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Grant Co. Superior Court Cause No. 12-2-01681-6

COURT OF APPEALS, DIVISION III
STATE OF WASHINGTON

JERRY JASMAN,

Appellant,

vs.

GRANT COUNTY, WASHINGTON; THE BOARD OF COUNTY
COMMISSIONERS FOR GRANT COUNTY, WASHINGTON; AND
RICHARD STEVENS, CAROLANN SWARTZ AND CINDY
CARTER, IN THEIR OFFICIAL CAPACITIES AS COUNTY
COMMISSIONERS FOR GRANT COUNTY, WASHINGTON,

Respondents.

APPELLANT'S OPENING BRIEF

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I. INTRODUCTION

The former Grant County Prosecutor, Angus Lee, brought a quo warranto action against Jasman, alleging that Jasman was prohibited from serving as deputy Grant County Coroner or signing death certificates as chief investigator in the coroner's office following an *Alford* plea to a charge of disorderly conduct. The elected Grant County Coroner, Craig Morrison, asked the Grant County Commissioners to pay for Jasman's defense of the quo warranto action because the prosecutor had not accused him of violating the terms of his sentence, he had received an opinion from counsel that he was not prohibited from serving as deputy coroner or chief investigator, and he was simply performing the tasks assigned to him by the county coroner in good faith. The County Commissioners granted the request to pay for Jasman's defense.

However, Prosecutor Lee instructed the County Commissioners to reverse their decision on grounds that they did not have authority to pay for the defense of Jasman, even though, at the same time, they were paying attorney fees and costs incurred to defend Prosecutor Lee against bar disciplinary charges so he could maintain his eligibility to serve as prosecutor. Nonetheless, in accordance with Prosecutor Lee's instructions, the County

Commissioners reversed the decision to pay for Jasman's defense of the quo warranto action. This interference with Jasman's defense led the superior court to disqualify Prosecutor Lee as counsel in the quo warranto action.

Coroner Morrison was allowed to intervene in the quo warranto action as the real party in interest since the ability to hire and assign tasks to Jasman implicated his prerogatives as the head of a coordinate branch of county government. Once Coroner Morrison intervened, he and Jasman sought appointment of a special prosecutor to defend them pursuant to RCW 36.27.030. The superior court denied the request for appointment of a special prosecutor, and that decision was affirmed on appeal.

In the meantime, after the superior court denied the request for appointment of a special prosecutor, Jasman filed this action against the County seeking indemnification for the costs of defending the quo warranto action. Jasman alleged claims for declaratory judgment, certiorari, and mandamus. The factual basis for these claims consisted of the County Commissioner's reversal of the decision to pay Jasman's defense costs based on the erroneous and conflicted advice of Prosecutor Lee. The legal basis for these claims included Jasman's allegation that the conduct of the County

Commissioners was arbitrary, capricious and contrary to law. The relief requested for these claims included attorney fees and costs incurred in defending the quo warranto action.

This action was stayed pending a final decision in the quo warranto action because reversal of the superior court's order denying appointment of special counsel potentially would have mooted the request for defense costs in this case. However, the appellate court decisions affirmed the superior court's order denying appointment of special counsel.

After the decision denying appointment of special counsel in the quo warranto action became final, the parties both sought summary judgment on Jasman's entitlement to indemnification for defense costs in this action. The superior court granted the County's motion, and Jasman now appeals.

Jasman asks this Court to confirm that local government entities have the authority to defend employees against claims arising from their employment, and hold that the Grant County Commissioners acted contrary to law when they reversed the decision to defend Jasman on grounds that they lacked such authority. Otherwise, the prospect of defense costs will discourage qualified employees from seeking government employment, and

local government entities will find it more difficult to attract and retain such qualified employees.

II. ASSIGNMENTS OF ERROR

1. The superior court erred in dismissing Jasman's claims on summary judgment. CP 1422.

2. The superior court erred in denying Jasman's motion for a continuance of summary pursuant to CR 56(f). CP 1422.

III. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Does a local government entity have authority under its general police power to defend its employees against claims arising from their employment?

