Honorable Ronald Castleberry
Department No. 9
April 29, 2011; 1:00 p.m.
WITH ORAL ARGUMENT

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

MARTIN RINGHOFER, Petitioner, vs. LINDA K. RIDGE, in her official capacity as Deputy Chief Administrative Officer of the King County Superior Court, Respondent.	No. 10-2-41119-4 SEA RESPONDENT'S BRIEF IN OPPOSITION TO PETITIONER'S MOTION FOR SUMMARY JUDGMENT

I. INTRODUCTION

The Legislature and Supreme Court have directed the superior courts to preliminarily determine the qualifications set forth in RCW 2.36.070 of each person summoned for jury duty prior to his or her appearance at court. RCW 2.36.072; GR 18. This is accomplished by having the person summoned submit a declaration signed under penalty of perjury with respect to the statutory criteria relating to age, citizenship, residency, ability to communicate in the English language, and, if convicted of a felony, the status of the person's civil rights. RCW 2.36.072(1); GR 18(d).

Had the Legislature or Supreme Court wanted the preliminary juror qualification information to serve as a vehicle for determining a each person's qualifications to vote, they

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could have easily done so. Instead, they adopted a different policy. Under the statute and court rule, the only information that courts may (not must) report to the county auditor -- the chief elections officer in the county -- is limited to address-related data. RCW 2.36.072(4); GR 18(d). Further, the statute and court rule make clear that the information provided to courts pursuant to the preliminary qualification process "may not be used for any other purpose." *Id.*

Notwithstanding the Legislature and Supreme Court's clear direction, petitioner claims that he is entitled to access preliminary juror disqualification information to compare against the voter registration records, because the criteria to be a juror and to vote overlap. However, petitioner's intent is not a substitute for the plain language of the statute and rule. For the reasons set forth below, neither the common law, federal and state constitutions, nor GR 31 compel a different result.

Accordingly, respondent respectfully asks (a) that petitioner's motion for summary judgment be denied, and, (b) as requested in respondent's own motion for summary judgment, that this case be dismissed with prejudice.

II. ARGUMENT

A. Petitioner Does Not Have a Common Law Right to Access Preliminary Juror Disqualification Information.

In support of his arguments for release of the preliminary juror disqualification information in this case, petitioner first relies on the common law right of access to court records. Respondent does not dispute that there is a strong presumption in favor of access to court records. However, that presumption does not apply here because the records at issue are not court records.

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In Washington, the common law right is codified in GR 31 (Access to Court Records), adopted by the Supreme Court in 2004 and most recently amended in 2006. According to the rule, "court records" include documents, information, exhibits, calendars, dockets, orders, judgments and numerous other records. GR 31(c)(4). However, GR 31 limits the definition of "court records" to only those documents that are "in connection with" or "related to" a judicial proceeding. GR 31(c)(4)(i) and (ii). It is undisputed that the preliminary juror information in this case is not connected to or related to any judicial proceeding. At the time jurors are preliminarily disqualified, they have not yet been assigned to sit in the jury pool for any particular case. The preliminary juror information therefore does not qualify as a "court record."

In addition, the common law access cases cited by petitioner are easily distinguished from the present case. Like the definition in GR 31, all involve court records that are connected to or related to a judicial proceeding. At issue in *United States v. James*, 663 F.Supp. 1018 (W.D.Wash. 2009), was a plea agreement and sentencing memorandum. *In re Application of National Broadcasting Co.*, 653 F.2d 609 (D.C.Cir. 1981) and *Nixon v. Warner Communications*, 435 U.S. 589, 98 S.Ct. 1306, 55 L.Ed. 2d 570 (1978), concerned video and audiotapes introduced into evidence and played to the jury during criminal trials. *See also, In re McClatchy Newspapers, Inc.*, 288 f.3d 369 (9th Cir. 2002) (letters submitted by defendant to reduce sentence); *Foltz v. State Farm Mut. Auto Ins. Co.*, 331 F.3d 1122 (9th Cir. 2003)(discovery, summary judgment motion, and other documents filed in the case); *Kamakana v. City and County of Honolulu*, 447 F.3d 1172 (9th Cir. 2003)(deposition testimony and documents attached to dispositive motions); *Nast v. Michels*, 107 Wn.2d 300, 730 P.2d 54 (1986)(court case files); *Hagestand v. Tragesser*, 49 F.3d 1430 (9th Cir. 1995)(copies of pleadings filed in civil case); *Pintos v. Pacific Creditors Ass'n*, 605 F.3d 665 (9th Cir.

