

NO. 66074-8

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**COURT OF APPEALS, DIVISION I  
OF THE STATE OF WASHINGTON**

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CAROLYN BILAL,

Appellant,

v.

STATE OF WASHINGTON OFFICE OF SUPERINTENDENT OF  
PUBLIC INSTRUCTION,

Respondent.

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**BRIEF OF RESPONDENT**

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## I. INTRODUCTION

Under well-established legal precedent in this State, this is not a difficult case. The appellant, Carolyn Bilal, filed a petition for judicial review of an administrative order issued by the respondent, Office of Superintendent of Public Instruction (OSPI). She did not timely serve the petition on OSPI or on OSPI's attorney of record. This means that, under Washington's Administrative Procedure Act, the superior court had no other option: Because the court had no subject matter jurisdiction over the matter, all it could do was dismiss the case.

In her appeal of the court's dismissal, Ms. Bilal claims that the superior court erred because she substantially complied with the APA's service requirements. But her argument fails for two reasons. First, Ms. Bilal did not timely raise it below. She in fact did not file any briefing opposing OSPI's motion to dismiss until after the superior court was set to hear the matter. Second, the superior court's ruling was correct on the merits. The record plainly shows that Ms. Bilal timely filed a petition for judicial review with the superior court and then waited until nearly three weeks after the APA's service deadline expired to effect service on OSPI. Simply put, Ms. Bilal did not comply with the mandates of the APA. The superior court therefore has no appellate jurisdiction to hear the petition, and its judgment should be affirmed.

## II. RESTATEMENT OF THE CASE

Ms. Bilal was a teacher and administrator who once worked for Seattle Public Schools. CP 16-17. In 2007, Seattle Public Schools reported Ms. Bilal to OSPI for engaging in a history of deceptive and unprofessional conduct. Following a five-day hearing conducted in April 2010, OSPI (acting through an administrative law judge retained from Washington's Office of Administrative Hearings) issued a 42-page order finding that Ms. Bilal had (among other things) systematically lied to school district officials and to OSPI for decades about who she was—including misrepresenting her date of birth, her work experience, and, most alarming of all, her criminal background. CP 51-52. OSPI concluded that clear and convincing evidence showed that Ms. Bilal has a serious behavioral problem and “cannot be entrusted to care for, supervise, or model honest conduct for the students of Washington State.” CP 52. And so, after carefully considering a host of mitigating factors, OSPI determined that Ms. Bilal's teaching certificate must be revoked. CP 53-54. The order of revocation was issued on June 28, 2010. CP 14.

Ms. Bilal timely appealed the order on July 21, 2010, by filing a Petition for Review of Administrative Order (called herein “the Petition”) in the King County Superior Court. CP 1-3. But she did not serve the Petition on OSPI or on the Attorney General's Office until nearly two

months after OSPI issued its revocation order—far outside the 30-day service period mandated by the Administrative Procedure Act, RCW 34.05.542(2). CP 11. Ms. Bilal filed no proof of service certifying that she ever served the Petition on OSPI or its attorney of record.

Because the superior court accordingly had no jurisdiction to hear the case as a matter of law, OSPI moved to dismiss the action on September 1, 2010. CP 6-9. The hearing on this motion was set without oral argument for September 13, 2010, at 9 a.m. CP 4. Although Ms. Bilal had a generous amount of time to respond to the motion—the deadline for filing her brief was Thursday, September 9, 2010—she failed to file any opposing papers until after 4 p.m. on the day of the hearing. CP 60. Ms. Bilal did not request any extension of time.

The superior court signed an order dismissing the action on September 16, 2010. Ms. Bilal did not request reconsideration or take any other steps to inform the trial court why she believed the trial court has jurisdiction over this case. Instead, she appealed the order of dismissal to this Court.

