

Honorable Ronald Castleberry
SUPERIOR COURT CLERK
Department No. 9
April 29, 2011, 1:00 p.m.
CASE NUMBER: 10-2-41119-4 SEA
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 MOTION
FOR SUMMARY JUDGMENT
DISMISSAL PURSUANT TO CR 56

I. RELIEF REQUESTED AND STATEMENT OF GROUNDS

This case involves an attempt by petitioner to access responses that individuals self-reported to the superior court regarding their competency to serve as a juror upon receiving a jury summons. Pursuant to state statute and court rule, the court uses these responses to preliminarily determine whether the individuals are qualified for jury duty prior to their appearance at the court identified in the summons. Neither state law nor court rule provide petitioner with the right to access this information, nor does the state constitution compel it. Accordingly, respondent Linda K. Ridge respectfully submits this motion for summary judgment dismissal of all petitioner's claims. There is no genuine issue as to any material fact in this case, and the documents and declarations submitted with this motion demonstrate that respondent is entitled to judgment as a matter of law.

1 II. FACTS

2 a. Jury Source List and Master Jury List Process

3 Annually, pursuant to chapter 2.36 RCW, and General Rule (GR) 18, the King County
4 Superior Court receives a jury source list from the Washington State Department of Information
5 Services. In accordance with a Supreme Court order appended to GR 18, King County creates a
6 list by merging the list of King County registered voters and the list of licensed drivers and
7 identicard holders who reside in the County. *See also*, GR 18(b) (defining jury source list as the
8 product of merging these lists) and RCW 2.36.010(8) (same). The methodology for merging this
9 information is set forth in an appendix to the order, and includes criteria for addressing known or
10 suspected duplicated names. *See* GR 18, Appendix.

11 From the jury source list, the Superior Court may create a smaller, master jury list, from
12 which prospective jurors may be summoned. RCW 2.36.055; GR 18, Appendix. The statute
13 also permits courts to forego creating a separate master jury list, and to simply summon jurors
14 off the larger jury source list. *See* RCW 2.36.010(9) (master jury list may be an exact duplicate
15 of the jury source list). In either case, the designation of jurors summoned for jury duty must be
16 random. GR 18, Appendix (designation of persons on master jury list to be summoned "shall be
17 random"); RCW 2.36.065 (selection of master jury list and jury panels shall be "fair and
18 random").

19 b. Preliminary Determination of Juror Qualifications

20 In Washington state, a person is deemed competent to serve as a juror, unless that person:

- 21 (1) Is less than eighteen years of age;
22 (2) Is not a citizen of the United States;
23 (3) Is not a resident of the county in which he or she has been summoned to serve;
(4) Is not able to communicate in the English language; or
(5) Has been convicted of a felony and has not had his or her civil rights restored.

1 RCW 2.36.070.

2 Pursuant to GR 18(d) and RCW 2.36.072(1), each superior court is required "to establish
3 a means to preliminarily determine by written declaration signed under penalty of perjury by
4 each person summoned, the qualifications set forth in RCW 2.36.070 of each person summoned
5 for jury duty prior the person's appearance at the court to which the person is summoned to
6 appear." If a declarant responds that he or she does not meet the statutory qualifications, that
7 person is to be excused from appearing in response to the summons. RCW 2.36.072(4).

8 Both the General Rule and statute expressly limit the permissible uses of self-reported
9 juror qualification information:

10 Information so provided to the court for preliminary determination of
11 qualification for jury duty may only be used for the term such person is summoned and
12 may not be used for any other purpose. Provided, that the court, or its designee, may
report a change of address or nondelivery of summons of persons summoned for jury
duty to the county auditor.

13 (Emphasis supplied). GR 18(d); RCW 2.36.072(4).

14 c. Petitioner's Requests

15 On February 22, 2010, the King County Department of Judicial Administration ("DJA")
16 received a public disclosure request from Petitioner Martin Ringhofer.¹ *See PRA response letter*
17 *attached to the Declaration of Thomas Kuffel(Kuffel Dec.) at Exhibit 1.* Through the request,
18 petitioner asked for the names and addresses of prospective jurors who were disqualified from
19 jury service in King County between January 1, 2008 and December 31, 2009 due to age,
20 citizenship, residency, inability to communicate in the English language, felony conviction, or
21 any other reason for disqualification. *Id.*

22 _____
23 ¹ Under the King county charter, the department of judicial administration is an executive branch agency
that is administered by the superior court clerk, who is appointed and serves at the pleasure of a majority
of the superior court judges in the county. The department performs the statutory and court rule functions
of the superior court clerk. King County Charter § 350.20.20.