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2010)(documents attached to a cross motion for summary judgment); *Phoenix Newspapers v. U.S. District Court*, 156 f.3d 940 (9th Cir. 1998)(sealed transcripts from closed hearings in criminal case).

Moreover, even assuming one could show that the preliminary juror disqualification records are court records, the Legislature and Supreme Court have restricted access to this specific category of information through RCW 2.36.072 and GR 18(d). Contrary to petitioner's arguments, the common law does not allow one to ignore the restrictions set forth by the Legislature and the Supreme Court. Unambiguous statutes are read in conformity with their obvious meaning, without regard to the previous common law. *City of Federal Way v. Koenig,* 167 Wn.2d 341, 351, 217 P.3d 1172, 1176 (2009)(citing *State ex rel. Madden v. Pub. Util. Dist. No. 1,* 83 Wn.2d 219, 222, 517 P.2d 585 (1973), *cert. denied*, 419 U.S. 808, 95 S.Ct. 20, 42 L.Ed.2d 33 (1974)).

Accordingly, petitioner's common law theory of access in this case must fail.

B. Petitioner's Request to Access Preliminary Juror Disqualification Information Does Not Implicate Federal or State Constitutional Rights to Access Judicial Proceedings and Court Records.

i. The First Amendment

The First Amendment to the U.S. Constitution gives the public and the press a presumptive right of access to criminal jury trials. *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 580, 100 S.Ct. 2814, 65 L.Ed.2d 973 (1980). This right has been extended to include many aspects of the judicial process. *See, e.g*. *Press-Enterprise Co. v. Superior Court*, 478 U.S. 1, 106 S.Ct.2735, 92, L.Ed.2d 1 (1986) (" *Press-Enterprise II* ") (finding First Amendment right of access to transcripts of pretrial suppression hearings); *Press-Enterprise Co. v. Superior Court of California, Riverside County,* 464 U.S. 501, 104 S.Ct. 819, 78 L.Ed.2d 629 (1984) (" *Press-*

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Enterprise I") (voir dire examination of potential jurors); *United States v. Simone*, 14 F.2d 833 (3rd Cir. 1994) (post-trial hearings to examine allegations of juror misconduct).

Based on an Ohio case mentioned in a footnote in *State v. Coleman*, 151 Wn.App. 614, 619, n.6, 214 P.3d 158 (2009), petitioner argues that "Courts that have addressed the issue of whether jury questionnaires are presumptively open under the First Amendment have held that the entire jury selection process is presumptively open to the public." Petitioner's Motion for Summary Judgment at p. 8, (citing *State v. Coleman*, 151 Wn.App. 614, 619, n.6, 214 P.3d 158 (2009) (citing *State v. ex rel. Beacon Journal Publishing Co. v. Bond*, 98 Ohio St.3d 146, 781 N.E.2d 180 (2002)).

As an initial matter, this specific statement is not found in either *Bond* (a First Amendment case) or *Coleman* (a state constitutional case). Nevertheless, courts have extended the First Amendment qualified right to open proceedings in criminal trials to juror questionnaires used by parties during the jury selection process. *See, e.g., Bond*, 781 N.E.2d at 188-89. As these cases explain, written jury questionnaires are the functional equivalent of oral questioning that occurs during voir dire examination, a part of the criminal trial that is presumptively open to the public. *Id.* ("[t]he fact that the questioning of jurors was largely done in written form rather than orally is of no constitutional import.") (quoting *Copley Press, Inc. v. Superior Court*, 228 Cal.App.3d 77, 89, 278 Cal.Rptr. 443 (1991)).

