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SUPREME COURT  
STATE OF WASHINGTON  
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CLERK

THE SUPREME COURT  
OF THE STATE OF WASHINGTON

Supreme Court Case No. 97071-8

Court of Appeals Division III Case No. 359662

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STATE OF WASHINGTON,  
Respondent,

v.

STEVENS COUNTY DISTRICT COURT JUDGE,  
Petitioner.

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**RESPONSE TO PETITIONER'S MOTION TO AMEND PETITION  
FOR DISCRETIONARY REVIEW**

Will Ferguson, WSBA 40978  
Deputy Prosecuting Attorney  
Office of the Stevens County Prosecutor  
215 S. Oak, Room #114  
Colville, WA 99114  
Phone: (509) 684-7500  
Fax: (509) 684-7589  
[wferguson@stevenscountywa.gov](mailto:wferguson@stevenscountywa.gov)  
[trasmussen@stevenscountywa.gov](mailto:trasmussen@stevenscountywa.gov)

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## I. STATEMENT OF THE CASE

Petitioner to the Court of Appeals was the State of Washington (hereinafter the “State”). Respondent to the Court of Appeals was the Stevens County District Court Judge, a judge in a court of limited jurisdiction, by and through Judge Gina Tveit (hereinafter “District Court” or “District Court Judge”). Petitioner to this Court is the District Court Judge. Respondent to this Court is the State.

On January 29, 2018, the Stevens County Superior Court (hereinafter “Superior Court”) ordered that all in-custody first appearances for Superior Court and District Court criminal cases would be heard by the Superior Court in a Superior Courtroom at noon, on Monday through Friday. CP 002, 008.

In-custody first appearances in this combined format were set to commence in the Superior Courtroom on February 5, 2018. CP 002. The procedure ordered by the Superior Court was that, from Monday through Friday, Superior Court Judges or Commissioners would hear all in-custody first appearances for all crimes, including misdemeanors and gross misdemeanors. CP 002. The Judges and Commissioners reviewed the allegations for probable cause and determined release conditions for each defendant. CP 002.

The “Rule 3.2 Hearing Order Conditions of Release” (hereinafter

“3.2 Hearing Order”) used by the Superior Court was the same order used by the District Court. CP 002. The intended result was that the 3.2 Hearing Order would be signed by a Superior Court Judge or Commissioner and filed in the District Court Clerk’s Office. CP 002. The misdemeanor or gross misdemeanor criminal case was then supposed to proceed in the same manner as all other misdemeanor or gross misdemeanor criminal cases filed in District Court. CP 002.

On February 2, 2018, the Stevens County District Court Judge, Gina Tveit, ordered the District Court, clerked by Nadine Borders, to refuse to file all orders “...in a District Court case unless it has been signed by a District Court Judge or District Court Judge pro tem.” CP 002, 010.

The State filed its Verified Petition for Writ of Mandamus against the Stevens County District Court Judge on February 8, 2018, in Stevens County Case No. 18-2-00062-7. CP 001. The Honorable John F. Strohmaier, Lincoln County Superior Court Judge, was appointed *nunc pro tunc* to preside over the writ proceedings. CP 070.

On February 8, 2018, Judge Strohmaier granted an Alternative Writ of Mandamus, commanding the District Court Judge to, among other things, order the Clerk of District Court to accept for filing district court documents signed by a Stevens County Superior Court Judge or Commissioner. CP 062-063.

The District Court Judge refused to do as the Alternative Writ commanded. CP 072-121. The District Court Judge refused to file any 3.2 Hearing Orders signed by a Superior Court Judge or Commissioner. CP 072-119.

Hearing on the Petition for Writ of Mandamus was held on February 28, 2018, before Judge Strohmaier. RP 3. On March 7, 2018, Judge Strohmaier denied the peremptory writ of mandamus. CP 172-78. The State moved for reconsideration on March 16, 2018. CP 179-83. Judge Strohmaier summarily denied reconsideration on March 26, 2018. CP 184-85. The State appealed to the Court of Appeals, Division III.

