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State of Washington
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No. 77019-5-I

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

D.H.,

Plaintiff,

v.

MAYOR EDWARD MURRAY,

Respondent,

and

LINCOLN BEAUREGARD,

Petitioner.

PETITION FOR REVIEW

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A. IDENTITY OF PETITIONER

Lincoln Beauregard asks this Court to grant review of the decision identified in Part B.

B. COURT OF APPEALS DECISION

The Court of Appeals issued its published decision on October 8, 2018. A copy of that decision is in the appendix at pages A-1 through A-19.

C. ISSUES PRESENTED FOR REVIEW

1. Did the trial court err in imposing CR 11 sanctions against an attorney for filing pleadings for the allegedly improper purpose of generating publicity without adequately addressing RPC 3.6 and its comments, particularly where the trial court did have a media policy in place when the alleged violation occurred, and RPC 3.6 authorized the attorney to respond to the opposing side's media efforts?

2. Did the trial court's imposition of sanctions for media contacts violate the attorney's First Amendment rights?

D. STATEMENT OF THE CASE

While Division I's published opinion adequately sets out the timeline in this case, op. at 1-5, it fails to convey the intensity of former Mayor Murray's media activities that prompted Lincoln Beauregard's response. Devon Heckard filed a lawsuit in the King County Superior Court on Thursday, April 6, 2017, alleging past sexual improprieties against him by former Seattle Mayor Ed Murray. CP 1-8. Heckard did not reveal his

identity, giving only his initials. *Id.* The case was assigned to the Honorable Tim Bradshaw. That *same day*, attorney Robert Sulkin hosted a press conference, on Murray's behalf, and publicly denied the allegations against Murray. CP 95. However, Sulkin did not file a notice of appearance with the trial court. *Id*. The next day, Beauregard sent Sulkin a letter with copies to the media, noting that he had seen Sulkin's press conference, offering Sulkin the opportunity to depose D.H., and seeking a date for the mayor's deposition. CP 96, 105. That letter was not filed with the trial court. *Id*. On April 9, Beauregard sent Sulkin another letter inquiring about discovery matters, and asking whether formal service of the summons and complaint was required. CP 96, 106. Sulkin did not respond to either letter and again did not file a notice of appearance. CP 96. Instead, on Tuesday, April 11, Sulkin called what he described as a "game changer" press conference, spoke publicly about Mayor Murray's genitals, accusing Heckard of lying, proclaimed the lawsuit meritless, and insinuated that Beauregard and his firm fabricated Heckard's claims to advance an "anti-gay" right wing conspiracy. CP 97-132.[1]

On April 12, Beauregard had the summons and complaint served on Murray because Sulkin had not responded to the prior letter. *Id*. On April

[1] Sulkin also demanded that the lawsuit be dropped. CP 97. Sulkin even accused the Seattle *Times* of impropriety in reporting the story. *Id*.

14, the Seattle newspaper, the *Stranger*, published a Murray op-ed accusing the Connelly Law Firm of making up the lawsuit to advance a political agenda for anti-gay reasons. CP 97, 133-43. In that op-ed, Murray echoed the anti-gay message against Beauregard originated by Sulkin during his press conferences and in other media interviews. *Id*.[2]

On April 17, Judge Bradshaw's judicial assistant sent the parties, and Sulkin, an email: "Good morning, I have been asked to inform the parties that Judge Bradshaw has availability this week should counsel wish to address preliminary matters and for planning purposes. Thank you." CP 97-98.

Sulkin did not respond, and did not file a notice of appearance. CP 98. Beauregard was startled by the *sua sponte* inquiry from Judge Bradshaw's staff when Sulkin had not filed a notice of appearance. CP 98. Shortly thereafter, Sulkin was quoted in the *Stranger* alleging that Beauregard and his firm were disparaging Judge Bradshaw, and a physician who examined Mayor Murray's genitals. CP 98, 172-79.[3] The case was reassigned to the Honorable Veronica Alicea-Galván for hearing.[4]

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[2] National media also published stories about the Connelly Law Firm's purportedly anti-gay agenda. CP 97. As Beauregard specifically advised the trial court, these allegations of an anti-gay "conspiracy" were simply false. CP 101-02.

[3] This assertion was untrue. CP 170-79.

[4] The court advised counsel of contacts with Murray and counsel. CP 181.

On April 19, Heckard filed an amended complaint disclosing his name to the public, and attaching a letter to Sulkin. CP 9-27. Sulkin was provided the letter along with the following email: "Letter attached. Let's keep it clear and about our clients." CP 99.

On April 19, prior to filing a notice of appearance, Sulkin sent Beauregard a letter discussing the terms of a proposed independent medical exam of Heckard. CP 43-44. Because Sulkin had still failed to file a notice of appearance, Beauregard and his firm began copying their letters to the trial court's file. CP 99. Beauregard responded to Sulkin's letter, noting Sulkin's failure to file a notice of appearance, and addressing discovery questions. CP 99-100.

On Friday, April 21, Sulkin's office filed a notice of appearance. CP 100. At the same time, Sulkin's office sent a letter to Beauregard demanding that filing future correspondence between counsel and subpoenas not be filed with the court. *Id*., CP 200-01. On Monday, April 24, Julie Kays of the Connelly Law Offices subpoenaed Murray's campaign manager, Maggie Thompson, and filed the documentation with the trial court. CP 58-60.[5] *See also*, CP 198-99.

[5] Thompson's testimony and records were relevant because Murray alleged that this lawsuit was politically motivated. CP 58-60.

The media wrote stories about the subpoena, and also published extensive stories discussing allegations about Murray's sexual abuse of other teen prostitutes and foster children. CP 100, 107-32.

In reaction, Murray and his legal team filed a motion for sanctions in the trial court on April 25, 2017 against Beauregard alleging various civil rule violations allegedly meriting the imposition of sanctions. CP 28-35. Beauregard sent Murray's counsel a letter that same day asking that the motion be withdrawn. CP 45-46.[6] Beauregard answered the motion as well. CP 158-69. For the first time on reply, Murray's counsel alleged specific RPC violations and submitted extensive new declarations from Arthur Lachman and John Strait, arguing that Beauregard violated RPC 3.4, 3.6, and 8.4. CP 203-72.[7] Beauregard provided supplemental authority on the

[6] In response to that letter, Murray filed an amended motion he termed an "errata" designed to more fully articulate his position on sanctions. CP 46-56. This was but the first pleading evidencing the "moving target" nature of Murray's sanctions argument.

[7] Murray's sanctions motion referenced the RPCs in passing, but it *nowhere* argued the specific RPC and civil rule violations he subsequently argued on reply. *Compare* RP 28-35, 46-53 with CP 187-92. Murray's initial motion focused on CR 11. CR 7 was mentioned only in passing. CP 33, 48. His reply raised specific arguments on CR 5, RPC 3.4, and RPC 3.6, for example. On appeal, Murray abandoned any claims that Beauregard violated CR 7, RPC 3.4, or RPC 8.4.

Where a party raises significant issues or arguments for the first time on reply as to a dispositive motion in the trial court, it is error for the trial court to consider such materials or argument in deciding the motion. *White v. Kent Medical Center, Inc.*, 61 Wn. App. 163, 168-69, 810 P.2d 4 (1991). On reply, no new arguments may be raised, and any evidence on reply is limited to "documents which explain, disprove, or contradict the adverse party's evidence." *Id.* at 169. *Accord*, *King v. Rice*, 146 Wn. App. 662, 672-73, 191 P.3d 946 (2008); *Adamsu v. Port of Seattle*, 185 Wn. App. 23, 340 P.3d 873 (2014), *review denied*, 183 Wn.2d 1009 (2015). *See also*, KCLR 7(b)(4).

