

Honorable Ronald Berry
KING COUNTY
SUPERIOR COURT CLERK
Noted on Motion Calendar.
Date: April 29, 2011
CASE NUMBER: 10-2-41119-4 SEA
Time: 1:00 p.m.
Department 9

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SUPERIOR COURT OF WASHINGTON
FOR KING COUNTY

MARTIN RINGHOFER,)	No. 10-2-41119-4 SEA
)	
Petitioner and Plaintiff,)	
)	
v.)	PETITIONER’S MOTION FOR
)	SUMMARY JUDGMENT
LINDA K. RIDGE, in her official capacity as)	
Deputy Chief Administrative Officer,)	
)	
Respondent and Defendant.)	
)	
_____)	

INTRODUCTION

This case is about the constitutional and common law right of the public to access court records. Petitioner Martin Ringhofer is a concerned citizen and registered voter who has requested access to court records concerning persons who have been called for jury duty, but who were disqualified for statutory reasons. Petitioner has found that persons disqualified as jurors for reasons that would also disqualify them from registering to vote are nonetheless registered to vote in other counties. In this regard, disqualification from jury duty often overlaps with disqualification from the right to vote. Petitioner seeks access to this Court’s

1 records in the interest of ensuring government and judicial transparency, as well as the
2 integrity of the juror selection and voter registration processes.

3 **EVIDENCE RELIED UPON**

4 Declaration of Martin Ringhofer (Ringhofer Decl.) and exhibits attached thereto.

5 **STATEMENT OF FACTS**

6 On February 10, 2010, Petitioner requested the King County Department of Judicial
7 Administration access to certain information about non-jurors: The term “non-juror” refers to
8 all individuals who were potential jurors that were not impaneled on the jury because they
9 were disqualified pursuant to RCW 2.36.070. *See* Ringhofer Decl., Ex. A. Non-jurors have
10 no stake in the outcome of the trial for which they were summoned.

11 By letter dated March 5, 2010, Petitioner was notified by the King County Department
12 of Judicial Administration that he should contact Respondent Ridge about his request.
13 Ringhofer Decl., Ex. B.

14 On October 16, 2010, Petitioner requested from Respondent access to documents
15 containing the following:

16 a. Names and addresses of all non-jurors in the King County Superior
17 Court from January 1, 2009, through December 31, 2009.

18 b. The date of each non-juror’s disqualification.

19 c. Reasons for disqualification: (1) less than eighteen years of age; (2) not
20 a citizen of the United States; (3) not a resident of the county in which he or she has been
21 summoned to serve; (4) not able to communicate in the English language; (5) convicted of a
22 felony and has not had his or her civil rights restored; or (6) other self-disqualifications. *See*
23 RCW 2.36.070. Ringhofer Decl., Ex. C.

1 On October 26, 2010, Petitioner received a letter from Respondent stating that the
2 Public Records Act does not apply to the judicial branch. Ringhofer Decl., Ex. D. The letter
3 also indicated that pursuant to GR 31(k) information relating to the master jury source list is
4 presumed to be private, other than names and addresses. *Id.* Respondent stated that a copy of
5 the master jury source list was available for public viewing at the King County courthouse,
6 but that pursuant to RCW 2.36.072(4) and GR 18(d), juror information may only be used by
7 the court for the term such person is summoned and may not be used for any other purpose.

8 Respondent refused to provide Petitioner with the individual names, addresses, and
9 associated reasons for disqualification or excuse from service from the term specified, as
10 requested. Instead Respondent provided Petitioner with the total numbers of persons from
11 January 1, 2008 to December 31, 2009, who sought disqualification due to the five statutory
12 grounds provided by RCW 2.36.070. Ringhofer Decl, Ex. D. Because of Respondent's
13 failure to provide the individualized information, Petitioner was not able to cross-check the
14 voter registration list with the non-juror list to identify persons who claimed lack of
15 citizenship status as a reason for disqualification but who had unlawfully registered to vote.