2. If not, should the superior court have allowed Jasman to conduct discovery regarding other instances where the Grant County Commissioners have defended employees against claims arising from their employment to establish that the reversal of the decision to defend Jasman was arbitrary and capricious?

IV. STATEMENT OF THE CASE

A. The elected Grant County Coroner hired Jasman as a deputy coroner and investigator.

Jasman is the former elected Grant County Coroner. While in office, he entered an *Alford* plea¹ to a misdemeanor for disorderly conduct pursuant to RCW 9A.84.030(1)(a).² As part of the plea, Jasman acknowledged the forfeiture of his right to hold public office, as provided in RCW 9.92.120. CP 126 (¶ 4). When he entered the plea, Jasman understood public office to mean elected office. CP 126 (¶ 5). Accordingly, he stepped down from his position as the elected Grant County Coroner. CP 126 (¶ 6).

Craig Morrison was elected as Grant County Coroner on November 2, 2010, to fill the vacancy created by Jasman's resignation. CP 127 (¶ 7) & CP 140 (¶ 2). On November 22, 2010, Coroner Morrison hired Jasman to serve as deputy coroner and investigator, based on the authority of RCW 36.16.070. CP 127 (¶¶ 8-9) & CP 140 (¶ 3).

¹ In an *Alford* plea, the defendant does not admit guilt, but concedes that there is sufficient evidence to convict. *See State v. MacDonald*, 183 Wn. 2d 1, 27 n.1, 346 P.3d 748 (2015). The County wrongly implies that Jasman was guilty of a more serious crime. *See County Motion to Dismiss*, at 1.

² A person is guilty of disorderly conduct under RCW 9A.84.030(1)(a) if he or she “[u]ses abusive language and thereby intentionally creates a risk of assault.” (Brackets added.)

Coroner Morrison hired Jasman because his experience, training and abilities made him the most qualified person in the area to fill the position. CP 140 (¶ 3). Neither Coroner Morrison nor Jasman believed the position of deputy coroner or investigator constituted public office. CP 127 (¶ 9) & CP 141 (¶ 9). Jasman obtained an opinion from counsel who represented him in the criminal proceeding, which he shared with Coroner Morrison and the County Commissioners, confirming that his misdemeanor conviction did not preclude him from serving as deputy coroner or investigator. CP 127 (¶ 10), CP 141 (¶ 10) & CP 150 (Ex. D-6).

B. The former Grant County Prosecutor filed a quo warranto action against Jasman, alleging that he was not eligible to serve as deputy coroner.

Approximately 19 months after Coroner Morrison hired Jasman, Prosecutor Lee filed a quo warranto action against Jasman. CP 1297-1327 (quo warranto information) & CP 142 (¶ 14). Prosecutor Lee did not claim that Jasman violated the terms of his *Alford* plea in the underlying criminal proceeding. From the perspective of Coroner Morrison, the quo warranto action was “politically motivated and shows evidence of the longstanding harassment” his office has received from Prosecutor Lee’s office. CP 1295.

C. Jasman resigned from his position as deputy coroner (but not investigator) pending the outcome of the quo warranto action.

After being served with the quo warranto information, Jasman resigned from his position as deputy coroner, although he remained in the position of investigator. CP 128 (¶ 18), CP 142 (¶ 15) & CP 145 (Ex. D-1). Coroner Morrison accepted the resignation and instructed Jasman not to sign death certificates pending resolution of his authority to serve as deputy coroner in the quo warranto action. CP 128 (¶ 19), CP 142 (¶ 16) & CP 147 (Ex. D-3).

D. The superior court allowed Coroner Morrison to intervene and aligned him as a defendant with Jasman.

Coroner Morrison moved to intervene in the quo warranto action, on grounds that the action interfered with his authority to hire deputies and employees as well as his authority to delegate tasks to them. CP 900-02 (motion), CP 1335-39 (memorandum), CP 160-65 (Morrison declaration) & CP 166-171 (Jasman declaration). The superior court granted the motion to intervene and aligned Coroner Morrison with Jasman as a defendant. CP 921-22.