First Amendment issue. CP 182-86. The trial court permitted Murray to file a sur-reply. CP 275-76.

Without any oral argument, RP 2,[8] the trial court made an oral ruling on May 4, 2017 generally stating that Beauregard violated RPC 3.6(a) in his actions filing documents in the court file, RP 3, and imposing $5,000 in sanctions under CR 11. RP 5. The court entered its actual order on sanctions that same day. CP 300-02.[9] The trial court made no findings either explaining its rationale for sanctions or the amount it chose to impose. *Id*. Ironically, after meeting with the media without counsel present, that court also entered an order on "media coverage" on May 4 setting forth its policies as to counsel's interactions with the media. CP 296-99. When Heckard dismissed his action pursuant to CR 41, CP 310-11, Beauregard appealed the May 4, 2017 sanctions order. CP 312-19.[10]

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[8] The trial court's bailiff notified counsel by email on May 3 as follows:

> Good Morning!
>
> Tomorrow's hearing will be at 1:30PM tomorrow in E854 instead of W764. Judge Galván will be issuing her oral ruling on the motion for sanctions, there will be NO ORAL ARGUMENT TOMORROW.
>
> This hearing/meeting will also go over expectation regarding media conduct in the courtroom. If you have any questions, please let me know.
>
> Thank you!

[9] Beauregard paid the sanction.

[10] After the briefs were filed, further allegations of sexual improprieties were leveled at Murray, leading to his resignation as Seattle's Mayor, prior to the expiration of

E. ARGUMENT WHY REVIEW SHOULD BE GRANTED

This was a highly politically charged case.[11] Nevertheless, the trial court permitted itself to be swayed by former Seattle Mayor Ed Murray's contention that counsel for the man who was accusing him of sexual improprieties, Lincoln Beauregard, should be sanctioned under CR 11 for filing documents in the court file for an allegedly improper purpose – "generating publicity." In fact, RPC 3.6 permitted Beauregard to respond to the media activities of Murray and Murray's counsel designed to impugn his client. Moreover, the trial court's order on sanctions violated Beauregard's First Amendment and article I, § 5 rights.[12]

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his term in office. *See* Jim Brunner, Daniel Beckman, Lewis Kamb, *Seattle Mayor Ed Murray Resigns after Fifth Child Sex Abuse Allegation*, Seattle *Times*, September 12, 2017.

[11] Courts confronted in high profile cases face significant challenges. Certainly a case in which an incumbent mayor of a major American city sued for illicit sexual contacts qualified as such a high profile case. A comprehensive analysis of the special challenges such a case presents is found in Gerald L. Wetherington, Hanson Lawton, Donald I. Pollock, *Preparing for the High Profile Case: An Omnibus Treatment for Judges and Lawyers*, 51 Fla. L. Rev. 425 (1999). Such cases compel careful attention by trial courts to media involvement and explicit advice to parties and their counsel of the court's approach to the case.

The trial court here failed from the start to recognize the need for proper handling this high profile case. It did not consult with counsel on media activities, or advise them of appropriate, or inappropriate, extra-court media actions. Instead, it immediately entertained Murray's motion for sanctions, *although it was Murray's counsel that first conducted press conferences on the issues in the case.*

[12] Article I, § 5 permits Washington citizens to "freely speak, write, and publish on all subjects." Beauregard will refer herein to his First Amendment rights generally.

Review is merited under RAP 13.4(b)(4) because this Court has never definitively addressed that aspect of CR 11 relating to the use of court filings for an improper purpose nor CR 5 relating to court filings. Review is also merited under RAP 13.4(b)(1) because the Court of Appeals published decision contradicts this Court's decision in *State v. Bassett*, 128 Wn.2d 612, 911 P.2d 385 (1996).

(1) Beauregard Did Not Violate CR 11 in Filing Certain Correspondence with the Trial Court

Division I's decision on CR 11 deserves review because it condones the trial court's failure to comply with this Court's CR 11 jurisprudence, and Beauregard's filings were not for an "improper purpose." RAP 13.4(b)(1).

CR 11 provides that a person signing a pleading impliedly warrants that it asserts legitimate positions and is not filed for an improper purpose. The rule is designed to deter frivolous actions or theories, *Bryant v. Joseph Tree, Inc.*, 119 Wn.2d 210, 220, 829 P.2d 1099 (1992). It is also meant to prevent filings for improper purposes.

Procedurally, this Court has been unambiguous in requiring the entry of findings of fact and conclusions of law in which the precise improper conduct is articulated and the rationale for any sanctions is set forth. *Biggs v. Vail*, 124 Wn.2d 193, 201, 876 P.2d 448 (1994). *See*

Johnson v. City of Tacoma, 2018 WL 4770893 (2018) (Division II reversed and vacated CR 11 determination because trial court failed to enter requisite findings of fact to document ruling, rendering ruling untenable).

The trial court's sanctions order is devoid of such specificity, CP 300-02, but Division I "reconstructed" the basis for the sanctions, nevertheless. Op. at 9-10.[13] That was error. Trial courts are not free to sanction lawyers or parties without findings. Review is merited. RAP 13.4(h)(1).[14]

While the law on frivolous actions under CR 11 is well-developed, the law on filings for allegedly improper purposes is not. The language of CR 11(a) provides some guidance when it states that pleadings are filed for an improper purpose when they are meant "to harass or to cause unnecessary delay or needless increase in the cost of litigation." The cases

[13] For example, Division I asserted that the trial court "implicitly" recognized that Beauregard's conduct may qualify for an exception to RPC 3.6. Such a reconstruction of the trial court's *unstated* thought process is precisely why findings on sanctions are essential.

[14] This Court made this same point in *Teter v. Deck*, 174 Wn.2d 207, 274 P.3d 336 (2012) addressing discovery sanctions. Citing *Blair v. TA-Seattle E No. 176*, 171 Wn.2d 342, 254 P.3d 797 (2011), the Court reversed a sanction order excluding a witness where the trial court made no real record having held no colloquy with counsel, refused to allow oral argument on the motion, and failed to enter specific findings on the willfulness of any discovery sanctions, or consideration of less onerous sanctions. 174 Wn.2d at 217-18. The trial court's sanction process hardly afforded Beauregard a legitimate process where it is not clear if the CR 11 sanctions were for violations of CR 5, or for violations of RPC 3.6.

in which sanctions have been imposed have confirmed such requirements.[15]

This Court has never addressed precisely what constitutes an "improper purpose." The trial court did not find precisely what "improper purpose" was served by Beauregard filing correspondence and subpoenas in the court file. If that "illicit purpose" was pre-trial publicity, such filings do not violate RPC 3.6 under the specific circumstances of this high profile case where Murray was desperate to try his case in the media, given the impact of the case on his political career.

