



FILED
IN PIERCE COUNTY SUPERIOR COURT

Hon. John McCarthy

A.M. OCT 16 2003 P.M.

PIERCE COUNTY, WASHINGTON
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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

Jane Doe,

Plaintiff,

NO. 03 2 06879 4

vs.

Pierce County, a political subdivision of the
State of Washington, et al.,

Defendants.

MEMORANDUM IN SUPPORT OF
PIERCE COUNTY'S MOTION TO
STRIKE DECLARATION

NOTE ON MOTION CALANDER:
OCTOBER 24, 2003

I. STATEMENT OF FACTS

In opposing summary judgment, plaintiff Norma Rodriguez has filed a declaration for which there is no showing of personal knowledge, which contains speculative, irrelevant and argumentative assertions, and which attaches documents for which she makes no effort to authenticate and which include rank hearsay.

For example, plaintiff asserts – without any stated basis and directly contrary to the sworn testimony of the lawyer involved, see Greer Aff. – that “no lawyers were involved in the commencement of the investigation.”¹ Rodriguez Dec., at 2. Similarly, plaintiff also sim-

¹ Inconsistently, however, she admits that when she wanted a copy of the investigation she contacted the “Pierce

ORIGINAL

1 ply states as fact – again without describing the basis for, or even claiming the existence of,
 2 any personal knowledge – a belief apparently based on hearsay that the “Personnel Director
 3 herself provided a similar 156-page investigation to another employee . . .” Id. at 3 (empha-
 4 sis added). Likewise, the declaration also engages in such argument as that concerning the
 5 significance of the prosecutor’s denial letter, id. at 3, that “victims of Human Rights abuses by
 6 Pierce County ... should not be given less rights to public disclosure,” id., that “it is obvious”
 7 from the documents of record “that they were not the sort of attorney client privileged docu-
 8 ments that should have been withheld,” id. at 4, that the protected documents should “not be-
 9 come some sort of secret records” that she “should have to start a lawsuit in order to see,” id.,
 10 and that “Defendant’s claim is a sham.” Id. Finally, plaintiff merely attaches documents such
 11 as an internet copy of a newspaper article to her declaration without any attempt to authenti-
 12 cate them or demonstrate how they would be admissible in evidence.
 13

14 Because such a declaration and attachments are improper, and because as a matter of
 15 law a Court may not consider inadmissible evidence when ruling on a motion for summary
 16 judgment, King County Fire Protection Districts #16, #36 and # 40 v. Housing Authority of
 17 King County, 123 Wn.2d 819, 826, 872 P.2d 516 (1994); Raymond v. Pacific Chemical, 98
 18 Wn.App. 739, 744, 992 P.2d 517 (1999), defendant now moves to strike.
 19

20 II. ANALYSIS

21 A. ASSERTIONS NOT SHOWN BASED ON PERSONAL KNOWLEDGE SHOULD 22 BE STRIKEN

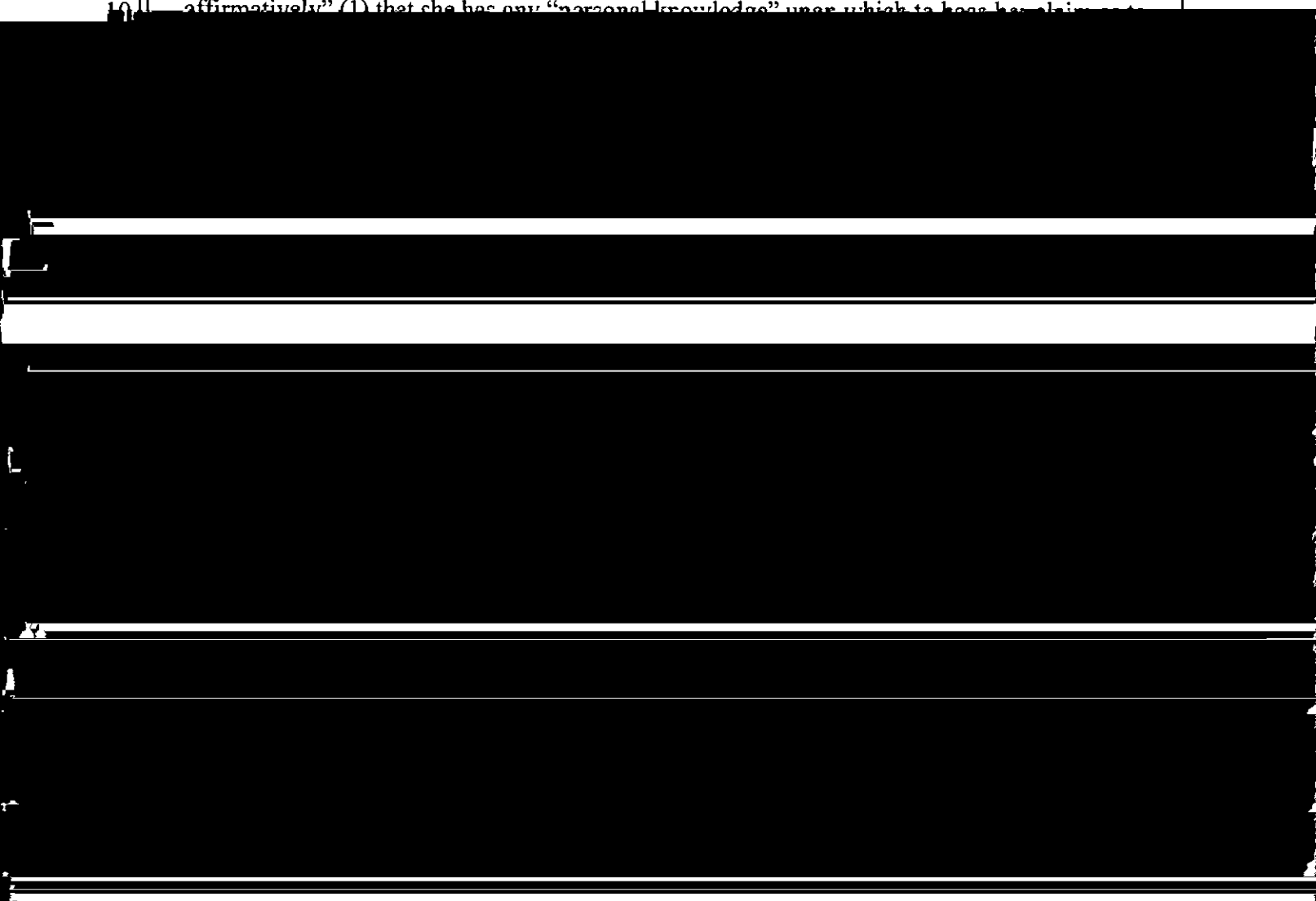
23 CR 56(e) provides that affidavits opposing a motion for summary judgment:

24 [S]hall be made on personal knowledge, shall set forth such facts as would be
 25 admissible in evidence, and shall show affirmatively that the affiant is compe-
tent to testify to the matters stated therein.

County Prosecutor’s Office.” Rodriguez Dec., at 2.

1 Hence, as a matter of law, a "nonmoving party may not rely on speculation, . . . or having its
2 affidavits considered at face value" but must "set forth specific facts sufficiently rebutting the
3 moving party's contentions" Tiger Oil Corp. v. Department of Licensing, State of Wash.,
4 88 Wn.App. 925, 929-30, 946 P.2d 1235 (1997)(emphasis added). See also Seven Gables
5 Corp. v. MGM/UA Entertainment Co., 106 Wn.2d 1, 12-13, 721 P.2d 1 (1986); Dombrosky
6 v. Farmers Ins. Co. of Washington, 84 Wn.App. 245, 253, 928 P.2d 1127 (1996); Carlton v.
7 Day Island Marina, 46 Wn.App. 784, 788, 732 P.2d 1008 (1987).
8

9 As demonstrated above, contrary to CR 56, the Rodriguez declaration does not "show
10 affirmatively" (1) that she has any "personal knowledge" upon which to base her claim.



1 e.g. Reed v. Ford Motor Co., 679 F. Supp. 873, 875 (S.D. Ind., 1988)(“the court will not con-
2 sider statements in [even a counsel’s] affidavit which are argumentative or which attempt to
3 characterize the evidence presented.”) Hence, the aforementioned attempts by plaintiff to ar-
4 gue her legal position in her declaration are improper and should be dismissed as a matter of
5 law.

6
7 C. UNAUTHENTICATED DOCUMENTS SHOULD BE STRIKEN

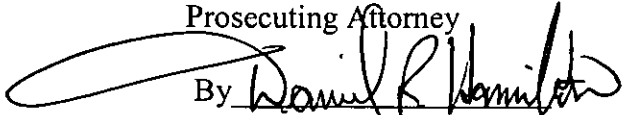
8 Finally, a person with knowledge of the foundational facts must properly authenticate
9 documents attached to summary judgment affidavits. Burmeister v. State Farm Ins. Co., 92
10 Wn.App. 359, 966 P.2d 921 (1998) (attached report that was “certified” by plaintiff’s counsel
11 should have been stricken where not shown authenticated by personal knowledge). Here,
12 plaintiff states only that she supposedly has “attached true and correct copies of documents,”
13 without stating – much less describing – how she has personal knowledge concerning them.
14 Further, the mere attachment of a supposed newspaper article from the internet hardly “sets
15 forth facts as would be admissible in evidence” because “newspaper articles are hearsay and
16 inadmissible as evidence to prove the truth of the statements contained therein.” State ex rel
17 Pierce County v. King County, 29 Wn.2d 37, 45, 185 P.2d 134 (1947). As a matter of law,
18 the repetition of hearsay to oppose summary judgment “does not create a material issue of
19 fact.” State v. Evans Campaign Comm., 86 Wn.2d 503, 507, 546 P.2d 75 (1976); Charbon-
20 neau v. Wilbur Ellis Co., 9 Wn.App. 474, 476, 512 P.2d 1126 (1973). See also In Re Pirtle,
21 136 Wn.2d 467, 473, 965 P.2d 593 (1998)(newspaper articles properly stricken as “hearsay
22 and incompetent evidence.”); Larez v. City of Los Angeles, 946 F.2d 630, 642 (9th Cir. 1991)
23 (“newspaper articles have been held inadmissible hearsay as to their content.”).
24
25

III. CONCLUSION

On summary judgment, statements consisting of inadmissible evidence must be treated as mere surplusage and disregarded. Utility Systems v. PUD No. 1, 112 Wn.2d 1, 17-18, 771 P.2d 701 (1989). Accordingly, defendants respectfully request the Court strike the attachments to plaintiff's declaration as well as those portions described above.

DATED THIS 16th DAY OF OCTOBER, 2003.

GERALD A. HORNE
Prosecuting Attorney



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CERTIFICATE

I hereby certify on 10-16-03
I delivered a true and accurate
copy of the attached document
to ABC LEGAL MESSENGERS, INC. for
delivery to:

C. Braun
attorney(s) of record

Prosecutor's Office