The Court of Appeals rendered its decision on March 12, 2019, in a published opinion. See State of Washington v. Stevens County District Court Judge, 436 P.3d 430 (Div. III, 2019). The Court of Appeals reversed the Superior Court's decision and described the District Court Judge's actions as "...legally erroneous...." Id. at 435.

The District Court Judge sought review in this Court, by filing Respondent's Petition for Review by the Supreme Court of Washington (hereinafter "Original Petition"). The State responded by pointing out that the District Court Judge did not comply with WA RAP 13.4(b). The District Court Judge then filed Respondent's Motion for Leave to File Amended Petition for Review by The Supreme Court (hereinafter "Motion"). This

Court transmitted a perfection letter on April 17, 2019, permitting the District Court Judge to file and serve her proposed amended petition for review. In that letter, this Court permitted the State to file and serve an answer to the District Court Judge's Motion. The District Court Judge filed Petitioner's Amended Petition for Review by The Supreme Court of Washington (hereinafter "Amended Petition") on April 19, 2019.

## II. ARGUMENT

### 1. THE SUPREME COURT SHOULD DENY THE DISTRICT COURT JUDGE'S PETITION FOR REVIEW

The District Court Judge cites several cases in which this Court granted a motion to amend a petition for discretionary review. See Respondent's Motion for Leave to File Amended Petition for Review by The Supreme Court at page 2, lines 16-20. However, the District Court Judge does not develop any of the cases she cites and gives no explanation as to why this Court granted those motions.

WA RAP 17.3 governs the contents of motions. A motion should contain "[a] direct and concise statement of the reasons why review should be granted, with supporting argument." WA RAP 17.3(b)(6). The District Court Judge's Motion contains a section devoted to argument. Said

portion is, however, devoid of any reason why this Court should grant the Motion.

By comparison, other court rules explicitly permit and encourage amendment of court pleadings. See WA CR 15, CRLJ 15, CrR 2.1(d), and CrRLJ 2.4(f). The Rules of Appellate Procedure appear to contain no such encouragement.

The District Court Judge's Motion should be denied; amendment of the Original Petition is unsupported by citation to any rule, caselaw, statute, or general principle.

**2. EVEN IF THIS COURT GRANTS THE MOTION TO FILE THE AMENDED PETITION FOR REVIEW, IT SHOULD DENY REVIEW BECAUSE THE GROUNDS FOR OBTAINING REVIEW HAVE STILL NOT BEEN SATISFIED.**

The District Court Judge alleges that the issues in this case present a significant question of constitutional law and the issues are of substantial public interest. Amended Petition at pages 4-5. The District Court Judge conflates two separate grounds for review. See WA RAP 13.4(b)(3) & (4).

The decision by the Court of Appeals does not contain interpretation or application of the Washington State constitution. WA RAP 13.4(b). The Court of Appeals' decision rightly avoided the constitutional question.



In examining and declining to apply the Priority of Action Doctrine, the Court of Appeals decided the case by avoiding the constitutional issue. Instead of creating and deciding a showdown of two constitutional provisions, Article IV, § 6 and Article IV § 10, the Court of Appeals decided the issue on rules of procedure and upon caselaw developed “[t]o guard against misuse of concurrent jurisdiction...” State of Washington v. Stevens County District Court Judge, \_\_\_\_\_ Wn.App. \_\_\_\_\_, 436 P.3d 430, 434 (Div. III, 2019). The Priority of Action Doctrine essentially provides, “the court which first gains jurisdiction of a cause retains the exclusive authority to deal with the action until the controversy is resolved.” Id. The Doctrine is embodied in our State’s court rules. Id. (citing WA CrRLJ 5.3). The Court of Appeals analogized the facts in this case to cases involving issuance of search warrants. Id. More specifically, the Court of Appeals decided the inapplicability of the Doctrine by examining caselaw, thereby avoiding the temptation to first turn to a potential constitutional showdown. In its reliance on caselaw, court rules, and interpretation of the Priority of Action Doctrine, the Court of Appeals deftly avoided constitutional implications. Therefore, this Court should not grant review based on WA RAP 13.4(b)(3).