16 On November 22, 2010, Petitioner filed a Petition with this Court seeking redress for
17 the Respondent's failure to provide all the information he requested.

18 STATEMENT OF ISSUES

19 1. Whether summary judgment should be entered in favor of Petitioner, declaring
20 that he has a right to access the individual names and addresses of non-jurors and the
21 reason(s) for their disqualification, and the dates of their disqualification under GR 31, and
22 whether a writ compelling Respondent to release the information should be issued.

1 2. Whether the application of GR 18(d) and RCW 2.36.072(4) unconstitutionally
2 inhibits Petitioner's use of and access to non-juror records in light of the federal and state
3 constitutions.

4 **ARGUMENT**

5 **I** 6 **RESOLUTION OF THIS CASE BY SUMMARY** 7 **JUDGMENT IS APPROPRIATE**

8 Petitioner moves for summary judgment under CR 56 because this case depends
9 entirely upon the interpretation of law. CR 56(c) provides in relevant part:

10 The judgment sought shall be rendered forthwith, if the pleadings,
11 depositions, answers to interrogatories, and admissions on file,
12 together with the affidavits, if any, show that there is no genuine issue
13 of material fact and that the moving party is entitled to judgment as a
14 matter of law.

15 "A court may grant summary judgment if the pleadings, affidavits, and depositions establish
16 that there is no genuine issue as to any material fact and the moving party is entitled to
17 judgment as a matter of law." *Lybbert v. Grant County*, 141 Wn.2d 29, 34, 1 P.3d 1124
18 (2000) (citing *Ruff v. County of King*, 125 Wn.2d 697, 703, 887 P.2d 886 (1995)).

19 As argued in detail *infra*, there is no genuine issue as to any material fact and the
20 Petitioner is entitled to judgment as a matter of law. This case depends solely on the
21 interpretation of common law, the federal and State constitutions, two court rules and several
22 statutes—GR 31, GR 18(d), RCW 2.36.072(4), RCW 7.16.150 and RCW 7.24.010. This case
23 is one of statutory construction; thus, resolution by summary judgment is appropriate. *City of
Pasco v. Pub. Employment Relations Comm'n*, 119 Wn.2d 504, 507, 833 P.2d 381 (1992).

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II
THE CASE PRESENTS APPROPRIATE METHODS TO DETERMINE
THE ISSUES

The Petition in this matter presents five methods for resolving issues in this case: (1) a Petition under the common law; (2) Petition based on the Federal and State constitutions; (3) a Petition for Judicial Review under GR 31; (4) a Complaint for Declaratory Relief ; and (5) a Petition for a Writ of Mandate under RCW 7.16.150, et seq. See Petition and Complaint. Petitioner acknowledges that these remedies may overlap. However, in light of the constitutional and public policy significance of Petitioner's claims, Petitioner is interested in ensuring that every opportunity is presented for the Court to reach the merits of this dispute.

A. Common Law Petition

There is a strong presumption in favor of the common law right of the public to inspect and copy judicial records. *United States v. James*, 663 F. Supp. 2d 1018, 1020 (W.D. Wash. 2009); see also *In re Application of National Broadcasting Co.*, 653 F.2d 609, 612 (D.C. Cir. 1981) (stating that the existence of the common law right to inspect and copy judicial records is indisputable). The United States Supreme Court recognizes the importance of a citizen's desire to keep a watchful eye on the workings of public agencies and a publisher's intention to publish information concerning the operation of government. These interests are sufficient to compel disclosure of judicial records. *In re McClatchy Newspapers, Inc.*, 288 F.3d 369, 371 (9th Cir. Cal. 2002) (citing *Nixon v. Warner Communications, Inc.*, 435 U.S. 589, 598 (1978)). The Supreme Court held in *Nixon*, "It is clear that the courts of this country recognize a general right to inspect and copy public records and documents, including judicial records and documents." *Nixon*, 435 U.S. at 597 (emphasis added). Other courts have also recognized the common law right of the public to inspect and copy court records. *Foltz v.*

