

No. 93594-7

SUPREME COURT OF THE STATE OF WASHINGTON

CITY OF SEATTLE,

Petitioner,

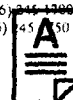
v.

DANIEL SCHULTE, et al.,

Respondents.

**PETITIONER CITY OF  
SEATTLE'S ANSWER TO  
RESPONDENTS'  
OBJECTION TO NOTICE  
OF SUPPLEMENTAL  
AUTHORITY**

On October 27, 2016, Petitioner City of Seattle (the "City") submitted as supplemental authority (1) a copy of Judge Bruce E. Heller's August 31, 2016 Memorandum Opinion dismissing plaintiffs' claims for negligent supervision and negligent release in *Harper v. State of Wash. Dep't of Corr.*, King County Superior Court Cause No. 14-2-32600-9 KNT, and (2) a copy of Judge Heller's October 12, 2016 Order Granting State's Motion for Reconsideration dismissing plaintiffs' claim for negligent infliction of emotional distress in the same action. Respondents now ask this Court to strike the City's supplemental authority, arguing the City violated GR 14.1 by citing two unpublished trial court decisions that



Respondents claim are “neither authorities, nor are they on point.” *See* Objection at 1.

This Court should disregard Respondents’ objections. The City properly and timely submitted supplemental authority under RAP 10.8, which permits filing of supplemental authority without argument prior to a decision on the merits. RAP 10.8 does not on its face limit the types of authorities properly submitted as supplemental.

Respondents base their objection upon a single inapplicable rule, GR 14.1. GR 14.1 governs only citation of unpublished decisions of the State Court of Appeals and unpublished decisions from other jurisdictions. GR 14.1 does not prohibit submission of superior court orders as supplemental authority. And even if GR 14.1 applied, here the supplemental authority was entered after March 1, 2013, and would still be properly cited to the Court. *See* GR 14.1(a). In sum, Respondents cite no rule preventing an appellate court from considering superior court orders addressing issues similar to those presented on appeal.


Moreover, the City’s supplemental authority was submitted to demonstrate the existence of recent conflict and confusion in the superior courts regarding the standard for summary judgment in cases involving allegations of gross negligence. The submitted nonbinding authority

simply indicates to the Court the need for direction to the superior courts, particularly where (as here) conflict exists between and among decisions of this Court and the Court of Appeals on the issues presented. The City's supplemental authority is thus entirely consistent with the City's arguments for acceptance of review under RAP 13.4(b)(1), (2), and (4). RAP 10.8 permits such supplemental authority.

Respondents do not otherwise object to the City's notice of supplemental authority. The notice complies with the applicable rules and should be considered by this Court.

RESPECTFULLY SUBMITTED this 14th day of November,  
2016.

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CERTIFICATE OF  
SERVICE

I am and at all times hereinafter mentioned was a citizen of the United States, a resident of the State of Washington, over the age of 21 years, competent to be a witness in the above action, and not a party thereto; that on the 14th day of November, 2016 I caused to be served a true copy of the following documents:

1. Petitioner City of Seattle's Answer to Respondents' Objection to Notice of Supplemental Authority; and
2. Certificate of Service

per the parties' electronic service agreement, upon:

1

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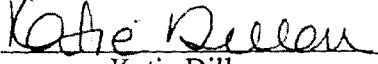
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*Defendant (pro se)*

I declare under penalty of perjury under the laws of the State of

Washington that the foregoing is true and correct.

DATED this 14th day of November, 2016.

  
Katie Dillon