterson County strikes at the heart of the intent of the PRA.

Mr. Patterson's actions and position in this case reject the very fundamental precepts that separate our democratic republic from those of a totalitarian regime. Where private corporations and the public State merge, there is no democracy, but only totalitarianism and fascism. Three Hundred years ago Lois the XIV stated "L'etat cest Moi". In 2007, Respondents maintain "L'etat c'est Mike". The statement is just as offensive now as it was 3 centuries ago. The State is not properly Michael Patterson, and Michael Patterson is not properly the State-especially not without a lawful appointment under RCW 36.32.

This Court should disregard the improperly interposed brief of Patterson County and direct the Trial Court to issue all of the relief requested by appellant.

Done November 21, 2007.

ARTHUR WEST