E. The County Commissioners approved a request to defend Jasman in the quo warranto action, but Prosecutor Lee instructed them to reverse the decision, prompting the superior court to disqualify him as counsel.

Coroner Morrison submitted a request to the County Commissioners for funds to defend Jasman in the quo warranto action, because he was merely following instructions and acting in good faith within the scope of his employment. CP 129 (¶ 20), CP 143 (¶ 18) & CP 148 (internal Ex. D-4). The County Commissioners initially approved the request. CP 129 (¶ 21), CP 143 (¶ 20) & CP 149 (Ex. D-5). However, the County Commissioners subsequently reversed the decision “[b]ased on legal advice from the Prosecuting Attorney’s office[.]” CP 149 (internal Ex. D-5; brackets added); *accord* CP 1294 (memo. re reversal of decision); CP 1296 (handwritten note re reversal of decision). This improper interference with Jasman's defense prompted the superior court to disqualify Prosecutor Lee and the other members of his office. CP 897-99 (disqualification order); CP 1340-44 (denying reconsideration of disqualification order).

F. After Prosecutor Lee was disqualified, the County Commissioners confirmed the reversal of the decision to defend Jasman on grounds that they lacked authority to provide him with a defense.

Prosecutor Lee appointed conflict counsel who opined that "the Board of County Commissioners does not have authority to authorize payment of outside counsel for a county officer or employee unless such counsel has been appointed a special prosecutor by either the Prosecuting Attorney or the Court." CP 1288-92 (p. 5); *accord* CP 1276 (email summarizing opinion); CP 1280 (email transmitting opinion). On this basis, the County Commissioners confirmed the reversal of the decision to defend Jasman. CP 1281-87.

The County Commissioners stood by the decision despite several requests from Coroner Morrison attesting to the County Commissioners' "completely appropriate custom and practice of providing funds to defend its officers and employees who are discharging their responsibilities and acting in good faith, as evidenced by [the County Commissioners'] original decision to grant [the request to defend Jasman]." CP 1277-79 (brackets added); *accord* CP 1293 (second request for reconsideration).

G. In the quo warranto action Coroner Morrison and Jasman separately sought court appointment of a special prosecutor pursuant to RCW 36.27.030 to represent the interests of the coroner's office.

Separately from the tender of defense to the Grant County Commissioners, Coroner Morrison and Jasman sought the appointment of a special prosecutor pursuant to RCW 36.27.030, on grounds that the quo warranto action impinges upon the right and responsibility of Coroner Morrison, as an elected county officer, to manage his office. CP 900-02 (motion) & CP 1335-39 (memorandum). However, the superior court deferred ruling on the motion pending a decision on the merits of the quo warranto action. CP 1328-34.

H. The superior court ultimately granted the relief requested in the quo warranto action and denied the request for appointment of a special prosecutor pursuant to RCW 36.27.030.

On cross motions for summary judgment, the superior court granted the relief requested in the quo warranto action and denied the request for appointment of a special prosecutor pursuant to RCW 36.27.030 to represent the interests of the coroner's office. CP 1328-34. This decision was affirmed over dissent by the Court of Appeals and then affirmed by the Supreme Court. *See* CP 1197-1225 (Court of Appeals decision); CP 1268-75 (Supreme Court decision); *Lee ex rel.*

Office of Grant Cty. Prosecuting Attorney v. Jasman, 183 Wn. App. 27, 332 P.3d 1106 (2014), *aff'd sub nom. Grant Cty. Prosecuting Attorney v. Jasman*, 183 Wn. 2d 633, 354 P.3d 846 (2015). Jasman did not raise, and the trial and appellate courts did not address, the question of whether Jasman was entitled to a defense on grounds other than RCW 36.27.030 in the quo warranto action. See CP 760-861 & 1226-67 (appellate court briefing).