WA RAP 13.4(b)(4) permits review by this Court if a petition involves an issue of substantial public interest. The Amended Petition

does not involve an issue of substantial public interest. Subsection (b)(4) does not contain a specific test for determining what a substantial public interest is. However, our courts have adopted a three-factor test for discretionary judicial review in some cases. In deciding whether certain cases present matters of recurring and substantial public interest, courts apply three factors:

(1) whether the issue is of a public or private nature; (2) whether an authoritative determination is desirable to provide future guidance to public officers; and (3) whether the issue is likely to recur.

Satomi Owners Association v. Satomi, LLC, 167 Wash.2d 781, 798, 225 P.3d 213 (2009) (internal quotations omitted) (see also State v. Beaver, 184 Wash.2d 321, 330-31, 358 P.3d 385 (2015)). It is conceded that this issue is of a public nature. However, because the final two factors weigh against review, the first factor should not be dispositive.

The Court of Appeals delivered an authoritative determination and no further guidance is needed. In a well-reasoned, ten-page decision, the Court of Appeals provided the following guidance in subsequent cases:

Unless a preliminary appearance hearing has already been held, the superior court retains the power and duty to promptly hold a preliminary appearance hearing for a detained person, even if a charge has been filed in district court.

State v. Stevens County Dist. Court Judge, 436 P.3d at 435. Should the issue arise again, which is unlikely, the Court of Appeals has made clear what a district court judge should do.

The issues presented in the Amended Petition are not likely to recur. No case in Washington's jurisprudence has been found that factually mirrors this case. It seems no district court judge has taken the position, at least to this level of our court system, that he or she can ignore a valid court order of the same county's superior court. The issues presented to the Court of Appeals were issues of first impression. As such, there is no split in decisions among the three Divisions of the Court of Appeals. There can be no rational contention that this type of case or the issues presented herein can be expected to recur, so long as the District Court Judge, and any subsequent judge taking the same position, follow the decision of the Court of Appeals.

Finally, the District Court Judge devotes ten pages of her Amended Petition to the argument that the Priority of Action Doctrine should apply to this case. Amended Petition at pages 8-18. Basically, the District Court Judge is alleging error on the part of the Court of Appeals. However, as the State argued previously in its response to the District Court Judge's Original Petition, arguing error by the Court of Appeals is insufficient to obtain review by this Court.

III. CONCLUSION

For the reasons stated above, this Court should deny the Motion to Amend Petition for Discretionary Review and, if this Court grants the Motion, it should deny the Amended Petition for discretionary review.

Dated this 15<sup>th</sup> day of May, 2019.



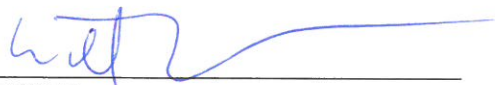
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Will Ferguson, WSBA 40978  
Deputy Prosecuting Attorney  
Office of the Stevens County Prosecutor  
215 S. Oak, Room #114  
Colville, WA 99114  
Phone: (509) 684-7500  
Fax: (509) 684-7589

CERTIFICATE OF SERVICE

I certify that on the 15<sup>th</sup> day of May, 2019, I caused a copy of this document to be served electronically and mailed, postage prepaid, to:

Jerry Moberg  
Jerry Moberg & Associates  
P.O. Box 130  
Ephrata, WA 98823



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Will Ferguson

# STEVENS COUNTY PROSECUTOR'S OFFICE

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## Transmittal Information

**Filed with Court:** Supreme Court  
**Appellate Court Case Number:** 97071-8  
**Appellate Court Case Title:** State of Washington v. Stevens County District Court Judge  
**Superior Court Case Number:** 18-2-00062-7

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