1 *State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1135 (9th Cir. 2003) (noting that the
2 presumption in favor of the common law right to inspect and copy judicial records is
3 recognized in both civil and criminal trials); *Kamakana v. City and County of Honolulu*, 447
4 F.3d 1172, 1178-79 (9th Cir. 2003); *Nast v. Michaels*, 107 Wn.2d 300, 303-304, 730 P.2d 54,
5 56-57 (1986). This right serves the important function of ensuring the integrity of judicial
6 proceedings. *National Broadcasting Co.*, 653 F.2d at 612.

7 The strong presumption in favor of the common law right to inspect and copy judicial
8 records is not absolute. *Nixon*, 435 U.S. at 598. A party seeking to overcome the presumption
9 in favor of access to court records must articulate compelling reasons supported by specific
10 factual findings that outweigh the general history of access and the public policies favoring
11 disclosure. *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1135 (9th Cir. 2003)
12 (citing *Hagestand v. Tragesser*, 49 F.3d 1430, 1434 (9th Cir. 1995) (the district court should
13 consider all the relevant factors such as public interest in disclosure and whether disclosure
14 would result in improper use of the material for scandalous or libelous purposes or
15 infringement upon trade secrets; court should not rely on hypothesis or conjecture); *see also*
16 *Pintos v. Pacific Creditors Ass'n*, 605 F.3d 665, 678 (9th Cir. 2010). Examples of compelling
17 reasons for not allowing disclosure of judicial records may include instances when the court
18 records or documents might become a vehicle for improper purposes, such as gratifying
19 private spite or promoting public scandal through the publication of the painful and disgusting
20 details of a divorce case, or to serve as reservoirs of libelous statements for press
21 consumption, or as sources of business information that might harm a litigant's competitive
22 standing. *See Nixon* 435 U.S. at 598; *Nast*, 107 Wn.2d at 303 (noting that "[c]ourt case files
23

1 are generally available except where specific reasons exist for not disclosing a case file, e.g.
2 adoption files, juvenile files”); *see also Foltz*, 331 F.3d at 1135.

3 Courts have held that even where a party shows that confidential financial information,
4 third-party medical records, personnel files, and trade secrets are involved, the party does not
5 automatically overcome the presumption of public access because the documents can be
6 redacted. *Foltz*, 331 F.3d at 1137-38 (finding that the district court abused its discretion in
7 sealing court documents in the absence of a showing of good cause and by maintaining under
8 seal the filed documents to which no compelling reason for secrecy applied).

9 Petitioner’s purpose in requesting the individual names and addresses of non-jurors, the
10 reason(s) for their disqualification, and the dates of their disqualification is lawful and proper.
11 Mr. Ringhofer desires to keep a watchful eye on the workings of public agencies. He plans to
12 use the information in the public interest to identify and quantify the incidence of
13 unauthorized voter registration and voting in King County. Nothing suggests that Petitioner
14 intends to use the records for an improper purpose. Hence, the right of access must be
15 presumed. *Phoenix Newspapers v. U.S. District Court*, 156 F.3d 940, 946 (9th Cir. 1998).

16 The requested information does not concern “painful and disgusting” details of a
17 personal matter nor does it disclose business information that could harm a litigant’s
18 competitive standing. The disclosure of the requested information would not prejudice or
19 harm any person in trial proceedings because the non-jurors have no stake in the outcome of
20 the trial for which they were summoned because they did not participate as a juror in a trial.
21 *See RCW 2.36.070.*

22 Respondent has not petitioned the court for a protective order or given justification of
23 good cause for withholding the records requested despite the existence of constitutional

1 provisions allowing access. In light of all these considerations and United States and
2 Washington Supreme Court precedent recognizing a common law right to inspect and copy
3 judicial records, Petitioner has a right to access the court records at issue.