I. Jasman filed this action seeking judicial review of the County Commissioners' reversal of the decision to defend him in the quo warranto action.

After the County Commissioners reversed the decision to defend Jasman, and after the superior court denied appointment of a special counsel pursuant to RCW 36.27.030, Jasman filed this action alleging claims for declaratory judgment, certiorari, and mandamus. See Complaint. CP 3-7. The factual basis for these claims included the County Commissioner's reversal of the decision to pay Jasman's defense costs based on the erroneous and conflicted advice of Prosecutor Lee. CP 4-5. The legal basis for these claims included Jasman's entitlement to fees under RCW 4.96.041 and the claim that the conduct of the County Commissioners was "arbitrary, capricious and contrary to law." CP 6. The relief sought included defense costs incurred in defending the quo warranto action, along with "[a]ny

further relief the Court deems warranted under the circumstances."

CP 7 (brackets added).

J. The court stayed this action pending appeal of the quo warranto action because reversal of the superior court's order denying appointment of special counsel would potentially render the request for defense costs in this action moot.

The superior court orally stayed this matter pending a final decision in the quo warranto action because of the potential that reversal of the superior court order denying appointment of special counsel would moot Jasman's request for indemnification of defense costs in this action. However, the appellate courts affirmed the order denying appointment of special counsel. *See Jasman*, 183 Wn. App. at 65-67, *aff'd*, 183 Wn. 2d at 646-48.

K. After the decision denying appointment of a special counsel in the quo warranto action became final, the court granted summary judgment in favor of the County in this action, and Jasman appealed.

The County moved for summary judgment seeking dismissal of this action. CP 645-47. In response, Jasman sought summary judgment in his favor, or, in the alternative, a continuance pursuant to CR 56(f) to obtain discovery from the County regarding payment of employees' defense costs in similar circumstances. CP 1346-47. The superior court granted summary judgment in favor of the County, CP 1421-23, and Jasman timely appealed, CP 1424-29.

V. ARGUMENT

The County Commissioners reversed the decision to defend Jasman in the quo warranto action on grounds that they lacked authority to do so. This decision is arbitrary, capricious and contrary to law because the County Commissioners had authority to defend Jasman under the general police power, and they have defended employees under similar circumstances in the past. This issue was not raised or decided in the quo warranto action—nor could it have been raised in that action—and as a result it is not moot or subject to the doctrine of collateral estoppel.

A. The County Commissioners improperly reversed the decision to defend Jasman on grounds that they lacked authority to do so.

The courts have authority to issue declaratory judgment regarding the "rights, status or legal relations" of the parties, and to grant further relief that is necessary or proper. RCW 7.24.020 & .080. The courts also have authority to issue a writ of certiorari (review) to the County Commissioners "to correct any erroneous or void proceeding" that is not otherwise subject to appeal. RCW 7.16.040 & .060. The grounds for a writ of certiorari include errors of law and arbitrary and capricious conduct. RCW 7.16.120(3); *Hayes v. City of Seattle*, 131 Wn. 2d 706, 713 n.4, 943 P.2d 265

(1997). In this case, declaratory judgment and certiorari are warranted because the County Commissioners' determination that they lacked authority to defend Jasman is erroneous as a matter of law and arbitrary and capricious.

- 1. The County Commissioners had authority to defend Jasman under their general police power, and the reversal of the decision to defend him therefore constitutes an error of law.**

The County Commissioners have expansive police power to enact laws not in conflict with the constitution or statute. Washington Constitution Article XI, § 11, provides "[a]ny county, city, town or township may make and enforce within its limits all such local police, sanitary and other regulations as are not in conflict with general laws." (Brackets added.) As stated in *Detamore v. Hindley*, 83 Wash. 322, 326-27, 145 P. 462 (1915), this constitutional provision

is a direct delegation of the police power as ample within its limits as that possessed by the Legislature itself. It requires no legislative sanction for its exercise so long as the subject-matter is local, the regulation reasonable and consistent with the general laws.