### **III. ARGUMENT**

An appeal from a final order of an administrative agency invokes the appellate, rather than general, jurisdiction of the superior court. *Skagit Surveyors & Eng'rs, LLC v. Friends of Skagit Cnty.*, 135 Wn.2d 542, 555,

958 P.2d 962 (1998). A superior court obtains appellate jurisdiction over an appeal from an agency decision when the petitioner timely files a petition for review in the superior court and serves that petition on all parties. *City of Seattle v. Pub. Emp't Relations Comm'n*, 116 Wn.2d 923, 926-27, 809 P.2d 1377 (1991). The Administrative Procedure Act strictly commands that a petitioner must file and serve "a petition for judicial review of an order . . . within thirty days after service of the final order." RCW 34.05.542(2). The Attorney General's Office and other parties may be served by mail; service by mail is deemed complete under the law when the petition is deposited in the U.S. mail, as evidenced by the postmark. RCW 34.05.542(4). Under the APA, "service on the attorney of record of any agency . . . constitutes service upon the agency . . . ." RCW 34.05.542(6). *See Ricketts v. Bd. of Accountancy*, 111 Wn. App. 113, 118, 43 P.3d 548 (2002).

If a petitioner does not timely serve a petition for judicial review on another party or on the party's attorney of record, the superior court has no subject matter jurisdiction over the lawsuit. And when a court lacks subject matter jurisdiction in a case, a court may do nothing else but enter an order of dismissal. *Skagit Surveyors*, 135 Wn.2d at 556. Orders of dismissal like the one entered in this case are reviewed *de novo*. *Ricketts*, 111 Wn. App. at 116.

Here, Ms. Bilal maintains that the trial court improperly dismissed this action because she substantially complied with the service requirements of the APA. The argument should be rejected for two reasons: First, she did not timely raise this argument below; and, second, the record manifestly shows that Ms. Bilal simply did not comply with RCW 34.05.542(2).

**A. Ms. Bilal did not timely file any papers opposing the motion to dismiss and this Court should therefore reject her argument.**

When a trial court has no opportunity to address an issue, the Court of Appeals may refuse to consider it. *Sorrel v. Eagle Healthcare, Inc.*, 110 Wn. App. 290, 299, 38 P.3d 1024 (2002). See RAP 2.5(a). Here, Ms. Bilal's appeal is premised on her argument that she substantially complied with the APA's service requirement by mailing certain documents to the Attorney General's Office before the APA's 30-day service period expired on July 28, 2010. Appellant's Br. at 6-7. But she never made that argument to the trial court. Indeed, she made no argument at all to the trial court: All of the papers she ultimately filed with the court came several days after her briefing deadline—and several hours after the court was set to hear the motion. (Ms. Bilal's late filing, including all of the documents she has cited in her brief to this Court, can be found at CP 60-104.)

The superior court had no chance to review the documents that Ms. Bilal has cited in her brief to determine their admissibility, relevance, or credibility. Nor did the court have a chance to consider how—if at all—those documents show that Ms. Bilal substantially complied with RCW 34.05.542(2). Sorting through that kind of evidence is the job of the trial court. Because Ms. Bilal did not properly raise any of her arguments below, they should be rejected in this forum—and the appeal should be dismissed.

**B. The superior court order dismissing this case was proper because Ms. Bilal did not timely serve the Petition—and the court is therefore without jurisdiction.**

Putting aside the fact that the superior court had no opportunity to consider Ms. Bilal’s arguments, those arguments fail as a matter of law for the following reasons.

To the extent that Ms. Bilal is now claiming that she perfected service in this case by timely mailing a copy of the Petition to the Attorney General’s Office, the claim is manifestly false. As the record plainly shows—and as the superior court found—the Petition was served on the Attorney General’s Office by certified mail on *August 16*, 2010. CP 11, 59, 108. This was *49 days* after OSPI issued its final order of revocation—nearly three weeks after the statutory service deadline expired. The manner in which the Petition was served is beside the point

here: The trial court simply cannot exercise subject matter jurisdiction over an APA appeal when a petition for judicial review is served on an agency or its attorney of record several weeks after the deadline for appealing the case runs out. *Cf. Ricketts*, 111 Wn. App. at 116 (petitioner perfected service under the APA by mailing the petition to the agency’s attorney of record on the thirtieth day after service of the agency’s final order).