4 **B. Constitutional Petition**

5 Courts that have addressed the issue of whether jury questionnaires are presumptively
6 open under the First Amendment have held that the entire jury selection process is
7 presumptively open to the public. *State v. Coleman*, 151 Wn.App. 614, 619, 214 P.3d 158
8 (2009) (citing *State ex rel. Beacon Journal Publ'g Co. v. Bond*, 781 N.E.2d 180, 190 (Ohio
9 2002) (holding that the First Amendment qualified right to open proceedings extends to
10 prospective juror questionnaires) (footnote omitted). The U.S. Supreme Court also held that
11 the public trial right extends to persons other than the accused and the right can be invoked by
12 members of the public, such as the media, under the First Amendment. *Presley v. Georgia*, ---
13 U.S. ----, 130 S.Ct. 721, 723, 175 L.Ed.2d 675, 679 (2010).

14 Unlike the facts in *Coleman* and *Presley*, here Petitioner Ringhofer did not request all
15 of the information included in the prospective juror questionnaires or copies of the
16 questionnaire itself. He merely requested limited information contained on the non-jurors'
17 written declarations executed pursuant to RCW 2.36.072(4), i.e. the individual names and
18 addresses of non-jurors, the reason(s) for their disqualification, and the dates of their
19 disqualification. *See* Ringhofer Decl., Ex. C. This requested information is presumed to be
20 open to the public. As such, Respondent wrongfully withheld the information.

21 The constitutional right to a public trial is sometimes limited to protect other
22 significant and fundamental rights. However, Respondent has not alleged that significant and
23 fundamental rights need to be protected as a justification for withholding the court records at

1 issue. Instead, she merely stated that she did not have a duty to provide the information under
2 the Public Records Act and was “unable to provide” the information because of RCW
3 2.36.072(4) and GR 18(d). *See* Ringhofer Decl, Ex. D.

4 In recognizing the public’s right to an open proceeding, the Court of Appeals relies
5 upon the U.S. Supreme Court's interpretation of the Sixth Amendment. *State v. Paumier*, 155
6 Wn. App. 673, 230 P.3d 212 (2010). The Sixth Amendment is intended to foster public
7 understanding and trust in the judicial system and to apply the check of public scrutiny on
8 judges. *State v. Coleman*, 151 Wn.App. at 619-620 (finding that the trial court violated the
9 public's right to an open proceeding after it closed a portion of *voir dire*). *Id.*

10 The Washington Constitution expressly guarantees that “[j]ustice in all cases shall be
11 administered openly, and without unnecessary delay.” W.A. Const. art. I, § 10 (emphasis
12 added); *see also State v. Easterling*, 157 Wn.2d 167, 174, 137 P.3d 825 (2006); *State v. Vega*,
13 144 Wn. App. 914, 916-17 (2008); *Seattle Times Co. v. Ishikawa*, 97 Wn.2d 30, 36, 640 P.2d
14 716 (1982). Because of Respondent’s delay and refusal to release the non-juror records,
15 Petitioner was not able to cross-check the voter registration list with the non-juror list in time
16 to file a report with Secretary of State Sam Reed urging him to purge the disqualified voters
17 from the voter rolls. As a result, Petitioner believes that disqualified voters were able to
18 influence the November 2010 election results. *See* Ringhofer Decl. at ¶21.

19 **C. Petition for Judicial Review under GR 31.**

20 GR 31(k) provides that upon a showing of good cause the Court may permit a
21 petitioner to have access to information on jury source lists. Similarly, GR 31(j) allows the
22 Court to grant access to juror information upon a showing of good cause. Good cause is a
23 legal determination made by the court. *See* GR 31 (2010); *see also State v. Sponburgh*, 84

1 Wn.2d 203, 209 (1974). The Court of Appeals has held that GR 31 is subject to the
2 constitutional mandate of open records. *Coleman*, 151 Wn.App. at 623.