1 Teresa Bailey, Deputy Director for DJA, responded to petitioner's request. *Id.* Ms.
2 Bailey advised petitioner that the Public Records Act ("PRA") does not apply to the courts. *Id.*
3 Further, Ms. Bailey informed petitioner that while DJA keeps the Master Jury List, the
4 department is not part of the juror disqualification process. *Id.* Ms. Bailey told petitioner that
5 King County Superior Court administers that process, and she provided him with the contact
6 information for respondent Linda Ridge with King County Superior Court. *Id.*

7 On February 25, 2010, petitioner sent another e-mail to DJA clarifying his earlier request
8 and, again, Ms. Bailey referred petitioner to respondent at King County Superior Court. *Kuffel*
9 *Dec. at Exhibit 2(response letter).*

10 On October 16, 2010, petitioner sent an e-mail to respondent requesting the following:

- 11 (1) "a list of the names and addresses of 'non-juror information' who were
12 disqualified from jury service in the King Count[sic] jurisdiction for the time
13 period . . . from January 1, 2008 to December 31, 2009, for any of the five
14 reasons listed in RCW 2.36.070[;]"
- 15 (2) "the names and addresses of non jurors who were disqualified from jury service
16 from the time period ranging [during the above time period] because of having
17 indicated other reasons for disqualification[;]" and
- 18 (3) "the individual's stated reasons from self-disqualification, and provide the total
19 number of potential jurors on your master lists for 2008 and 2009 and the number
20 of summons you sent to prospective jurors for both years."

21 *Kuffel Dec. at Exhibit 3.*

22 Five business days later, on October 25, respondent provided a response to petitioner's
23 request. *See Kuffel Dec. at Exhibit 4 (response letter).* First, respondent informed petitioner that
the courts are not subject to the PRA and the specific duties imposed by the act did not apply to
petitioner's request. *Id.* Next, respondent explained that access to juror information is governed
by court rule and statute. *Id.* Respondent explained that those authorities restrict the juror
information that may be released. *Id.* Specifically, respondent explained that GR 18(d) states

1 that self-reported juror information concerning the qualification requirements in RCW 2.36.070
2 "may only be used by the court for the term such person is summoned and may not be used for
3 any other purpose." *Id.*

4 Though respondent was prohibited by law from providing petitioner with the information
5 he requested regarding disqualified individuals, she did provide him with the total number of
6 persons summoned and a list showing the number of disqualified individuals in each RCW
7 2.36.072 category during the specified time period. *Id.* Further, as provided by GR 31(k),
8 respondent informed petitioner that the master jury source list containing only names and
9 addresses was available for public viewing at the office of the Superior Court Clerk. *Id.*

10 Respondent received no further correspondence from petitioner until service of this
11 lawsuit.

12 III. EVIDENCE RELIED UPON

13 This motion is based on the records and pleadings herein as well as the Declaration of
14 Thomas Kuffel with the exhibits attached thereto, and the arguments and authorities cited herein.

15 VI. ARGUMENT

16 The information requested by petitioner is, as he calls it, non-juror information. He seeks
17 information only related to those persons who have been disqualified from jury service due to
18 age, residency, language, felony conviction, or other self-disqualification. The relevant court
19 rule and state law make clear that this information is not available for public inspection.
20 Respondent fulfilled her duty to follow the court rule and state law by denying petitioner access
21 to the protected non-juror information. Petitioner is not entitled to a writ of mandate, declaratory
22 or injunctive relief, or relief under GR 31.