Under its police power authority, a municipality such as the county has authority to indemnify employees for legal fees incurred in

defending against actions related to acts within the scope of employment:

Where a municipal officer incurs a loss in the discharge of an official duty in a matter in which the corporation has an interest, and in the discharge of a duty imposed or authorized by law, and in good faith, the municipal corporation has the power to appropriate funds to reimburse that officer, unless expressly forbidden. *Usually this involves indemnification of employees for legal fees incurred in defending against actions that are based upon acts the employee committed within the scope of employment.*

3 McQuillin Municipal Corporations § 12:173.25 (3d ed.) (footnotes omitted; emphasis added); *cf. Washington Hosp. Liab. Ins. Fund v. Pub. Hosp. Dist. No. 1 of Clallam Cty.*, 58 Wn. App. 896, 899, 795 P.2d 717, 719 (1990) (recognizing municipal corporations have authority to defend officers despite the absence of express statutory authority to provide such a defense, citing McQuillan's treatise). Accordingly, the County Commissioners' determination that they lacked authority to defend Jasman is erroneous as a matter of law.

2. The County Commissioners' had a policy of defending employees under similar circumstances, and reversal of the decision to defend Jasman is therefore arbitrary and capricious.

Government action is arbitrary and capricious if there are insufficient reasons for treating similar situations differently. *See, e.g., Citizens for Mount Vernon v. City of Mount Vernon*, 133 Wn. 2d

861, 875–76, 947 P.2d 1208, 1216 (1997). In this case, the County has a policy and practice of defending employees under circumstances similar to those facing Jasman, as evidenced by the fact that they originally granted his request for a defense. The County resisted Jasman's discovery regarding defense of employees in other cases, and successfully resisted a motion to compel this discovery and continue summary judgment until it was received. Nonetheless, Jasman did produce evidence that the County paid attorney fees and costs incurred to defend Prosecutor Lee against bar disciplinary charges that resulted in his discipline. *See* CP 699-700, 752-59, 862, 878-896, 923-1196 & 1373. In light of this evidence, the County Commissioners' reversal of the decision to defend Jasman is arbitrary and capricious.

At a minimum, Jasman should have been given an opportunity to complete discovery on this issue before summary judgment. The court must make justice its primary consideration in ruling on a motion for continuance, even an informal one. *Cogle v. Snow*, 56 Wn. App. 499, 508, 784 P.2d 554 (1990). Absent prejudice to the moving party, the court should grant a continuance. *See Butler v. Joy*, 116 Wn. App. 291, 299-300, 65 P.3d 671 (2003), *rev. denied*, 150 Wn. 2d 1017 (2003).

In this case, the superior court denied Jasman's motion for continuance on grounds that it was "moot," without explaining its reasoning. CP 1422. This was an abuse of discretion because arbitrary and capricious conduct is an alternative and independent basis for finding in Jasman's favor, even if the Grant County Commissioners did not have police power authority to defend him in the quo warranto action. The court's decision on summary judgment did not therefore render this issue moot.

B. The quo warranto action does not collaterally estop Jasman from asserting his declaratory judgment and certiorari claims because they do not involve identical issues.

The County argues that Jasman's claims for declaratory judgment and certiorari are barred by the doctrine of collateral estoppel. *See, e.g.*, CP 12, 23, 638, 641, 1408. Collateral estoppel requires, among other things, "that the issue decided in the prior action was identical to the issue presented in the second action." 14A Wash. Prac., Civil Procedure § 35:32 (2d ed.). In this case, collateral estoppel is inapplicable because the issues are not identical.

The quo warranto action involved a request for special counsel under RCW 36.27.030, which provides in pertinent part:

When from illness or other cause the prosecuting attorney is temporarily unable to perform his or her duties, the court or

judge may appoint some qualified person to discharge the duties of such officer in court until the disability is removed.