3 Petitioner has good cause for requesting limited non-juror information. Voters are
4 placed on juror source lists either by registering to vote or by obtaining a driver's license or
5 state identification card. RCW 2.36.054. In King County, the County Elections agency
6 allows persons to register online to vote via the Washington Secretary of State's website.
7 This practice increases the potential for fraud by creating a voter eligibility verification
8 problem since the online registration process relies on self-verification of voting eligibility.
9 <http://www.kingcounty.gov/elections/registration.aspx> (last visited on October 25, 2010); *see*
10 *also* <https://wei.secstate.wa.gov/osos/secure/pages/Onlinevoterregistration.aspx> (last visited
11 on October 25, 2010). No one checks the applicant's photo identification or the validity of
12 their documents when they register online. Furthermore, in Vote-By-Mail counties, ballots
13 are mailed each election to registered voters. Thus, the likelihood of persons ineligible to vote
14 actually voting is enhanced by the fact that all that is required of the voters is that they vote
15 their ballot, sign and date the Voter Affidavit on the envelope, declaring that they are eligible
16 to vote. When unauthorized persons vote, they directly and illegally impact elections.

17 Petitioner seeks to use non-juror information from King County in the public interest
18 to identify and quantify the incidence of unauthorized voter registration and voting in King
19 County. Ringhofer Decl, at ¶ 3. Petitioner's proposed use of the court records would promote
20 transparencies and the integrity of the juror selection and voter registration processes. If the
21 non-juror records are disclosed, Petitioner would cross-check non-juror names with the
22 Washington Help America Vote Act (HAVA) Voter Registration List, a public record, to
23 determine the number of ineligible persons who are registered to vote and are voting in King

1 County. He intends to release this information to Secretary of State Reed and his counsel. He
2 also intends to release summary reports of his findings to local King County public officials to
3 educate them about the incidence of ineligible voters influencing elections in King County.

4 In the past, Petitioner has used non-juror information from other Washington counties
5 in the public interest to identify and quantify the incidence of unauthorized voter registration
6 and voting in those jurisdictions. In December 2010, the Douglas County Prosecutor Steven
7 Clem provided Petitioner with a list of individual names and addresses for persons summoned
8 for juror service from 2008 to 2010, who were disqualified based on the five statutory
9 grounds under RCW 2.36.070. Ringhofer Decl., Ex. E. A total of 1,361 potential jurors self-
10 disqualified, of which, 381 were ineligible to vote: Two were under 18 years of age, 141 were
11 convicted felons, and 238 were not U.S. citizens. *Id.* Of the 238 non-citizen disqualified
12 jurors, seven were nonetheless listed as registered to vote in the statewide Help America Vote
13 Act (“HAVA”) voter database. Petitioner notified the Douglas County Prosecutor. Petitioner
14 has also been in contact with Secretary Reed’s office. *Id.*

15 On February 16, 2011, Shane Hamlin, Co-Director of Elections for the Office of the
16 Secretary of State sent Petitioner an emailing stating that he would ask his team in the Voter
17 Registration program to double-check if the seven ineligible individuals were in fact
18 registered to vote. Ringhofer Decl., Ex. F. Mr. Hamlin also informed Petitioner that he had
19 no authority to ask the suspected ineligible voters to prove their citizenship status. *Id.*

20 On March 15, 2011, Mr. Hamlin sent Petitioner an email stating that Secretary Reed
21 did not have the authority or obligation to cross check voter registrations against disqualified
22 juror data. Ringhofer Decl., Ex. G. He further stated, “[M]y voter registration team
23 researched the seven individuals you identified as registered voters, but who declined jury

1 service due to citizenship status. Our research confirms that these seven individuals are, in
2 fact, registered to vote in Douglas County.” (emphasis added). *Id.* The email record between
3 Petitioner and Hamlin shows that Secretary Reed is not going to cross check voter
4 registrations against disqualified juror data on his own accord. The fact that Secretary Reed’s
5 office responds to inquiries from constituents regarding non-jurors’ voter registrations, shows
6 the important function that Petitioner has in identifying and bringing to Secretary Reed’s
7 attention, non-jurors who might be unlawfully influencing the elections in King County and
8 Washington State.

