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JUDGE KATHERINE M. STOLZ  
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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF PIERCE

JOSEPH J. KIRBY and DEBORAH A.  
KIRBY, husband & wife,

Plaintiffs,

vs.

THE CITY OF TACOMA, a municipal  
corporation, RAY CORPUZ and "JANE  
DOE" CORPUZ, husband & wife, PHILLIP  
ARREOLA and "JANE DOE" ARREOLA,  
husband & wife; WILLIAM WOODWARD  
and "JANE DOE" WOODWARD, husband  
& wife; RAYMOND ROBERTS and  
"JANE DOE" ROBERTS, husband & wife;  
DAVID BRAME and "JANE DOE"  
BRAME, husband & wife; and JAMES  
HAIRSTON and "JANE DOE"  
HAIRSTON, husband & wife,

Defendants.

NO. 99 2 13911 4

MOTION OF TACOMA POLICE  
MANAGEMENT ASSOCIATION TO  
INTERVENE

**I. MOTION/RELIEF REQUESTED**

COMES NOW the TACOMA POLICE MANAGEMENT ASSOCIATION (TPMA)  
Washington not for profit corporation, by and through its attorney, STEPHEN M. HANSEN, of  
the law firm of LOWENBERG, LOPEZ & HANSEN, P.S., and pursuant to Superior Court Civil

MOTION OF TACOMA POLICE  
MANAGEMENT ASSOCIATION TO INTERVENE - 1

ORIGINAL

LOWENBERG, LOPEZ & HANSEN, P.S.  
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6 DEC 26 2001

1 Rule 24, moves the above-entitled Court for permission to intervene in the above-entitled matter  
 2 for purposes of requesting that a protective order be issued in accordance with CR 26(c).

3 **II. EVIDENCE RELIED UPON**

- 4 1. Declaration of STEPHEN M. HANSEN

5 **III. DECLARATION**

6 I, STEPHEN M. HANSEN, DECLARE UNDER PENALTY OF PERJURY AS  
 7 FOLLOWS:

- 8 1. I am the attorney for the TACOMA POLICE MANAGEMENT ASSOCIATION  
 9 ("TPMA"). I submit this declaration in support of the instant motion to intervene.  
 10 I am competent to testify to the facts in this declaration.
- 11 2. The TPMA is a Washington not for profit corporation. Its members consist of all  
 12 commissioned officers of the Tacoma Police Department who are of the rank of  
 13 either Captain or Lieutenant. The TPMA is the exclusive bargaining  
 14 representative with the City of Tacoma for the Captains and Lieutenants.
- 15 3. The TPMA respectfully moves the Court to intervene in the above-entitled matter  
 16 for purposes of requesting that a protective order be issued in accordance with  
 17 CR 26(c).
- 18 4. The Plaintiffs are seeking production of all the named defendant's "pre-hire" files  
 19 (with the exception of Phillip Arreola), and are seeking production of *all* pre-hire  
 20 files for all police lieutenants *employed by the City of Tacoma for the past ten*  
 21 *years.*
- 22 5. The Plaintiffs' discovery request would require disclosure of personal and  
 23 confidential information. The City of Tacoma has opposed the dissemination of  
 24 this information on behalf of the named defendants. Any ruling of this Court will  
 25 also affect the rights of individuals who are not named defendants; namely, those  
 26  
 27

1 who are members of the TPMA. The TMPA seeks to intervene to protect the  
2 interests of its members.

3 THIS STATEMENT IS TRUE AND CORRECT TO THE BEST OF MY  
4 KNOWLEDGE AND SIGNED UNDER PENALTY OF PERJURY UNDER  
THE LAWS OF THE STATE OF WASHINGTON.

5 DATED AT TACOMA, Washington, this 21<sup>st</sup> of December, 2001.

6  
7   
STEPHEN M. HANSEN, WSBA #15642

8 **IV. AUTHORITIES**

9 CR 24 provides, in part, as follows:

10 (a) Intervention of Right. Upon timely application anyone shall be  
11 permitted to intervene in an action: (1) when a statute confers an  
12 unconditional right to intervene; or (2) when the applicant claims  
13 an interest relating to the property or transaction which is the  
14 subject of the action and he is so situated that the disposition of the  
action may as a practical matter impair or impede his ability to  
protect that interest, unless the applicant's interest is adequately  
represented by existing parties.

15 (b) Permissive Intervention. Upon timely application, anyone may  
16 be permitted to intervene in an action: (1) When a statute confers a  
17 conditional right to intervene; or (2) When an applicant's claim or  
18 defense and the main action have a question of law or fact in  
19 common. When a party to an action relies for ground of claim or  
20 defense upon any statute or executive order administered by a  
federal or state governmental officer or agency or upon any  
regulation, order, requirements, or agreement issued or made  
pursuant to the statute or executive order, the officer or agency  
upon timely application may be permitted to intervene in the  
action. In exercising its discretion the court shall consider whether  
the intervention will unduly delay or prejudice the adjudication of  
the rights of the original parties.