1 A. Summary Judgment Standard

2 Summary judgment is proper when the pleadings, answers to interrogatories, admissions
3 and any affidavits, taken together, "show that there is no genuine issue as to any material fact
4 and that the moving party is entitled to judgment as a matter of law." CR 56(c). A genuine issue
5 of material facts exists where reasonable minds could differ on the facts controlling the outcome
6 of the litigation. *Wilson v. Steinbach*, 98 Wn.2d 434, 437, 656 P.2d 1030 (1982). The moving
7 party is entitled to summary judgment if it submits affidavits establishing that it is entitled to
8 judgment as a matter of law. *Ranger Insur. Co. v. Pierce County*, 164 Wn.2d 545, 552, 192 P.3d
9 886 (2008) (citing *Meyer v. Univ. of Washington*, 105 Wn.2d 847, 719 P.2d 98 (1986)). The
10 nonmoving party avoids summary judgment when it "set[s] forth specific facts which sufficiently
11 rebut the moving party's contentions and disclose the existence of a genuine issue as to a material
12 fact." *Id.* The nonmoving party "may not rely on speculation, [or] argumentative assertions that
13 unresolved factual issues remain." *Id.* (citing *Seven Gables Corp. v. MGM/UA Entm't Co.*, 106
14 Wn.2d 1, 13, 721 P.2d 1 (1986)).

15 The foregoing standard of review must be applied in the context of the particular relief
16 petitioner is seeking in this case. As to his request for mandamus and injunctive relief,
17 petitioner's burden is high. Mandamus is an extraordinary remedy. *Walker v. Munro*, 124
18 *Wash.2d* 402, 407, 879 P.2d 920 (1994). A party seeking a writ of mandamus must show that
19 (1) the party subject to the writ has a clear duty to act; (2) the petitioner has no plain, speedy, and
20 adequate remedy in the ordinary course of law; and (3) the petitioner is beneficially interested.
21 RCW 7.16.160, .170. Further, the duty to act must be ministerial in nature rather than
22 discretionary. *Brown v. Owen*, 165 Wn.2d 706, 725, 206 P.3d 310(2009).

1 Petitioner's request for declaratory relief regarding the constitutionality of the statute also
2 involves a high burden. When analyzing the constitutionality of a statute, a court must begin
3 with the presumption that a legislative act is constitutional, and the party challenging the
4 constitutionality has the burden of proving it unconstitutional beyond a reasonable doubt.
5 *Clements v. Fashing*, 457 U.S. 957, 963, 102 S.Ct. 2836, 73 L.Ed.2d 508 (1982); *Miller v. U.S.*,
6 73 F.3d 878, 881 (9th Cir. 1995).

7 For the reasons set forth below, petitioner cannot, as a matter of law, meet the high
8 burden required for mandamus, injunctive or declaratory relief, nor is he entitled to relief under
9 GR 31. Respondent is therefore entitled to summary dismissal of this action.

10 B. GR 18(d) and RCW 2.36.072(4) Do Not Allow Dissemination of Juror
11 Qualification Responses.

12 As an initial matter, petitioner fashioned his requests for juror information under the
13 Public Records Act ("PRA"). However, the PRA clearly does not apply in this instance. *City of*
14 *Federal Way v. Koenig*, 167 Wn.2d 341, 346 (2009) (PRA does not apply to the judicial branch);
15 *see also, Spokane & Eastern Lawyer v. Tompkins*, 136 Wn. App. 616 (2007) (superior court not
16 an "agency" under public records act); *Nast v. Michels*, 107 Wn. 2d 300, 305-307 (1986) (courts
17 are not within the realm of the public disclosure act). Therefore, petitioner must identify another
18 avenue through which to allege that he is entitled to the juror information. In this instance,
19 petitioner relies on RCW 2.36.072 and GR 18.

20 The information requested by petitioner is information provided to the court by potential
21 jurors for the preliminary determination of their qualifications to serve as jurors. As cited earlier,
22 GR 18 and RCW 2.36.072 mandate that this information may only be used for the purpose of
23 preliminarily determining juror qualification, with a limited exception, and may not be used for
any other purpose. *See* GR 18(d); RCW 2.36.072(4).

1 Disseminating juror qualification information to petitioner to conduct research on voting
2 registration records is not a purpose provided for under the statute or rule. Accordingly, under
3 the plain language of each, it is not allowed. *See* Petition at ¶19.