Prosecutor Lee was "unable to perform his ... duties" by the adversary position taken against Coroner Morrison in the quo warranto action, but a majority of the Court of Appeals and the Supreme Court determined that Prosecutor Lee had no duty to represent him. In particular, the Court held that prosecutors have a duty to represent county officers in suits for damages or suits in which the county is the real party in interest, and that the quo warranto action against Jasman was "not a suit for money damages against Coroner Morrison or a case in which the county was the real party in interest."

Jasman, 183 Wn. 2d at 647.³

³ While the Supreme Court held that the quo warranto against Jasman was not a claim for damages against *Coroner Morrison*, which would give rise to a duty to defend *Coroner Morrison* under RCW 4.96.041, the Court never explicitly addressed whether the potential for recovery of damages in the quo warranto action triggered the duty to defend *Jasman* under RCW 4.96.041. See *Jasman*, 183 Wn. 2d at 647. Local government entities such as Grant County are obligated to defend employees in "an action or proceeding for damages ... arising from acts or omissions while performing or in good faith purporting to perform his or her official duties[.]" RCW 4.96.041(1) & (2) (ellipses & brackets added). While Prosecutor Lee did not initially seek damages in the quo warranto action against Jasman, he had the right to do so any time within one year after final judgment was entered. See RCW 7.56.090 (stating "[w]hen judgment is rendered in favor of the plaintiff, he or she may, if he or she has not claimed his or her damages in the information, have his or her action for the damages at any time within one year after judgment"; brackets added). In this sense, a quo warranto action, by its very nature, is a proceeding for damages triggering the duty to defend under RCW 4.96.041. At a minimum, the quo warranto action against Jasman entailed the potential for damages. By analogy to the insurance law context, the potential for such damages should be sufficient to trigger the obligation to defend. See, e.g., *Truck Ins. Exch. v. Vanport Homes, Inc.*, 147 Wn. 2d 751, 760, 58 P.3d 276 (2002) (noting an insurer's duty to defend "is based on the potential for liability"). The analogy to insurance is apt because both insurance and RCW 4.96.041 are forms

This issue obviously differs from the question of whether the County Commissioners acted arbitrarily, capriciously, or contrary to law when they reversed their decision to defend Jasman in the quo warranto action, as described above. In order to make its collateral estoppel argument, the County equivocates between the grounds for appointment of a special prosecutor and the grounds for Jasman's declaratory judgment and certiorari claims. *See County Motion to Dismiss*, at 7 (stating Jasman "made essentially the same arguments" in the quo warranto action).

The County also takes statements by counsel for Jasman out of context, and then states the opposite of what actually occurred. Specifically, the County claims that, in oral argument on appeal of the underlying quo warranto action, "Jasman's counsel conceded that Mr. Jasman is not entitled to indemnification in his statements and affirmations to the Division III appellate court." *See County Motion to Dismiss*, at 11. In context, counsel conceded only that Jasman was not independently entitled to appointment of special counsel, apart from Coroner Morrison, but that he was entitled to

of indemnification, one by contract and the other by statute. The fact that Prosecutor Lee did not expressly seek damages did not prevent his successor from seeking such damages at any time within one year after final judgment was entered. Jasman does not rely on this argument on appeal, but the Court is nonetheless entitled to rule in his favor on this basis.

appointment of special counsel along with Coroner Morrison because the claims involved both of them and were inseparable. Counsel did not concede that Jasman was not separately entitled to indemnification under the alternate grounds alleged in this action.

Because this action does not involve the same issues as the *quo warranto* action, the doctrine of collateral estoppel is inapplicable.

C. The *quo warranto* action has not mooted Jasman's declaratory judgment and certiorari claims because these claims and the basis for them were not addressed, and could not have been addressed, in the *quo warranto* action.