9 Solely because of Petitioner’s vigilance and Secretary Reed’s confirmation of the non-
10 jurors on the voter rolls, the Douglas County Prosecutor is currently investigating the seven
11 ineligible voters to ensure that they are not able to vote in any elections.

12 Petitioner’s proposed uses of the court records are lawful and in the public interest
13 because they promote transparency and integrity of the juror selection and voter registration
14 processes. His use would complement Secretary Reed’s efforts in ensuring that only lawful
15 voters participate in elections. Therefore, Petitioner has shown good cause sufficient to allow
16 the release of the requested court records.

17 **D. Petition for Writ of Mandate under RCW 7.16.150, et seq.**

18 A court may issue a writ of mandamus “to compel the performance of an act which the
19 law especially enjoins as a duty resulting from an office.” RCW 7.16.160; *Delaney v. Board*
20 *of Spokane County Com’rs.*, 161 Wn.2d 249, 164 P.3d 1290 (2007). Mandamus is an
21 appropriate means to compel a state official to comply with the law when the claim is clear
22 and there is a duty to act. *Paxton v. City of Bellingham*, 129 Wn.App. 439, 446, 119 P.3d 373
23 (2005).

1 Petitioner seeks a petition for writ of mandate. Such a writ

2 may be issued by any court, except a district or municipal court, to any
3 inferior tribunal, corporation, board or person, to compel the
4 performance of an act which the law especially enjoins as a duty
5 resulting from an office, trust or station, or to compel the admission of
6 a party to the use and enjoyment of a right or office to which the party
7 is entitled, and from which the party is unlawfully precluded by such
8 inferior tribunal, corporation, board or person.

6 RCW 7.16.150.

7 The applicant for a writ of mandamus is required to satisfy three elements before a
8 writ will issue: (1) the party subject to the writ is under a clear duty to act; (2) the applicant
9 has no plain, speedy and adequate remedy in the ordinary course of law; and (3) the applicant
10 is beneficially interested. *Eugster v. City of Spokane*, 118 Wn.App. 383, 402, 76 P.3d 741
11 (2003). An applicant for a writ of mandamus is beneficially interested in the issuance of the
12 writ if the applicant has an interest in the action beyond that shared in common with other
13 citizens. *Id.* at 403 (finding that appellees were beneficially interested in the land at issue
14 because of their stake and security interest in the land).

15 The writ must be issued in all cases where there is not a plain, speedy
16 and adequate remedy in the ordinary course of law. It must be issued
17 upon affidavit on the application of the party beneficially interested.

17 RCW 7.16.170.

18 Respondent Ridge has a nondiscretionary duty under the Washington Constitution and
19 common law to provide access to court records to members of the public who properly seek
20 them and who have constitutional and common law rights to access the court records, such as
21 Petitioner. Respondent has failed to perform such duties in compliance with the law.
22 Petitioner has no other plain, speedy and adequate remedy in the ordinary course of law. If a
23

1 writ of mandate is not issued, Petitioner will continue to be deprived of his right to access
2 court records.

3 Petitioner is beneficially interested in the relief sought because he is the person who
4 has requested court records protected by federal and state constitutional open courts
5 provisions and as a voter in King County who seeks to ensure that ineligible voters are unable
6 to influence elections in the County. The Court should compel Respondent to provide the
7 requested non-juror records.

8 Lest there be any concern that a writ of mandate is not an appropriate vehicle for
9 addressing public access to court records, the Court in *Seattle Times Co. v. Serko*, 170 Wn.2d
10 581, 590, 243 P.3d 919 (2010), clearly held that a writ of mandate was appropriate.

