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SUPREME COURT
STATE OF WASHINGTON
Oct 24, 2012, 8:04 am
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NO. 87823-4

RECEIVED BY E-MAIL

SUPREME COURT OF THE STATE OF WASHINGTON

VICKI LEE ANNE PARKER and JAMES S. JOHNSON,

Appellants,

v.

KIM WYMAN, in her capacity as Thurston County Auditor, and
CHRISTINE SCHALLER-KRADJAN, MARIE CLARKE, and VICTOR
MINJARES,

Respondents.

And

MARIE C. CLARKE,

Appellant,

v.

KIM WYMAN, Thurston County Auditor, and
CHRISTINE SCHALLER- KRADJAN,

Respondents.

**REPLY IN SUPPORT OF APPELLANT MARIE CLARKE'S
MOTION TO STRIKE CHRISTINE SCHALLER'S AMENDED
STATEMENT OF ADDITIONAL AUTHORITIES**

MARIE C. CLARKE
Appellant and Attorney at Law
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 ORIGINAL

Ms. Schaller has presented no reasoned basis for denying Ms. Clarke's Motion to Strike, which should be granted. Ms. Schaller does not deny that her "additional authorities" are not, in fact, "additional." Nor does she deny that by including parentheticals indicating what is *not* contained in the cited authorities, or what those authorities "signify[]," she has presented argument in violation of RAP 10.8. Further, she incorrectly asserts that Ms. Clarke disagrees with Ms. Schaller's "reading of these authorities." While Ms. Clarke does disagree with Ms. Schaller's "reading" of all of these authorities, Ms. Clarke's Motion to Strike only specifically noted the four authorities where Ms. Schaller's representations concerning those authorities were plainly false.

Ms. Schaller also cites a Court of Appeals case which held that a ~~Statement of Additional Authorities should not be rejected~~ when a party has had an adequate opportunity to respond. As an initial matter, this Court has never applied such a rule, which it should reject. This rule only serves (a) to penalize parties who seek to enforce RAP 10.8 and (b) results in needless multiplication of filings. Further, Ms. Clarke has not had an opportunity to substantively respond to Ms. Schaller's implicit argument, as Ms. Clarke has only sought to point out where Ms. Schaller has made false statements of law.

Finally, Ms. Schaller incorrectly states that the issue her authorities

relate to—an argument that RCW 42.04.020 only requires state, and not county, residency for Superior Court judges—was first raised at oral argument. In fact, it was first raised in the State’s Amicus Brief, whereupon the State then proceeded to explain why the argument must be rejected. Ms. Schaller’s opportunity to respond substantively to this issue was in her Answer to the State’s Amicus Brief. Yet she barely dedicated two pages to the issue in her Answer. Ms. Schaller’s suggestion that the “questions raised at oral argument indicated that the Court still wanted clarification on the issues addressed in these authorities” patronizingly assumes that the Court does not know how to request supplemental briefing under RAP 10.1(h) if necessary.

The truth of the matter is that Ms. Schaller does not want robust ~~briefing on this issue because she knows full well that, if the Court reaches~~ that issue and is fully informed on it, she cannot prevail. If this Court determines that (a) RCW 42.04.020 applies to the Supreme Court and Superior Court,¹ and (b) it remains valid because it originated as a

¹ Specific statutes establishing residency requirements for the Court of Appeals and District Courts—i.e., RCW 2.06.050 and RCW 3.34.060—are not barriers to this conclusion, as they do not render RCW 42.04.020 surplusage. Rather, these statutes simply clarify specifically what residency is required for these positions. *State ex rel. Heavey v. Murphy*, 138 Wn.2d 800, 812, 982 P.2d 611 (1999) (holding language not surplusage because it served to clarify); *Washington Water Power Co. v. Graybar Elec. Co.*, 112 Wn.2d 847, 859, 774 P.2d 1199 (1989) (holding that unnecessary language in statute permissible where consistent with legislative intent). Further, Ms. Schaller’s argument throws the baby out with the bathwater—by paying lip service to the concern of rendering RCW 2.06.050 and RCW 3.34.060 surplusage, she presents an argument that