Beauregard did not violate CR 5 as to his court filings under the unusual circumstances here,[16] but, even if he did, Division I's opinion

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[15] *E.g.*, *Bryant*, 119 Wn.2d at 219 (delay); *Harrington v. Pailthorp*, 67 Wn. App. 910, 912, 841 P.2d 1258 (1992), *review denied*, 121 Wn.2d 1018 (1993) (harassment); *Suarez v. Newquist*, 70 Wn. App. 827, 855 P.2d 1200 (1993) (attorney files multiple affidavits of prejudice to delay proceedings); *Skilcraft Fiberglass, Inc. v. Boeing Co.*, 72 Wn. App. 40, 863 P.2d 573 (1993) (filing of improper motion for default).

[16] Murray never mentioned CR 5 in his opening motion, CP 28-35, 46-53, and Division I concedes the trial court never expressly found that Beauregard violated the rule, op. at 13, but it addressed its alleged violation anyway, op. at 11-13, again reconstructing the trial court's unstated basis for its arbitrary decision. Beauregard did not violate CR 5 because CR 5(i) specifically references the pleadings that cannot be filed and the correspondence and subpoenas here do not fall within the rule. Specifically, the documents at issue here included correspondence between legal counsel and subpoenas and/or deposition notices that were served upon third parties. Inter-counsel correspondence and other correspondence are often filed in court files in our State. In fact, King County's electronic filing system is specifically designed to allow for the filing of "CORRESPONDENCE" or "SUBPOENAS" with the court. CP 103-04. Filing correspondence with the trial court is permissible, a basic part of any litigation attorney's job is making a record with the court. The record is used for various purposes including to log a history about the litigation, including discovery process, and to create a record for appeal. All of the letters and subpoenas were filed in anticipation of upcoming motions practice concerning (1) scheduling depositions, (2) Murray's deposition, and (3) contested subpoenas. The litigation history is also used by whoever appeared as Murray's counsel in accord with CR 70.1. In certain circumstances, CR 5(i) gives way to the need for a

asserts that he did so for the improper purpose of "generating publicity." Op. at 15 ("[F]iling documents with the court for the purpose of generating publicity is an improper purpose."). RPC 3.6 is implicated, and Division I's opinion misapplies that rule.

Division I concluded that the trial court believed Beauregard's illicit purpose under CR 11 was to communicate improperly with the media in violation of RPC 3.6. Op. at 14-16. The trial court asserted that Beauregard's filing practices were "for the sole purpose and intent –

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record in a case. *See, e.g., Gronquist v. Wash. State Dep't of Licensing*, 175 Wn. App. 729, 757-60, 309 P.3d 538 (2013) (trial court erred in refusing to allow inmate in PRA case to file deposition transcripts). This Court has never construed CR 5.

Critically, no King County local rule foreclosed such filings. No reported decision barred counsel from making such a filing. If, in good faith, counsel believed a record needs to be made, filing in the court file is appropriate. In fact, CR 5(d)(1) *requires* all "pleadings and other papers" to be filed with the exception of the precise discovery documents mentioned in CR 5(i) that are not to be filed. As noted in Karl B. Tegland, 3A *Wash. Practice, Rules Practice* (6th ed. 2013) at 148-49, the rationale of the drafters of CR 5(i) was to relieve Clerks' offices of administrative burden of filing discovery-related materials.

Beauregard's filing of key documents in the court file began after Murray's counsel started hosting press conferences and attempting to discuss the terms of Murray's IME without ever filing a notice of appearance. From the day Heckard's lawsuit was filed, Sulkin hosted a succession of press conferences holding himself out as Murray's attorney, but, for two full weeks, Sulkin ignored correspondence sent directly to him (and not filed with the court). Sulkin even ignored an email from Judge Bradshaw's judicial assistant. When "a defendant has not appeared, service of notice or papers in the ordinary proceedings in an action need not be made upon him or her." RCW 4.28.210. By law, Sulkin was not entitled to be formally acknowledged as legal counsel even as it contemporaneously hosted press conferences. If Sulkin wanted to receive all of the filed correspondence, all he had to do was file a proper notice of appearance with the trial court. Instead, he opted to delay, and ignore repeated letters that were sent directly to him, to slow the litigation in light of the impending mayoral candidate-filing deadline of May 19, 2017. Murray's sanctions motion was a tool to shift the focus away from his damaged campaign fortunes.

apparent intent of generating publicity that has the potential of prejudicing the administration of justice." RP 5. This was error. Beauregard did not violate that rule, particularly where proof of RPC violations by attorneys ordinarily requires a higher than usual burden of proof.[17]

This Court's guidance is needed regarding RPC 3.6, because this Court has never clearly expressed when that rule is violated. The importance of clarity from this Court in enforcing the RPCs was emphasized *Chism v. Tri-State Construction, Inc.*, 193 Wn. App. 818, 374 P.3d 193, *review denied*, 186 Wn.2d 1013 (2016). There, Division I reaffirmed that the regulation of the practice of law rests with this Court alone. *Id.* at 839-40. Thus, Division I held that a trial court improperly exercised its authority to disgorge fees based upon alleged RPC violations where the RPCs at issue there were insufficiently precise to put counsel on notice that he was violating them. Citing *In re Disciplinary Proceedings against Haley*, 156 Wn.2d 324, 338, 126 P.3d 1262 (2006), in the absence of clear guidance, Division I noted that any discipline could only be imposed prospectively, *id.* at 843, and concluded that "the superior court's authority to order

[17] In order to establish an RPC violation meriting discipline, this Court mandates that such violation be proved by a higher standard than traditional preponderance of the evidence – clear preponderance. *In re Disciplinary Proceedings Against Marshall*, 160 Wn.2d 317, 330, 157 P.3d 859 (2007) ("The clear preponderance standard requires more proof than a simple preponderance but less than beyond a reasonable doubt."). Neither Division I nor the trial court evidenced any appreciation of that fact.

disciplinary remedies is limited to the subset of cases involving violations of the RPCs in which the applicability of the cited RPC to the attorney's conduct has been clearly established." *Id.* at 844.

RPC 3.6, allegedly violated by Beauregard, is hardly a picture of clarity, containing very imprecise language as to when an attorney may be found (by a clear preponderance) to have violated it. With regard to RPC 3.6 specifically, the rule contemplates a balancing of interests. RPC 3.6 cmt. [1]. It allows fair comment by an attorney impacted by comments from the other side. *Id.* at cmt. [7]. Indeed, the trial court here did not have a "media policy" in place until *the same day* Beauregard was sanctioned, hardly giving him "advance notice" that he was about to face sanctions by the trial court.

But Beauregard did not violate RPC 3.6 in any event. RPC 3.6(a) provides a high bar to a violation of the rule:

> (a) A lawyer who is participating or has participated in the investigation or litigation of a matter shall not make an extrajudicial statement that the lawyer *knows or reasonably should know* will be disseminated by means of public communication and will have a *substantial likelihood of materially prejudicing an adjudicative proceeding in the matter*.

(emphasis added).[18] Further, RPC 3.6(c) states that:[19]

> a lawyer may make a statement that a reasonable lawyer would believe is required to protect a client from the substantial undue prejudicial effect of recent publicity not initiated by the lawyer or the lawyer's client. A statement made pursuant to this paragraph shall be limited to such information as is necessary to mitigate the recent adverse publicity.

Beauregard did not violate a court order in communicating with the media. No order was in place until the same day the trial court entered its sanction order, and his actual court file filings would not violate the order in any event. At no point did Murray allege that any of the specific substantive information contained in any pleadings violated RPC 3.6. Moreover, even Murray's counsel, who first held press conferences in this case, acknowledged that Beauregard, like them, could communicate with the media. "To be clear – if consistent with the Rule of Professional Conduct – Mr. Beauregard wishes to communicate directly with the press, that is his right." CP 28.