11 **E. Complaint for Declaratory Relief under RCW 7.24.010, et seq.**

12 A complaint for declaratory relief is a suitable vehicle for determining whether
13 Respondent's decision to withhold non-juror records is valid. This Court's power to "declare
14 rights, status, and other legal relations" does not depend upon "whether or not further relief is
15 or could be claimed." RCW 7.24.010.

16 A person ... whose rights, status or other legal relations are affected by
17 a statute ... may have determined any question of construction or
18 validity arising under the ... statute ... and obtain a declaration of
rights, status or other legal relations thereunder.

19 RCW 7.24.020.

20 In order to have standing under the declaratory relief statute, a party must establish (1)
21 an actual, present, and existing dispute, (2) between parties having genuine and opposing
22 interests, (3) involving direct and substantial interests, and (4) where a judicial determination
23 will be final and conclusive. *City of Spokane v. County of Spokane*, 158 Wn.2d 661, 678, 146

1 P.3d 893 (2006). In addition, the interest that the petitioner seeks to protect must be
2 “arguably within the zone of interests to be protected or regulated by the statute or
3 constitutional guarantee in question.” *Snohomish County Prop. Rights Alliance*, 76 Wn.App.
4 44, 52, 882 P.2d 807 (1994) (quoting *Trepanier*, 64 Wn.App. 380, 382, 824 P.2d 524 (1992)).

5 Here, Petitioner and Respondent have genuine and opposing interests. Petitioner
6 contends that he has a constitutional and common law right to access the non-juror records he
7 requested from Respondent on October 16, 2010. Respondent’s letter of denial from October
8 26, 2010 evidences her opposing interest and refusal to grant Petitioner access to the court
9 records sought. Ringhofer Decl., Ex. D.

10 This case involves direct and substantial interests. Petitioner is a person whose rights
11 and legal relations depend upon the construction of GR 31, RCW 7.16.150 RCW 7.24.010 in
12 accordance with Article I, Section 10 of the Washington Constitution and the First and Sixth
13 Amendments to the U.S. Constitution. Petitioner is entitled to a declaration of rights and
14 obligations because of the United States Supreme Courts’ strong presumption favoring the
15 public’s common law right to inspect and copy judicial records in absence of improper
16 purpose. He also has a clear legal right to access court records according to the open court
17 doctrine established under Article I, Section 10 of the Washington Constitution and the First
18 and Sixth Amendments to the U.S. Constitution. Respondent’s decision to deny Petitioner’s
19 request impinged on these rights. In addition, Petitioner’s request is in the public interest
20 because it promotes transparency and insures the integrity of the juror selection and voter
21 registration processes. A declaration of rights by this Court will terminate the controversy
22 between Petitioner and Respondent.

1 Finally, RCW 7.24.120 has a remedial purpose. The statute states,

2 This chapter is declared to be remedial; its purpose is to settle and to
3 afford relief from uncertainty and insecurity with respect to rights,
4 status and other legal relations; and is to be liberally construed and
administered.

5 This Court should enter a declaratory judgment in favor of Petitioner's request for non-juror
6 records.

7 **III**
8 **RESTRICTIVE APPLICATION OF GR 18(D) AND RCW 2.36.072(4) IN**
9 **LIGHT OF GR 31 IS UNCONSTITUTIONAL**

10 At the heart of this case is the constitutionality and proper interpretation of GR 18(d),
11 RCW 2.36.072(4), and GR 31. As discussed at length above, GR 31 allows the Court to grant
12 access to juror information upon a showing of good cause. Respondent's interpretation of GR
13 18(d) and RCW 2.36.072(4) would unconstitutionally restrict Petitioner's access and
proposed use of the non-juror records.