Petitioner erroneously equates the preliminary qualification information provided by persons receiving a jury summons, with the jury questionnaires used by attorneys as part of actual jury selection in a specific, pending case. Unlike juror voir dire, the preliminary determination process created by the Legislature and Supreme Court is complete before the person receiving the summons even reports to court. Unlike juror voir dire, the information is

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unrelated to any judicial proceeding, and is retained by the court for a limited time and solely for administrative purposes. Indeed, according to petitioner's own characterization, the information is "non-juror" data that he intends to use, not to monitor the fairness of any jury trial or apply the check of public scrutiny on judges, but to compare it against election records.

Accordingly, petitioner is not entitled to relief as a matter of law under the First Amendment.

ii. Article I, Section 10

For the reasons set forth in respondent's motion for summary judgment dismissal, noted to be heard in conjunction with petitioner's motion for summary judgment, the access principles advanced by state constitutional article 1, section 10, are not triggered in this case. Respondent incorporates those arguments herein.

Additionally, like the First Amendment authority (*Bond*) cited by petitioner, the article I, section 10 case law cited in petitioner's summary judgment motion is inapplicable to the circumstances presented here. *State v. Coleman*, 151 Wn.App. at 621, involved jury questionnaires filed with the clerk of the court. *State v. Easterling*, 157 Wn.2d 167, 137 P.3d 825 (2006) involved whether the trial court properly closed a pretrial hearing when considering a codefendant's motion to sever. *State v. Vega*, 144 Wn.App. 914, 916, 184 P.3d 677 (2008), *review denied*, 165 Wn.2d 1024 (2009), held that the defendant's public trial right under article I, section 22 was not violated when the trial court questioned individual jurors apart from the other jurors about matters that may taint the other jurors. Lastly, *Seattle Times Co. v. Ishikawa*, 97 Wn.2d 30, 36, 740 P.2d 716 (1982), reversed a trial court decision to close hearing in a criminal trial.

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All of these cases relate to activities occurring within a criminal proceeding. None purport to extend the reach of the constitutional right of access to preliminary information that is not related to or maintained in connection with a criminal proceeding. Accordingly, the petitioner's state constitutional argument must be denied as a matter of law.

C. GR 31(k) Does Not Apply to Preliminary Juror Disqualification Information.

Petitioner argues that the court should permit him access to the preliminary juror disqualification information pursuant to GR 31(k). He devotes almost three pages of his motion to an attempt to demonstrate that his request for the information constitutes good cause as required by the rule. While petitioner's intended use of the information may be a good one, it is irrelevant here because the rule does not apply. GR 31(k) applies "[a]fter conclusion of a jury trial" and therefore, on its face, applies only to jurors who were called to serve for that jury trial. It does not apply to jurors who were preliminarily disqualified from service under RCW 2.36.072, before ever being assigned to sit in any jury pool.

D. Because Petitioner is Not Entitled to Declaratory or Mandamus Relief, His Motion For Summary Judgment Must be Denied.

For the reasons set forth above, petitioner is not entitled to declaratory or mandamus relief. The statute and court rule's plain language do not entitle him to a declaration directing access to the preliminary juror information. Moreover, he cannot show that respondent failed to perform a duty required by law and he has failed to show that the court rule and statute at issue in this case are unconstitutional.

Accordingly, petitioner's motion for summary judgment must be denied.

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DATED this 18th day of April, 2011.

Respectfully submitted,

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MARTIN RINGHOFER, Petitioner, vs. LINDA K. RIDGE, in her official capacity as Deputy Chief Administrative Officer of the King County Superior Court, Respondent.	No. 10-2-41119-4 SEA CERTIFICATE OF SERVICE

I, Gail E. Behan, hereby certify and declare under penalty of perjury under the laws of the state of Washington as follows:

1. I am a paralegal employed by King County Prosecutor's Office, am over the age of 18, am not a party to this action and am competent to testify herein.

2. On April 18, 2011, I did cause to be delivered by Legal Messenger a true copy of Respondent's Brief in Opposition to Petitioner's Motion for Summary Judgment and this Certificate of Service to:

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DATED this 18th day of April, 2011 at Seattle, Washington.

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