A violation of RPC 3.6(a) requires the dissemination of information that could cause a "substantial likelihood of materially prejudicing an

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[18] It is noteworthy that an attorney may disclose to the media both "information contained in a public record" and "the scheduling or result of any step in litigation." RPC 3.6(b).

[19] *See generally*, Robert H. Aronson, *An Overview of the Law of Professional Responsibility: The Rules of Professional Conduct Annotated and Analyzed*, 61 Wash. L. Rev. 823, 871-72 (1986). *See also,* comment [7] to RPC 3.6 (in Appendix).

adjudicative proceeding." The trial court failed to identify *any* substantive information contained within, or beyond, the court filings that disseminated any information that would actually run afoul of RPC 3.6(a). There is no proof by Murray, and no express finding by the trial court, that Beauregard *knew* that his firm's court filings in this case had the *substantial* likelihood of *materially* prejudicing the trial of Heckard's case against Murray. Without the identification of substantively offending information, there cannot be an RPC 3.6 violation. Murray's lawyers accused Beauregard of using an improper *method* of disseminating information. They never critiqued any *substance*.

The trial court had an obligation to balance Beauregard's right of expression and the trial process in determining if Beauregard violated RPC 3.6(a). Comment [1] to RPC 3.6. *See* Appendix. The trial court failed to do so either in its oral ruling or written order. Nor could it on this record.

Murray's lawyers, and their experts, did not cite any authority supporting the notion that RPC 3.6 can apply to court-filed documents or scheduling information. Indeed, the safe harbor provisions of RPC 3.6(b) provide that such information that is filed can be shared with the public.

Finally, Murray publicly vilified Beauregard's client, other accusers, and his law firm. Specifically, Sulkin and Murray spread a false narrative that his law firm planned an alleged anti-gay right wing

conspiracy. Sulkin contributed to this narrative during an early "game changer" press conference. Murray made similar statements repeatedly on television, and in a widely-published op-ed in the *Stranger*. Murray's April 14 op-ed in the *Stranger* implicated Beauregard and his firm in a "conspiracy." CP 97, 133-43. Beauregard was entitled to respond on behalf of his client, a well as to protect his and his firm's reputations.

This Court has the ultimate responsibility of construing the RPCs. It has not addressed RPC 3.6. Review of Division I's erroneous treatment of RPC 3.6 is merited. RAP 13.4(b).

(2) The Trial Court's Sanctions Order Invades Beauregard's First Amendment Rights and Prejudices His Client's Right of Representation

Beauregard argued below that the trial court would violate his First Amendment rights if it sanctioned him. CP 182-86. The trial court did not address his constitutional argument either in its oral ruling or written order. Division I fails to do so in any depth. Op. at 16-18.[20] Again reconstructing what the trial court allegedly thought in sanctioning Beauregard, Division I

[20] Division I's failure to come to grips with this issue is readily explained by Murray's superficial discussion of it. Murray simply argued below, without any citation of authority, that the trial court's imposition of a $5000 fine against Beauregard for "using the court filing system for the sole purpose of communicating with the media" is not a deterrent to counsel from speaking with the media. Perhaps someone less cynical might believe that Murray's counsel would not have filed the sanctions motion if Beauregard had first held a press conference or written an op-ed piece, rather than Sulkin and Murray.

states that he was sanctioned not for communicating with the media ("generating publicity"), but "improper use of the court file," op. at 17, something it had previously acknowledged the trial court did not find. Assuming, *arguendo* that Beauregard's alleged "improper purpose" in making the court filings was to "generate publicity" in violation of RPC 3.6, his First Amendment rights are implicated.

Merely because a person is an officer of the Court does not mean that her/his constitutional rights are forfeited. Indeed, even judges continue to enjoy First Amendment rights notwithstanding their need to be impartial neutrals.[21] This principle is no less true for attorneys. It is a well-developed principle of both state and federal constitutional law that efforts to restrict counsel's communication with the media violate First Amendment principles.

In *State v. Bassett*, 128 Wn.2d 612, this Court held in a *per curiam* opinion that pre-trial orders limiting counsel's ability to communicate with the media by barring *any* discussion of the case outside the courtroom, violated the First Amendment, even in a high-profile aggravated first-

[21] *See Republican Party of Minnesota v. White*, 536 U.S. 765, 122 S. Ct. 2528, 153 L. Ed. 2d 694 (2002) (Canon of Judicial Conduct barring judicial candidates from announcing their views on disputed legal or political issues held unconstitutional). *See also*, *In re Disciplinary Proceedings against Sanders*, 135 Wn.2d 175, 188, 1955 P.2d 369 (1998) ("A judge does not surrender First Amendment rights upon becoming a member of the judiciary.").

degree murder case, because such a gag order was a prior restraint on speech. Such prior restraint was presumptively unconstitutional in the absence of at least a reasonable likelihood that publicity would prejudice a fair trial, and no other means existed to mitigate the effect of any such publicity. *Id*. at 616.[22] Simply put, overboard efforts by trial courts to gag parties or counsel, even in civil cases, violate the First Amendment.[23]

Here, the trial court demonstrated no awareness that its sanctions order, retroactively punishing Beauregard for media contacts, constituted a violation of his free speech rights. Division I's opinion condones the trial court's failure to address the issue and offers little cogent analysis of the First Amendment implications of the trial court's actions. RP 2-6. As noted *supra*, Beauregard did not violate RPC 3.6 because his actions created no demonstrable substantial likelihood that the trial of the case would be materially prejudiced. In the absence of such proof, RPC 3.6 as applied to him was unconstitutional. *Gentile v. State of Nevada Bar*, 501 U.S. 1030, 111 S. Ct. 2720, 115 L. Ed. 2d 888 (1991) (Court concluded that Nevada's

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[22] *See generally*, Jonathan Eric Pahl, *Court-ordered Restrictions on Trial Participant Speech*, 57 Duke L.J. 1113 (2008) (reaffirming the point made *supra* regarding "the extreme legal uncertainty facing trial participants who desire to speak publicly about court proceedings.").

[23] *Ex Parte Wright*, 166 So. 3d 618 (Ala. 2014); *Atlanta Journal-Constitution v. State*, 596 S.E.2d 694 (Ga. App. 2004). *See also*, *PCG Trading LLC v. Seyfarth Shaw, LLP*, 951 N.E.2d 315 (Mass. 2011) (lawyer's comment to national law journal permissible).

RPC was void for vagueness in the absence of proof of substantial likelihood of material prejudice to the trial proceedings). Review on this important constitutional issue is merited. RAP 13.4(b)(4).

F. CONCLUSION

The trial court erred in imposing sanctions against Beauregard. This Court cannot allow the Court of Appeals' published opinion affirming that ruling to stand. This Court should properly analyze CR 11 and RPC 3.6, and vacate the sanctions order. Costs on appeal should be awarded to Beauregard.

DATED this 16th day of October, 2018.

Respectfully submitted,

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APPENDIX

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DELVONN HECKARD, Plaintiff, v. MAYOR EDWARD MURRAY, Respondent, LINCOLN BEAUREGARD, Appellant.	)	No. 77019-5-I DIVISION ONE PUBLISHED OPINION FILED: October 8, 2018

LEACH, J. — Lincoln Beauregard appeals the trial court's imposition of CR 11 sanctions against him. The trial court found that Beauregard filed documents with the court for the improper purpose of generating publicity in violation of CR 11. Beauregard claims that he did nothing that could serve as a basis for a CR 11 violation. We disagree and affirm.