territorial law, Ms. Schaller cannot prevail regardless of whether this Court finds RCW 42.04.020 to require county residency. This is because there are two other statutes—RCW 42.12.010 and RCW 29A.20.021—that, when combined with Article IV, Section Five, plainly require county residency for Superior Court judges. In other words, once it is determined that residency requirements are constitutional under Article XXVII, Section Two, simply avoiding a single statute is insufficient for Ms. Schaller to prevail because the county residency requirement is pervasive in the statutory election scheme. This is why the State properly asserted that RCW 42.04.020, when read in conjunction with related statutes, plainly requires county residency for Superior Court judges.

The Court should reject Ms. Schaller's attempt to obfuscate an ~~issue that she cannot prevail on and that her experienced counsel made a~~ strategic decision to essentially ignore throughout this case due to its weakness. Accordingly, Ms. Clarke respectfully requests that the Court strike Ms. Schaller's Amended Statement of Additional Authorities.

renders RCW 42.04.020 surplusage *in its entirety* in *all* situations. According to Ms. Schaller, the requirements in RCW 42.04.020 only apply when there is already another statute that accomplishes the same goal. That plainly could not have been the Legislature's intent. Finally, RCW 2.06.050 and RCW 3.34.060 did not exist until the 1960's. The Legislature plainly did not intend the passages of these statutes to serve to repeal RCW 42.04.020 more than 70 years into statehood.

RESPECTFULLY SUBMITTED this 24th day of October, 2012.

A handwritten signature in black ink, appearing to read "Marie C. Clarke". The signature is written in a cursive style with a large initial "M".

MARIE C. CLARKE, WSBA 36146
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PROOF OF SERVICE

I hereby certify that on October 24, 2012, Reply In Support Of Appellant Marie Clarke's Motion To Strike Christine Schaller's Amended Statement Of Additional Authorities was filed electronically with the Clerk of the Supreme Court and, due to the expedited briefing schedule and agreement of the parties, a copy was served via email on October 24, 2012, to the following parties or counsel of record:

1.	Supreme Court	supreme@courts.wa.gov
2.	Vicki Lee Ann Parker	vlaparker@aol.com
3.	James Johnson	onlyjimjohnson@comcast.net
4.	Victor Minjares	victorminjaresforjudge@gmail.com
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9.	Jeff Even	jeffe@atg.wa.gov
10.	Peter Gonik	peterg@atg.wa.gov
11.	Kristin Jensen	kristinj@atg.wa.gov

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 24th day of October, 2012, at Olympia, WA.



Marie C. Clarke

OFFICE RECEPTIONIST, CLERK

From: OFFICE RECEPTIONIST, CLERK
Sent: Wednesday, October 24, 2012 8:05 AM
To: 'mcclarke24@comcast.net'; onlyjimjohnson@comcast.net;
victorminjaresforjudge@gmail.com; newmanlaw@comcast.net; phil@tal-fitzlaw.com;
klumppd@co.thurston.wa.us; jeffe@atg.wa.gov; peterg@atg.wa.gov; kristinj@atg.wa.gov;
vlaparker; Linda Olsen
Subject: RE: 87823-4 - Clarke v. Kim Wyman et al.; Appellant Marie Clarke's Reply in Support of
Motion to Strike Additional Authorities

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Sent: Wednesday, October 24, 2012 7:28 AM
To: onlyjimjohnson@comcast.net; victorminjaresforjudge@gmail.com; newmanlaw@comcast.net; phil@tal-fitzlaw.com;
klumppd@co.thurston.wa.us; jeffe@atg.wa.gov; peterg@atg.wa.gov; kristinj@atg.wa.gov; OFFICE RECEPTIONIST,
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Subject: 87823-4 - Clarke v. Kim Wyman et al.; Appellant Marie Clarke's Reply in Support of Motion to Strike Additional
Authorities

Good morning:

Attached for filing and service is a copy of Appellant Marie Clarke's Reply in Support of Motion to Strike Additional Authorities. Thank you.

Marie C. Clarke
mcclarke24@comcast.net