Ms. Bilal’s contention that she substantially complied with RCW 34.05.542(2) by timely mailing what she calls a “mini-brief” to the Attorney General’s Office is likewise without merit.<sup>1</sup> The APA expressly requires “a petition for judicial review” be filed and served. The statute does not by its terms allow a party to an administrative appeal to file a petition with the court and mail an entirely different document to the agency’s attorney of record. A single document—“a petition for judicial review”—must be provided both to the court and to the agency. Ms. Bilal clearly understood what a petition for judicial review should look like—and when it should be filed. *See* CP 1-3. Her failure to ensure that OSPI

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<sup>1</sup> The “mini-brief” begins in the record at CP 75. As the record shows, this document was never separately entered as a pleading in the case docket. Ms. Bilal only filed the “mini-brief” with the trial court as an exhibit to her belated response to OSPI’s motion to dismiss.

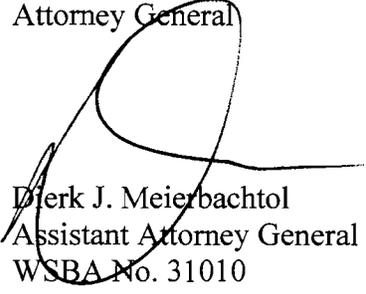
received a copy of this document within the time period mandated under the APA is necessarily fatal to her action.

#### IV. CONCLUSION

Regretfully, Ms. Bilal overlooked or ignored the APA's service requirements and the superior court's briefing deadlines. The fact that she has appeared *pro se* in this matter offers no legitimate defense. *Pro se* litigants, after all, must comply with relevant rules of procedure and substantive law, regardless of their status. The rules apply equally to parties with attorneys and those who represent themselves. *State v. Bebb*, 44 Wn. App. 803, 806, 723 P.2d 512, *aff'd*, 108 Wn.2d 515, 740 P.2d 829 (1987). The superior court in this case had no subject matter jurisdiction over Ms. Bilal's lawsuit. Accordingly, its order dismissing this case must be affirmed.

RESPECTFULLY SUBMITTED this 26th day of January, 2011.

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Appellant,

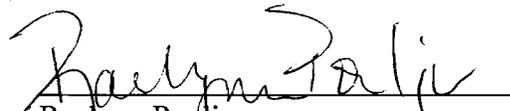
v.

STATE OF WASHINGTON OFFICE  
OF SUPERINTENDENT OF PUBLIC  
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Respondent.

CERTIFICATE OF  
SERVICE

I certify that I mailed , via FedEx Overnight Delivery, a copy of  
the foregoing *Brief of Respondent* to Carolyn Bilal, Appellant, at 4137  
Lexington Place South, Seattle, Washington 98118, on January 26, 2011.

  
Raelynn Poulin

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January 26, 2011

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*VIA FEDEX OVERNIGHT DELIVERY*

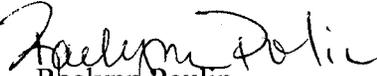
**RE: *Carolyn Bilal, Appellant, v. State of Washington Office of Superintendent of Public Instruction, Respondent***  
**Case No. 66074-8-I**

Dear Mr. Johnson:

Enclosed for filing please find the original and one copy of the *Brief of Respondent* and *Certificate of Service* in the above-referenced matter. In addition, I have enclosed copies of the top page of each of these documents to be conformed and returned in the enclosed self-addressed, stamped envelope.

If you have any questions pertaining to this mailing, please feel free to contact me at (360) 753-2499.

Sincerely,

  
Raelynn Poulin  
Legal Assistant

Cc: Carolyn Bilal, Appellant (w/enclosure via FedEx Overnight Delivery)  
Catherine Slagle, OSPI (w/enclosure via campus mail)  
Enclosures

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