FACTS

This politically charged case began on April 6, 2017, when Delvonn Heckard, through Beauregard, filed this lawsuit against Edward Murray. At the time, Murray was the elected mayor of Seattle, serving the last year of his term and planning to run for reelection. The candidate filing period for this election ran from May 15 to May 19, 2017. Heckard alleged that Murray had paid him for sex

while Heckard was a minor. Anticipating claims of political motivation, Beauregard also asserted,

> Natural speculation would lead some people to believe that D.H.'s actions are politically motived—which is not exactly true. In this regard, D.H. is disturbed that Mr. Murray maintains a position of trust and authority, and believes that the public has a right to full information when a trusted official exploits a child. To the extent that D.H. has any political motivations for outing Mr. Murray, they stop there.

That same day, Murray's attorney, Robert Sulkin, hosted a press conference on Murray's behalf and publicly denied the allegations against Murray. The next day, Beauregard sent Sulkin a letter stating that Heckard was available for a video deposition. On April 9, Beauregard sent Sulkin another letter asking about discovery and service of process. Sulkin did not reply to either letter.

On April 11, Sulkin called another press conference. He stated that the lawsuit was meritless and Heckard's claims were part of an "anti-gay political conspiracy." On April 12, Beauregard had the summons and complaint served on Murray. On April 14, a Seattle newspaper, The Stranger, published a Murray op-ed stating that the accusations were false and made to advance an anti-gay political agenda.

On April 17, the assigned judge's bailiff advised Beauregard, other counsel of record, and Sulkin of the judge's availability that week "should counsel

wish to address preliminary matters and for planning purposes." The same day, Beauregard filed an affidavit of prejudice against the assigned judge. The next day, The Stranger quoted Sulkin saying that Beauregard and his firm were "question[ing] the integrity of [the] highly regarded judge [assigned to the case]" and the "integrity of a highly respected doctor [who examined Murray and] whose conclusions undermine their claim." The case was reassigned to another judge.

On April 19, Heckard filed an amended complaint. Beauregard attached to this complaint a letter to Sulkin commenting on the press conferences, the fact that Sulkin had not yet filed a notice of appearance, and Sulkin's statements about Beauregard taking issue with the judge originally assigned to the case. Beauregard and his firm also began copying select documents to the trial court file.

Over the course of the proceedings, in addition to the letter attached to the amended complaint, Beauregard filed with the trial court a number of letters addressed to Sulkin and subpoenas and/or notices of deposition to three individuals, including Murray, and the City of Seattle/Seattle Police Department. In Beauregard's original, amended, and second amended subpoena and notice of deposition to Murray, he described some topics he intended to explore when questioning Murray:

> [These include] potential causes of the medical matters referenced publicly by [Murray's] attorneys in a news conference on April 11,

> 2017. Those medical causes could include multiple medical complications stemming from having promiscuous sex with multiple child prostitutes. Bumps, warts, and/or moles do not always remain 30-years, depending upon the root cause. Mr. Murray will also be asked about the prior use of campaign funds to extinguish the voices of other victims, and all other topics related to this lawsuit.

The Seattle Times published articles about one of the subpoenas and/or notices of deposition and matters discussed in the correspondence that Beauregard filed. Sulkin filed a notice of appearance on April 21. He also sent Beauregard a letter asking that Beauregard stop filing with the court correspondence addressed to him. Beauregard did not.

On April 25, Murray asked the court to sanction Beauregard "under CR 11 and the Court's inherent authority for wrongly filing documents for an improper purpose." Beauregard responded to the request, and Murray replied to this response. On May 4, the trial court held a hearing to announce its oral decision. It did not permit oral argument. Neither party objected to the court's decision not to permit oral argument. Beauregard did not ask the court to reconsider its decision to proceed without oral argument and has not assigned error to this decision.

The court found that Beauregard filed the documents at issue for an improper purpose in violation of CR 11 and imposed $5,000 in sanctions. Beauregard promptly paid the sanctions into the registry of the court. In June 2017, after Heckard voluntarily dismissed his lawsuit without prejudice,

Beauregard appealed the sanctions order. The parties completed briefing the appeal in November 2017.

In January 2018, the parties entered into a settlement agreement. As part of the settlement, Murray agreed to stipulate to an order vacating the trial court's sanctions order. The trial court denied a request to enter the proposed agreed order and also ordered the disbursal of the $5,000 in sanctions to the King County Bar Foundation.

Beauregard asked this court to void the trial court's order denying the request to vacate the sanctions order. A commissioner of this court denied this request but stayed the portion of the trial court's order disbursing the funds. Beauregard then amended the notice of appeal to include the trial court's order denying the request to vacate the sanctions order. Neither party requested nor provided supplemental briefing.

ANALYSIS

Beauregard challenges the scope of the issues and materials considered by the trial court and the merits of its sanctions decision. We address his challenges in this order.

Scope of Materials and Issues Considered by the Trial Court

Beauregard claims that the trial court should not have considered Murray's claims that Beauregard violated RPC 3.6 and CR 5(i) and supporting expert

declarations because Murray raised these arguments for the first time on reply. Murray responds that this court should decline to review this claim because Beauregard did not preserve it for appeal. An appellate court may refuse to review any claim of error that a party did not raise in the trial court unless one of three exceptions applies.[1] Because Beauregard did not object, he did not preserve the issue for appeal.

Also, to the extent that the trial court may have considered material it should not have, Beauregard has not shown that he was prejudiced. So any error was harmless. King County Super. Ct. Local Civ. R. (KCLR) 7(b)(4)(G) states, "[A]ny reply material which is not in strict reply[ ] will not be considered by the court over objection of counsel except upon the imposition of appropriate terms, unless the court orders otherwise." Moreover, "[r]ebuttal documents are limited to documents which explain, disprove, or contradict the adverse party's evidence."[2]

Beauregard asserts that Murray violated KCLR 7(b)(4)(G) by claiming for the first time in his reply brief and supporting declarations that Beauregard violated RPC 3.6 and CR 5(i). The application of court rules is a question of law that an appellate court reviews de novo.[3]

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[1] RAP 2.5(a).

[2] White v. Kent Med. Ctr., Inc., P.S., 61 Wn. App. 163, 168-69, 810 P.2d 4 (1991).

[3] Kim v. Pham, 95 Wn. App. 439, 441, 975 P.2d 544 (1999).

Murray's request for sanctions stated that Beauregard's challenged conduct was "inconsistent with CR 7 and the Rules of Professional Conduct." Indeed, the request did not mention either RPC 3.6 or CR 5(i). But Beauregard's response claimed that Murray's counsel was "unable" to cite any rule that he violated. Beauregard also stated that RPC 3.6 gave him license to "publicly discuss matters that have been filed with the Court." In direct reply to this argument, Murray responded that Beauregard violated RPC 3.6.

Beauregard also claimed in his response that there is "no rule that precludes filing discovery related correspondence and/or subpoenas." Again, in direct response, Murray asserted that Beauregard violated CR 5(i), which generally forbids filing discovery documents with the court.