4 Had the Legislature intended that a permissible use of the preliminary juror
5 disqualification information be for research into voter registration eligibility, it would have listed
6 that in RCW 2.36.072. In fact, state legislators proposed bills in 2008, 2010 and this year that
7 would amend RCW 2.36.072 to require the courts to send the County Auditor and the Secretary
8 of State a list of jurors disqualified due to age, citizenship, residency, and felony conviction. *See*
9 H.B. 3159, 60th Leg., Reg. Sess., Sec. 1 (Wash. 2008); S.B. 6527, 61st Leg., Reg. Sess. (Wash.
10 2010); and S.B. 5855, 62nd Leg., Reg. Sess. (Wash. 2011). *See Kuffel Dec. at Exhibit 5.* Had it
11 been adopted, the latter bill would have required the court to create and maintain a list of all
12 disqualified prospective jurors and make it open for public inspection. *Id.* Thus far, however,
13 the Legislature has declined to so expand the permissible uses of preliminary juror qualification
14 information.

15 Additionally, had the Legislature intended that preliminary juror disqualification
16 information be available upon request by members of the public, it would not have stated that the
17 information could be used only for the term for which the person is summoned. "Jury term" is
18 defined as a period of time of one or more days, not exceeding one month, during which
19 summoned jurors must be available to report for juror service. *See* RCW 2.36.010(10). State
20 retention schedules require that the preliminary juror disqualification information be kept only
21 until the end of the jury term. *See Kuffel Dec. at Exhibit 6 (excerpted page from local*
22 *government records retention schedule).* If the Legislature intended for the information to be
23 available to the public, it would not have allowed for such prompt destruction of it.

1 The statute and court rule prohibit release of preliminary juror qualification information
2 to petitioner. Respondent did what the law required when she denied petitioner's request for the
3 information.

4 C. Petitioner is Not Entitled to Juror Qualification Information under GR 31(j)

5 General Rule 31 governs access to court records. Subsection (j) states:

6 **Access to Juror Information.** Individual juror information, other than name, is
7 presumed to be private. After the conclusion of a jury trial, the attorney for a party, or
8 party pro se, or member of the public, may petition the trial court for access to individual
9 juror information under the control of the court. Upon a showing of good cause, the
10 court may permit the petitioner to have access to relevant information. The court may
11 require that juror information not be disclosed to other persons.

12 While this rule permits access to juror information upon a showing of good cause, it is
13 not relevant to the information requested by petitioner in this case. The rule only applies "[a]fter
14 conclusion of a jury trial," and therefore applies only to information regarding jurors who were
15 called to serve for that trial, not jurors who were preliminarily disqualified from service under
16 RCW 2.36.072. Accordingly, petitioner's reliance on the rule in this instance is misplaced.

17 D. State Law Restrictions on the Disclosure of Preliminary Juror Qualification
18 Information Are Constitutional.

19 In the event RCW 2.36.072 and GR 18(d) prohibit his access to the preliminary juror
20 disqualification information, petitioner's fallback position is that the statute and rule are
21 unconstitutional. He claims that such an interpretation of the statute and rule would violate
22 article I, section 10 of the Washington State Constitution. *See* Petition at ¶ 14.

23 Preliminarily, it does not appear that petitioner has served the attorney general with this
lawsuit and is therefore precluded by RCW 7.24.110 from challenging the constitutionality of the
statute.²

² RCW 7.24.110 provides:

1 Regardless, petitioner misinterprets article I, section 10, as it does not apply to the
2 information he requested. Article I, section 10 of the Washington Constitution states, "Justice in
3 all cases shall be administered openly, and without unnecessary delay."³ This provision
4 guarantees the public and the press a right of access to judicial proceedings and court documents
5 in both civil and criminal cases. *Dreiling v. Jain*, 151 Wn.2d 900, 908, 93 P.3d 861 (2004). It
6 applies to trials, pretrial hearings, transcripts of pretrial hearings or trials, exhibits introduced at
7 pretrial hearings and voir dire proceedings. *Seattle Times v. Eberharter*, 105 Wn.2d 144, 155,
8 713 P.2d 710 (1986); *State v. Duckett*, Wn.App. 797, 173 P.3d 948 (2007) (citing *State v.*
9 *Easterling*, 157 Wn.2d 167 174, 137 P.3d 825 (2006); *State v. Brightman*, 155 Wn.2d 506, 122
10 P.3d 150 (2005) (voir dire proceeding). The right of access also applies to summary judgments
11 and other dispositive motions that adjudicate the substantive rights of the parties, like a full trial.
12 *Dreiling*, 151 Wn.2d at 910, 918 (motion to terminate shareholder derivative action with the
13 scope of article I, section 10).