14 According to RCW 2.36.072(4), information provided to the court for preliminary
15 determination of statutory qualification for jury duty may only be used for the term such
16 person is summoned and cannot be used for any other purpose, "except that the court, or
17 designee, may report a change of address or nondelivery of summons of persons summoned
18 for jury duty to the county auditor." RCW 2.36.072(4).

19 Similarly, GR 18(d) states, "[i]nformation so provided to the court for preliminary
20 determination of qualification for jury duty may only be used for the term such person is
21 summoned and may not be used for any other purpose." GR 18(d) (2010).

1 For the reasons that follow, Petitioner contends that GR 18(d) and RCW 2.36.072(4)
2 cannot be used to unlawfully inhibit his use of non-juror records in contravention of federal
3 and state constitutions' open court provisions.

4
5 **1. Court rules cannot be interpreted to circumvent or supersede
constitutional mandates or deprive one of constitutional rights.**

6 Court rules cannot be interpreted to circumvent or supersede constitutional mandates
7 or deprive one of constitutional rights. *Coleman*, 151 Wn.App. at 622, 214 P.3d at 161.

8 As discussed at length above, the First and Sixth Amendments of the U.S. Constitution
9 and Article I, Section 10 of the Washington Constitution expressly guarantee Petitioner a right
10 to open proceedings. The public also has a right to be present whether or not any party has
11 asserted their Sixth Amendment right to a public trial. *See Presley v. Georgia*, --- U.S. ----,
12 130 S.Ct. 721, 724-25(2010). Justice is to be administered openly without unnecessary delay.
13 Washington Const. art. I, § 10.

14 In this case, Respondent states in her denial letter that GR 18(d) restricts Petitioner's
15 access to and use of the non-juror information. *See Ringhofer Decl.*, Ex. D. Given the
16 *Coleman* holding, GR 18(d) cannot be interpreted to deprive Petitioner of his constitutional
17 right to access the court records under the open court doctrine.

18
19 **2. Statutes that are in derogation of the common law are to be construed
narrowly.**

20 A standard principle of statutory construction calls for statutes that are in derogation of
21 the common law are to be construed narrowly. *Estate of Haselwood v. Bremerton Ice Arena,*
22 *Inc.*, 166 Wn.2d 489, 498, 210 P.3d 308 (2009). As argued above, the common law grants
23 Petitioner the right to inspect the court records he requested from Respondent. *Nixon*, 435

1 U.S. at 598; *see also National Broadcasting Co.*, 653 F.2d at 612; *McClatchy Newspapers,*
2 *Inc.*, 288 F.3d at 371 (citing; *Kamakana v. City and County of Honolulu*, 447 F.3d 1172,
3 1178-79 (9th Cir. 2003); *Foltz*, 331 F.3d at 1135; *Nast*, 107 Wn.2d at 303-304; *James*, 663 F.
4 Supp. 2d at 1020. As such, RCW 2.36.072(4) is in derogation of the common law, so it must
5 be construed narrowly, which leads to the release of court records.

6 To the extent RCW 2.36.072(4) and GR 18(d) prohibit disclosure of the information
7 sought by Petitioner, they both conflict with the Washington Court of Appeals' interpretation
8 of Article I, Section 10 as protecting and ensuring the right of public access to court records
9 and court proceedings. *Coleman*, 151 Wn.App. at 620.

10 Whether this court rule or RCW 2.36.072(4) are unconstitutional on their face or
11 unconstitutional in every factual scenario is beyond the scope of this case. However, neither
12 the rule, nor the statute, provide a valid defense to the denial infringement of Petitioner's
13 constitutional right to access these court records.

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1 **CONCLUSION**

2 For the reasons set forth above, the Petitioner respectfully requests the Court to enter
3 Summary Judgment in his favor, declaring that he has a right to access non-juror records and
4 to issue a writ compelling Respondent to immediately release the requested non-juror records.

5 DATED this 31st day of March, 2011.

6 GROEN STEPHENS & KLINGE LLP

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