Murray also submitted with his reply two expert ethics witnesses' declarations supporting his claims that Beauregard violated RPC 3.6 and CR 5(i). We conclude that Murray's counterarguments in his reply brief sufficiently answered Beauregard's arguments. The expert declarations, however, were not necessary to "explain, disprove, or contradict" Beauregard's claims and were outside of the scope of a "strict reply." Even so, the trial court's consideration of these declarations was harmless. The trial court did not find that Beauregard violated RPC 3.6, as discussed below, so it did not rely on the declarations to support its decision.

CR 11 Sanctions

Beauregard next claims that the trial court abused its discretion by imposing sanctions under CR 11 because no rule prohibits an attorney from filing with the trial court correspondence addressed to opposing counsel or subpoenas and/or notices of deposition. We disagree. Beauregard's conduct violated CR 5(i) and CR 11.

CR 11 requires that attorneys sign all pleadings, motions, and legal memoranda. This signature constitutes the attorney's certification that to the best of the attorney's "knowledge, information, and belief," formed after a reasonable inquiry, the pleading, motion, or memorandum is

> (1) . . . well grounded in fact; (2) . . . warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law or the establishment of new law; [and] (3) . . . not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.[4]

If an attorney signs a pleading, motion, or memorandum in violation of this rule, "the court, upon motion or upon its own initiative, may impose upon the person who signed it . . . an appropriate sanction."[5] An appellate court reviews a trial court's imposition of CR 11 sanctions for an abuse of discretion.[6] A trial court abuses its discretion when "the decision is manifestly unreasonable or

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[4] CR 11(a)(1)-(3) (emphasis added).
[5] CR 11(a)(4).
[6] Biggs v. Vail, 124 Wn.2d 193, 197, 876 P.2d 448 (1994).

exercised on untenable grounds or for untenable reasons."[7] When reviewing CR 11 sanctions, an appellate court "must keep in mind that '[t]he purpose behind CR 11 is to deter baseless filings and to curb abuses of the judicial system.'"[8]

At issue here is whether Beauregard filed documents for an improper purpose. Beauregard claims that the trial court did not "find, precisely" what was the improper purpose. When a trial court imposes CR 11 sanctions, it must "specify the sanctionable conduct in its order" and make a finding that the document is either not grounded in fact or law or the attorney filed the document for an improper purpose.[9] The written findings requirement exists to allow the appellate court to review the issues raised on appeal, so a trial court's failure to enter written findings does not require reversal "where the court's comprehensive oral ruling is sufficient to allow appellate review."[10]

Here, the trial court stated,

> In reviewing these documents, the court finds troubling not only the subject matter of the filings proffered by the plaintiff, but the manner in which this occurred.
>
> Plaintiff was clearly aware that his behavior was the subject of a motion, and, nevertheless, willfully and with a flagrant disregard for established legal norms, continued to file documents that were irrelevant to the matter before the court, nonresponsive to

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[7] State v. Ancira, 107 Wn. App. 650, 653, 27 P.3d 1246 (2001).

[8] Biggs, 124 Wn.2d at 197 (quoting Bryant v. Joseph Tree, Inc., 119 Wn.2d 210, 219, 829 P.2d 1099 (1992)).

[9] Biggs, 124 Wn.2d at 201.

[10] State v. Bynum, 76 Wn. App. 262, 266, 884 P.2d 10 (1994).

> the pleadings at issue, and for the sole purpose and intent—apparent intent of generating publicity that has the potential of prejudicing the administration of justice.
>
> Therefore, the defense motion for sanctions pursuant to CR 11 is granted. The court is imposing sanctions in the amount of $5,000.

Although the trial court did not make written findings specifying the sanctionable conduct, its oral ruling makes clear that it found Beauregard filed the documents at issue for the improper purpose of "generating publicity that has the potential of prejudicing the administration of justice."

Beauregard next claims that he did not violate CR 11 because filing documents to generate pretrial publicity does not violate RPC 3.6 or any other civil rule and is not an improper purpose. We disagree.

A. RPC 3.6

Beauregard contends that the trial court erred in using an RPC 3.6 violation as a basis for imposing CR 11 sanctions because he did not violate RPC 3.6.

The relevant provisions of RPC 3.6 are as follows:

> (a) A lawyer who is participating or has participated in the investigation or litigation of a matter shall not make an extrajudicial statement that the lawyer knows or reasonably should know will be disseminated by means of public communication and will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter.
>
> (b) Notwithstanding paragraph (a), a lawyer may state:
>
> . . .
>
> (2) information contained in a public record.

RPC 3.6 restricts lawyers' extrajudicial communications with the media. In its oral ruling, the trial court explained that RPC 3.6(b)(2) exempts lawyers from these restrictions if they state information contained in a public record. The court stated, "Unless specifically sealed by a court, items contained in court files are matters of public record." And Beauregard filed the documents at issue in the trial court file. After implicitly recognizing that Beauregard's conduct may qualify under an exception clause of RPC 3.6., the court did not frame the issue as whether his extrajudicial statements were proper. Rather, the court defined the issue as a "question of what documents are properly filed before this court." The court did not find that Beauregard violated RPC 3.6.

B. CR 5(i)

Beauregard also contends that he did not violate CR 5(i). With limited exceptions, CR 5(i) prohibits parties from filing discovery material with the court:

> Depositions upon oral examinations, depositions upon written questions, interrogatories and responses thereto, requests for production or inspection and responses thereto, requests for admission and responses thereto, and other discovery requests and responses thereto shall not be filed with the court unless for use in a proceeding or trial or on order of the court.

(Emphasis added.)

First, Beauregard claims that he did not violate CR 5(i) because it does not prohibit filing with the court correspondence to opposing counsel or subpoenas and/or notices of deposition when counsel believes he must do so to

make a record. Beauregard asserts that he was justified in filing with the court the documents at issue to make a record on two grounds: (1) Sulkin did not file his notice of appearance stating that he was Murray's counsel until two weeks after Heckard filed his lawsuit and (2) Sulkin did not respond to either of the two letters that Beauregard sent him within three days of Heckard filing his lawsuit.

Beauregard relies on Gronquist v. Department of Licensing[11] to support the proposition that the CR 5(i) filing restrictions do not apply when a party believes it is necessary to file select documents to make a record. Gronquist, however, does not support this proposition.

Gronquist sought review of the trial court's refusal to allow him to file deposition transcripts that he claimed supported his pending motions and undermined the opposing party's motion for summary judgment. Division Two of this court held that Gronquist was entitled to file the depositions, but the court did not decide that a need to make a record overrode the restrictions of CR 5(i).[12] Instead, the court reasoned that CR 5(i) permitted the filing of the depositions because they were "'for use in a proceeding or trial or on order of the court.'"[13]

Alternatively, Beauregard contends that similar to Gronquist, CR 5(i) permits filing the documents at issue because they related to upcoming motions

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[11] 175 Wn. App. 729, 309 P.3d 538 (2013).
[12] Gronquist, 175 Wn. App. at 759.
[13] Gronquist, 175 Wn. App. at 759 (quoting CR 5(i)).

practice about scheduling depositions, Murray's deposition questions, and contested subpoenas. But these documents did not relate to any pending motions when Beauregard filed them. No discovery disputes had arisen. No party had sought relief through a pending motion.

