

No. 80998-4

SANDERS, J. (concurring)—I concur with the lead opinion that this injunction must be vacated because petitioner Allan Parmelee is an indispensable party. I write separately, however, to state some additional concerns.

To begin, although Mr. Parmelee is an inmate at a state institution, and he seeks information about his guards, he is entitled to the same rights under the Public Records Act, chapter 42.56 RCW, as any other person. By the same token his prisoner status does not excuse noncompliance by the Department of Corrections (DOC) with its duties under that act, nor does it excuse employees of the Department of Corrections at the Washington State Penitentiary from the same compliance with the civil rules as would be required of anyone else.

Moreover, I believe jurists should be most skeptical of proceedings, such as this one, that have all the earmarks of a collusive lawsuit. For example, although Mr. Parmelee made his public records request on October 7, 2004, DOC responded on December 22, 2004 that because the affected employees planned to seek injunctive

relief, DOC would not release the documents “until a hearing date is scheduled and a decision is made by Walla Walla Superior Court.” Clerk’s Papers at 500. When that proceeding was finally commenced on January 26, 2005, DOC filed a memorandum in support of the employees’ request for a protective order. All of this transpired without the participation of Mr. Parmelee, the person who requested the records in the first place. These events fly in the face of the legislative mandate that “[t]his chapter shall be liberally construed” to promote public disclosure. RCW 42.56.030. Moreover, withholding documents from a requester for more than five days is not justified by any expectation that a lawsuit may be filed in the future. RCW 42.56.520. I would hope the trial court on remand would take a careful look at these provisions of the statute to the end that legislative policy be vindicated. I emphasize, the rights of Mr. Parmelee in this proceeding are no less than those of any other party seeking public disclosure under the act.

Another troubling aspect of the case is the election of these employees to proceed pro se with their concomitant refusal to comply with the rules of court. CR 10(e)(3) provides in part:

At the right side of the bottom of the first page of each pleading or other paper the name, mailing address and telephone number of the attorney or firm preparing the paper should be printed or typed.

If plaintiffs do not want to supply this information, their remedy is to retain an attorney, not to violate the court rules.

CR 11 also is quite explicit about signing pleadings: “A party who is not represented by an attorney shall sign and date the party’s pleading, motion, or legal memorandum and state the party’s address.” CR 11(a). CR 11(a) also provides the remedy: “If a pleading, motion, or legal memorandum is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant.” I do not see any provision in CR 11 that permits what has happened here; although if DOC employees are excused from complying with these rules, I don’t see why the rules should be enforced against anyone else.

In terms of result, the lead opinion rightfully dissolved the wrongfully issued injunction in a proceeding where an indispensable party was not named. Under these circumstances and pursuant to *Ino Ino, Inc. v. City of Bellevue*, 132 Wn.2d 103, 937 P.2d 154 (1997), I would expect the trial court on remand to award Mr. Parmelee all the reasonable expenses and attorney fees he incurred in his effort to dissolve this wrongfully issued injunction. If it is fair to assess substantial reasonable attorney fees against nude dancers who obtained an injunction against the city of Bellevue’s enforcement of an ordinance allegedly violating their constitutional free speech rights, then I think it is equally appropriate to award Mr. Parmelee his reasonable attorney fees against the individual plaintiffs in this proceeding. Equal justice under law demands it.

Although some might not view Mr. Parmelee as the poster child for rigorous

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enforcement of the Public Records Act, we should not cut corners to allow bad facts to make bad law as well.

I concur.

AUTHOR:

Justice Richard B. Sanders

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WE CONCUR:

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