21 Here, the outcome Court's ruling will "impair or impede" the privacy interests of the  
22 Tacoma Police Lieutenants. CR 1(a)(2). The outcome also involves a "question of law or fact in  
23 common" with that of the named Defendants. The interests of the Police Lieutenants (and  
24 current Captains who were of the rank of Lieutenant within the past ten years) who are affected  
25 by the scope of the Plaintiffs' discovery request would not otherwise be directly represented  
26 without intervention.

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28 MOTION OF TACOMA POLICE  
MANAGEMENT ASSOCIATION TO INTERVENE - 3

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1 Under CR 24(a), one is allowed to intervene as a matter of right in an action after  
2 establishing

- 3 (1) timely application for intervention;  
4 (2) the applicant claims an interest which is the subject of the  
5 action;  
6 (3) the applicant is so situated that the disposition will impair or  
7 impede the applicant's ability to protect the interest; and  
8 (4) the applicant's interest is not adequately protected by the  
9 existing parties.

10 *Aguirre v. AT & T Wireless Services*, 33 P.3d 1110, 1113 (2001) (citing *Westerman v. Cary*, 125  
11 Wn.2d 277, 892 P.2d 1067 (1994)). In determining whether an applicant has an interest sufficient  
12 to intervene as a matter of right, a court makes a case-by-case analysis, balancing the relative  
13 concerns of the prospective interveners, the original parties to the action, and the public in  
14 effecting the efficient resolution of the controversy. *In re Dependency of J.W.H.*, 106 Wn.App.  
15 714, 724, 24 P.3d 1105 (2001).

16 A party has the right to intervene on timely motion if it claims an interest relating to the  
17 subject of the action, and if the disposition of the action may impair or impede its ability to  
18 protect that interest. *Columbia Gorge Audobon Society v. Klickitat County*, 98 Wn.App. 618,  
19 629, 989 P.2d 1260 (1999). The determination is fact specific. *Id.* The term "interest" is to be  
20 construed broadly, rather than narrowly. *Fritz v. Gorton*, 8 Wn.App. 658, 660, 509 P.2d 83  
21 (1973). "Not much of a showing is required, however, to establish an interest. And insufficient  
22 interest should not be used as a factor for denying intervention." *Id.* (citing *American Discount  
23 Corp. v. Saratoga W., Inc.*, 81 Wn.2d 34, 43, 499 P.2d 869 (1972)). (Emphasis in original).

24 In Washington, as in the federal courts and other jurisdictions, the requirements of CR  
25 24(a) are liberally construed to favor intervention. *Fritz v. Gorton*, 8 Wn.App. 658, 660, 509 P.2d  
26 83 (1973). On the question of timeliness in particular, CR 24(a) allows intervention as of right  
27 unless it would work a hardship on one of the original parties. *Loveless v. Yantis*, 82 Wash.2d

1 754, 759, 513 P.2d 1023 (1973). A motion to intervene is timely if it is filed before the  
2 commencement of the trial. *American Discount Corp. v. Saratoga West, Inc.*, 81 Wn.2d at 43.

3 Denial of intervention as a matter of right will be reversed only to correct an error of law.  
4 *Spokane County v. State*, 136 Wn.2d 644, 649, 966 P.2d 305 (1998); *Westerman v. Cary*, 125  
5 Wn.2d 277, 302, 892 P.2d 1067 (1994). Denial of permissive intervention is reviewed for abuse  
6 of discretion. Discretion is abused when it is manifestly unreasonable or exercised on untenable  
7 grounds or for untenable reasons. *State ex rel. Carroll v. Junker*, 79 Wn.2d 12, 26, 482 P.2d 775  
8 (1971).


9 Here, it is appropriate to allow intervention either as a matter of right or on a permissive  
10 basis. Privacy interests are at stake. These interests could be impaired if the Plaintiffs' discovery  
11 requests are produced, or otherwise produced without appropriate protective measure. The  
12 instant application is timely as intervention is being sought before the Court issues a ruling on the  
13 merits. Moreover, the Plaintiffs will be afforded ample time to respond to the merits of the  
14 protective order motion. Intervention is sought only for purposes of the pending discovery  
15 issues. Accordingly, participation by TPMA as to these issues only will not result in undue delay  
16 or hardship. Finally, there is no direct representation being asserted to protect the interests of the  
17 police Lieutenants (be they currently commissioned officers or otherwise). Intervention will  
18 assure protection of the privacy interests asserted in this matter.

19 **V. CONCLUSION**

20 For the reasons set forth above, the Tacoma Police Management Association respectfully  
21 requests that its motion to intervene be GRANTED.

22 RESPECTFULLY SUBMITTED December 21, 2001.

23 LOWENBERG, LOPEZ & HANSEN, P.S.

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26 STEPHEN M. HANSEN, W.S.B.A.#15642  
27 Attorney for Tacoma Police Management  
28 Association

28 MOTION OF TACOMA POLICE  
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