The trial court did not expressly find that Beauregard violated CR 5(i). But it explained that "[CR 5(i)] indicates that discovery materials [are] not to be filed except with certain exceptions, none of which exist in this instance." We conclude that Beauregard filed notices of deposition in contravention of CR 5(i), which specifies that "other discovery requests . . . shall not be filed with the court unless for use in a proceeding or trial." Further, CR 26(h) states, "A party filing discovery materials . . . for use in a proceeding or trial shall file only those portions upon which the party relies."

Although the subpoenas and/or notices of deposition Beauregard filed related to this case, unlike in Gronquist, the court did not have before it any pending proceeding where these documents supported or undermined a request for relief. Beauregard was not relying on them for "use in a proceeding or trial" as CR 5(i) and CR 26(h) require. Because Beauregard violated CR 5(i), the court did not abuse its discretion by considering CR 5(i) when making its determination that Beauregard filed documents with the court for an improper purpose in violation of CR 11.

C. Improper Purpose

Beauregard casts doubt on the trial court's statement that he filed the documents at issue with the "apparent intent of generating publicity" and alternatively claims that if he did file the documents to generate publicity, this was not an improper purpose.

First, Beauregard has acknowledged that he filed with the court correspondence addressed to Sulkin and subpoenas and/or notices of deposition to allow the press access to them and to combat Sulkin's press conferences. In opposition to Murray's motion for sanctions, Beauregard filed a letter with the trial court addressed to Sulkin stating, "On the merits, your motion's express purpose is to intimidate us from making the record that we deem appropriate. By law, you are effectively asking the Court to seal the files from public view by way of unlawful strong arm tactics." And in his response to Murray's motion, Beauregard stated that he was "abundantly aware that the media [was] watching this lawsuit. In full accord with Washington's public policy favoring an open court system, when reporters have questions about the status of the litigation, the undersigned attorneys avoid hosting press conferences and, instead, just refer interested individuals to the filings of record." He also stated, "In order to keep a proper record, the undersigned attorneys began filing correspondence with the Court to ensure that the litigation history was properly crystalized, and whatever

lawyers ever finally filed a Notice of Appearance would have full information." Beauregard makes clear that he filed the documents at issue to help facilitate the media's access to them. He does not claim that the court needed to review these documents to resolve any pending request for relief.

Second, filing documents with the court for the purpose of generating publicity is an improper purpose. The court file is not a bulletin board for attorneys to post information for the press. Neither is it an archive for communications between lawyers. It exists so attorneys may provide the court with documents relevant to the proceedings pending before it so that the court can consider this information when resolving a request for relief. Attorneys may communicate with the press through a number of avenues. But the court file does not exist for the purpose of facilitating this communication. Beauregard's written statements provide sufficient support for the trial court's conclusion that he filed the documents for the improper purpose of generating publicity.

Beauregard also cites the drop-down menu provided online by the King County Clerk for electronic filings to justify his actions. This menu provides a path for filing subpoenas and correspondence. But this menu does not purport to provide litigants with advice about what documents they may properly file with the court. As noted above, when subpoenas and correspondence are relevant to a pending request for relief, the applicable rules permit filing them. Beauregard's

argument fails to consider this threshold criteria. He also fails to provide any authority supporting his implicit assumption that this drop-down menu could modify the requirements of applicable court rules.

At oral argument, Beauregard's counsel questioned the trial court's decision not to hear oral argument before deciding the sanctions motion, particularly given the significance of the imposition of sanctions. But Beauregard did not object to this procedure at the trial court, did not assign error to it, and did not discuss it in his briefing. We decline to consider an issue raised for the first time at oral argument.

First Amendment

Last, Beauregard asserts that sanctions based on his alleged violation of RPC 3.6 violated his First Amendment rights because the trial court retroactively punished him for his media contacts without finding that his actions created a demonstrable, substantial likelihood that the trial of the case would be materially prejudiced as a result of his conduct. This court reviews constitutional issues de novo.[14]

"Under the First Amendment, [no limitation on counsel's speech] is permissible unless the court finds there is at least 'a reasonable likelihood that

[14] State v. Clark, 187 Wn.2d 641, 649, 389 P.3d 462 (2017).

pretrial publicity will prejudice a fair trial.'"[15] Because we decide that the trial court did not find that Beauregard violated RPC 3.6, we do not review this claim as it relates to an RPC 3.6 violation. And the trial court did not retroactively punish Beauregard for his media contacts.

First, Beauregard had notice that if he continued to file with the court the documents at issue, his behavior would be subject to a sanctions request. Sulkin wrote to Beauregard asking him to stop filing letters addressed to him, "Please confirm you will no longer file letters to me with the Court. If no such confirmation is immediately forthcoming, we will be forced to take appropriate action." Still, Beauregard continued to file letters addressed to Sulkin. The trial court noted this in its ruling.

Second, the trial court did not restrict Beauregard's ability to communicate with the media by way of press conference or any other permissible avenue. It did not restrict the content of his communications with the media. It did not sanction him for the content of his communications. Instead, it sanctioned him for improper use of the court file. After the trial court imposed sanctions, it did enter an order governing media coverage in the courtroom. But Beauregard

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[15] State v. Bassett, 128 Wn.2d 612, 615-16, 911 P.2d 385 (1996) (holding that pretrial orders limiting counsel's ability to communicate with the media violated the First Amendment because it was a prior restraint on speech, which was presumptively unconstitutional) (internal quotation marks omitted) (quoting In re Dow Jones & Co., 842 F.2d 603, 610 (2nd Cir. 1988)).

does not appeal this order. The trial court did not violate Beauregard's First Amendment rights by imposing CR 11 sanctions.

Attorney Fees

Murray asks that this court award him attorney fees under RAP 18.9 because Beauregard's appeal was frivolous. "RAP 18.9(a) permits an appellate court to award a party attorney fees . . . when the opposing party files a frivolous action. An appeal is frivolous if . . . the court is convinced that the appeal presents no debatable issues upon which reasonable minds might differ."[16] Here, although Beauregard's claims lack merit, they are not frivolous. We deny Murray's request for attorney fees.

The Trial Court's Denial of the Parties' Stipulated Motion To Vacate

Beauregard also appeals the trial court's January 2018 order denying the parties' stipulated motion to vacate the sanctions order. Because the trial court did not abuse its discretion by imposing sanctions, it did not abuse its discretion by denying the parties' motion to vacate the sanctions order. The fact that the parties stipulated to the motion to vacate does not make it binding on the court.[17]

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[16] Advocates for Responsible Dev. v. W. Wash. Growth Mgmt. Hr'gs Bd., 170 Wn.2d 577, 580, 245 P.3d 764 (2010).

[17] Folsom v. County of Spokane, 111 Wn.2d 256, 261, 759 P.2d 1196 (1988) (recognizing the "long-standing rule that stipulations of law are not binding").

CONCLUSION

The trial court did not abuse its discretion by imposing CR 11 sanctions after finding that Beauregard filed documents with the court for the improper purpose of generating pretrial publicity. We affirm.

Leach, J.

WE CONCUR:

Schindler, J.

Becker, J.

RPC 3.6 cmt. [1]:

> It is difficult to strike a balance between protecting the right to a fair trial and safeguarding the right of free expression. Preserving the right to a fair trial necessarily entails some curtailment of the information that may be disseminated about a party prior to trial, particularly where trial by jury is involved. If there were no such limits, the result would be the practical nullification of the protective effect of the rules of forensic decorum and the exclusionary rules of evidence. On the other hand, there are vital social interests served by the free dissemination of information about events having legal consequences and about legal proceedings themselves. The public has a right to know about threats to its safety and measures aimed at assuring its security. It also has a legitimate interest in the conduct of judicial proceedings, particularly in matters of general public concern. Furthermore, the subject matter of legal proceedings is often of direct significance in debate and deliberation over questions of public policy.