14 Conversely, our appellate courts have declined to find a right of access in matters that are
15 not trials or pretrial hearings or do not involve documents introduced into the court record:

16 As this information [obtained in discovery] does not become part of the court's decision
17 making process, article I, section 10 does not speak to its disclosure. However the same
18 cannot be said for materials attached to a summary judgment motion. Summary
19 judgment effectively adjudicates the substantive rights of the parties, just like a full trial.
Accordingly, when previously sealed discovery documents are attached in support of a
summary judgment motion, they lose their character as the raw fruits of discovery.

20 When declaratory relief is sought, all persons shall be made parties who have or claim any
21 interest which would be affected by the declaration and no declaration shall prejudice the rights
22 of persons not parties to the proceeding. In any proceeding which involves the validity of a
municipal ordinance or franchise, such municipality shall be made a party, and shall be entitled to
be heard, and if the statute, ordinance or franchise is alleged to be unconstitutional, the attorney
general shall also be served with a copy of the proceeding and be entitled to be heard.

23 (Emphasis added).

³ A related provision, article I, section 22, guarantees criminal defendants the right to a speedy, public trial.

1 (Emphasis added.) *Dreiling*, 151 Wn.2d at 909-910.

2 In *Eberharter*, likewise, this Court found no public right of access to judicial proceedings
3 relating to the criminal investigatory process, such as search warrant affidavits in unfiled
4 criminal cases. *Eberharter*, 105 Wn.2d at 156-57. See also, *Buehler v. Small*, 115 Wn. App.
5 914, 921, 64 P.2d 78 (2003) (no constitutional right to access a judge's notes as they were not
6 part of any case record and did not constitute transcripts of criminal proceedings or exhibits).

7 In this instance, the preliminary juror disqualification information requested by petitioner
8 is obviously not part of a trial, motion or pre-trial proceeding. Indeed, it is not even related to a
9 "court case." At the time jurors are preliminarily disqualified, they have not yet been assigned to
10 sit in the jury pool for a particular case. Similarly, the requested information does not constitute
11 a "court record" as defined by GR 31 because it is not connected with or related to a judicial
12 proceeding.⁴ Further, the information requested by petitioner relates to mandatory reasons for
13 disqualification. By law, the disqualified individuals cannot sit on a jury -- there is no discretion
14 as to disqualification to be exercised by a judge.

15 It is also important to recognize that petitioner himself is not seeking the preliminary
16 juror disqualification information in order to observe or check the judicial system. He has
17

18
19 ⁴ GR 31(4) provides:

20 "Court record" includes, but is not limited to: (i) Any document, information, exhibit, or other
21 thing that is maintained by a court in connection with a judicial proceeding, and (ii) Any index,
22 calendar, docket, register of actions, official record of the proceedings, order, decree, judgment,
23 minute, and any information in a case management system created or prepared by the court that is
related to a judicial proceeding. Court record does not include data maintained by or for a judge
pertaining to a particular case or party, such as personal notes and communications, memoranda,
drafts, or other working papers; or information gathered, maintained, or stored by a government
agency or other entity to which the court has access but which is not entered into the record.

(Emphasis supplied).

1 clearly stated that he wants the information to check the state voter registration system. While
2 this may be an important interest, it is not one protected by article I, section 10.


3 V. CONCLUSION

4 Petitioner is not entitled to the information regarding preliminary juror qualifications and
5 respondent properly denied his requests. Further, RCW 2.36.072 and GR 18 do not infringe
6 upon the constitutional requirement that justice be openly administered. Petitioner is not entitled
7 to mandamus, declaratory, or injunctive relief or relief under GR 31 which is inapplicable to
8 preliminary juror qualification information. Respondent respectfully requests that this case be
9 summarily dismissed with prejudice.

10 DATED this 31ST day of March, 2011.

11 Respectfully submitted,

12 DANIEL T. SATTERBERG
13 King County Prosecuting Attorney

14 By: 
15 THOMAS KUFFEL, WSBA 20118
16 Senior Deputy Prosecuting Attorney
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