The County argues that Jasman's claims are moot for the same reasons that they are allegedly subject to collateral estoppel; namely, because the appellate courts affirmed the superior court order denying appointment of special counsel. See County Motion to Dismiss, at 13 (arguing declaratory judgment claim is moot because "the Supreme Court affirmed ... and ... the *quo warranto* action is now final"; ellipses added); *id.* at 14 (arguing certiorari claim is moot "[w]ith the *quo warranto* action having been decided and affirmed"; brackets added); *id.* at 14 (arguing mandamus is moot "[w]ith the *quo warranto* action having been decided and affirmed"; brackets added); *accord* CP 646, 656-57.

Far from rendering Jasman's claims for declaratory judgment and certiorari moot, it is precisely because no special counsel was appointed in the quo warranto action that Jasman's claims are not moot. He still has not been indemnified for the defense of the quo warranto action, and he is entitled to have the Court address the alternate grounds for indemnification that are presented for review in this action.

D. Jasman's declaratory judgment and certiorari claims have been adequately pled, and it was not necessary for him to specifically reference the "police power" in the text of the complaint.

The County characterizes Jasman's argument based on the general police power as an "alternative claim under the police power doctrine," and contends that this claim was not adequately pled in Jasman's complaint. County Motion to Dismiss, at 15-16; CP 1398 & 1400-01. The County's characterization of the police power as a "claim" that must be pled is incorrect. Police power is merely authority supporting Jasman's claims for declaratory judgment and certiorari, which are adequately pled. Police power does not constitute a separate freestanding claim, and the phrase does not have to be specifically referenced in the complaint.

Declaratory judgment and certiorari are statutory special proceedings. *See* RCW 7.16.030-.140 (regarding certiorari); Ch. 7.24

RCW (Uniform Declaratory Judgments Act); *see also Putman v. Wenatchee Valley Med. Ctr., P.S.*, 166 Wn. 2d 974, 982, 216 P.3d 374 (2009) (defining special proceeding as "proceedings created ... by the legislature"; ellipses added). Neither type of proceeding imposes a requirement to plead specific authority. Jasman's complaint is sufficient under both of these statutes.

Even if these proceedings were subject to normal pleading requirements, Jasman would not be required to specifically mention the phrase "police power" in the complaint. "A pleading which sets forth a claim for relief" is sufficient if it contains "(1) a short and plain statement of the claim showing that the pleader is entitled to relief and (2) a demand for judgment for the relief to which the pleader deems the pleader is entitled." CR 8(a). The only time that authority must be pled is where the case is governed by foreign law. *See* CR 9(k). Jasman's complaint is sufficient under normal pleading rules.

Jasman's complaint is sufficient to support the claims for declaratory judgment and certiorari and to give adequate notice to the County. The complaint alleges the factual basis for the claims. CP 4-5. It references the claims by name, i.e., "declaratory judgment" and "certiorari." CP 6. It specifically alleges that "[t]he decision of the

Defendants to deny defense and indemnity to Jerry Jasman for the quo warranto action is arbitrary, capricious and contrary to law." CP 6 (brackets added). It requests relief including defense of the quo warranto action. CP 7. If this was not sufficient, then Jasman's summary judgment pleadings gave ample notice to the County that Jasman's claims were based in part on the police power. CP 1352-53. The County is not entitled to have the dismissal of Jasman's affirmed on grounds that they were inadequately pled.

VI. CONCLUSION

Jasman asks the Court to reverse the decision of the superior court dismissing this action, enter declaratory judgment that the Grant County Commissioners had authority to defend him in the quo warranto action, and issue a writ of certiorari to the Grant County Commissioners that reversal of the decision to defend him was contrary to law. In the alternative, Jasman asks the Court to reverse the decision of the superior court denying his motion for a continuance pursuant to CR 56(f) to conduct discovery regarding the County's defense of employees in similar circumstances.

Respectfully submitted this 15th day of December, 2017.

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CERTIFICATE OF SERVICE

The undersigned does hereby declare the same under oath and penalty of perjury of the laws of the State of Washington:

On the date set forth below, I served the document to which this is annexed by email and First Class Mail, postage prepaid, as follows:

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