RPC 3.6(c) cmt. [7]:

> Finally, extrajudicial statements that might otherwise raise a question under this Rule may be permissible when they are made in response to statements made publicly by another party, another party's lawyer or LLLT, or third persons, where a reasonable lawyer would believe a public response is required in order to avoid prejudice to the lawyer's client. When prejudicial statements have been publicly made by others, responsive statements may have the salutary effect of lessening any resulting adverse impact on the adjudicative proceeding. Such responsive statements should be limited to contain only such information as is necessary to mitigate undue prejudice created by the statements made by others.

FILED
KING COUNTY, WASHINGTON

MAY - 4 2017

SUPERIOR COURT CLERK
BY Tara Shoemaker
DEPUTY

Hon. Veronica Alicea-Galván

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

D.H.,

Plaintiff,

v.

MAYOR EDWARD MURRAY,

Defendant.

No. 17-2-09152-9SEA

ORDER ON DEFENDANT'S MOTION FOR SANCTIONS

CLERK'S ACTION REQUIRED

Pending before the Court is Defendant's Motion for Sanctions. In connection with Defendant's Motion, the Court has reviewed the following:

(1) Defendant's Motion for Sanctions;

(2) Declaration of Malaika M. Eaton in Support of Defendant's Motion for Sanctions and Exhibits A–B attached thereto;

(3) Response to Frivolous Motion for Sanctions;

(4) Declaration of Lincoln C. Beauregard in Opposition to Defendant's Motion for Sanctions and Exhibits 1–7 attached thereto;

(5) Declaration of Julie A. Kays in Opposition to Defendant's Motion for Sanctions and the attachment thereto;

(6) Declaration of Vickie Shirer in Opposition to Defendant's Motion for Sanctions and the attachment thereto;

(7) Defendant's Reply in Support of Motion for Sanctions;

(8) Second Declaration of Malaika M. Eaton in Support of Defendant's Motion for Sanctions and Exhibits C–D attached thereto;

(9) Declaration of Arthur J. Lachman in Support of Defendant's Motion for Sanctions and the attachment thereto; and

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(10) Declaration of John A. Strait in Support of Defendant's Motion for Sanctions and Exhibits A–C attached thereto. [and]

(11) Supplemental Authority

(12) Declaration of Maurice Levon Jones;

(13) Declaration re: Deposition of Mayor Ed Murray ;

(14) Declaration of Lincoln C. Beauregard re: Photo of Jones

(15) Declaration of Lincoln C. Beauregard re: Motion for Sanction

(15) Defendant's Surreply in Support of Motion for Sanctions; and

(16) Third Declaration of Malaika M. Eaton in Support of Defendant's Motion for Sanctions and Exhibit E attached thereto.

The Court has also reviewed the records on file herein. The court hereby adopts and incorporates it's oral ruling on the issue from May 4, 2017, And being otherwise fully advised, now, therefore,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant's Motion for Sanctions is GRANTED. The Court assesses sanctions against attorney Lincoln Beauregard in the amount of $5000, to be paid to the Clerk of the Court immediately but in no event later than 10 days from the date of entry of this Order.

IT IS SO ORDERED.

DATED this 4 day of May, 2017.

Honorable Veronica Alicea-Galván
King County Superior Court Judge

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MAY -4 2017

SUPERIOR COURT CLERK
BY Tara Shoemaker
DEPUTY

SUPERIOR COURT OF WASHINGTON FOR

COUNTY OF KING

D.H.,

Plaintiff,

vs.

Mayor Edward Murray
Defendant.

No. 17-2-09152-9SEA

ORDER RE: MEDIA COVERAGE

The following order applies to all future Superior Court proceedings in the above-captioned cause of action. The purpose of this order is to provide the parties a fair trial, to preserve the dignity of these proceedings, to protect jurors' privacy, and to allow the media reasonable access.

1. For purposes of this order and any other orders regarding media coverage, "camera" includes still cameras, television cameras and video recording devices. "Television camera" includes video camera and all other video or moving picture recording devices. "Photograph" includes still photography, televising, and videotaping.

2. One television camera will be allowed in the courtroom on a daily rotation to be arranged by members of the media. Only high definition broadcast cameras will be allowed for this purpose. The courtroom television camera will be a "pool" camera and shall share its video feed with media requesting the same. The television camera shall be on a tripod in a fixed location approved by the court. Any necessary cables shall run through the courtroom and courthouse hallways in a manner that does not interfere with the operation of the courtroom or the courthouse.

3. One still camera will be allowed in the courtroom on a daily rotation to be arranged by members of the media. The courtroom still camera will be a "pool" camera and shall share its pictures with media requesting the same. The still camera shall be on a tripod in a fixed location approved by the court, shall be a minimum of a professional grade DSLR camera and shall be operated by a photographer with experience in courtroom photography.

4. "Pooling" arrangements for camera and other equipment are the sole responsibility of the media.

5. Except as otherwise provided in this order, no camera or recording device shall be permitted in the courtroom without the express permission of the court.

6. Camera and recording device operators must be representatives of the media who have obtained the permission of the court. Camera and recording device operators must be familiar with and abide by the contents of this order, while keeping in mind the published Bench-Bar-Press Principles & Considerations and GR 16.

7. If the Court determines that there is a compelling reason why a witness or participant should not be photographed in the courtroom, camera operators shall abide by the Court's direction. Otherwise, camera operators will be free to photograph anyone who participates in the trial while court is in session, subject to the other requirements of this order.

8. No interviews of parties, witnesses, attorneys, or others shall be permitted in the courtroom during the proceedings. The court will designate locations for the purpose of these interviews and inform the media of such.

9. Cellular phones and pagers shall be set to silent mode in the courtroom. If the use of any cellular phone or pager becomes disruptive to the proceedings the individual will be removed from the courtroom.

10. No camera shall focus on the papers, exhibits, or other documents or laptop computers of counsel in such a manner that the contents of these materials can be read or otherwise discerned by the viewer. The restriction does not apply to documents displayed in open court while court is in session, or if the court gives permission to film exhibits when court is not in session.

11. Sidebar conferences shall not be recorded or photographed.

12. No flashbulbs, strobe lights, or other artificial lights shall be used anywhere in the courtroom.

13. One audio system for radio broadcast purposes will be allowed in the courtroom pursuant to pooling arrangements by members of the media. The courtroom audio system will be a "pool" system and shall share its recordings with the media requesting the same. The audio system shall be in a fixed location approved by the court. Any necessary cables shall run through the courtroom and courthouse hallways in a manner that does not interfere with the operation of the courtroom or the courthouse.

14. Television equipment, audio equipment, and tripod-mounted cameras shall not be placed in or removed from the courtroom while court is in session.

15. Any camera, radio, or recording equipment that is permitted in the courtroom shall operate only while the court is in session. Live streaming and coverage is permitted, so long as there are no disruptions to court proceedings. Any live blogging of the events must occur from the overflow courtroom so as not to disrupt court proceedings.

16. Microphones used by members of the media will be allowed at the bench, the lower bench, and near the witness stand. No microphones will be allowed at counsel table.

17. Media representatives are expected to present a neat appearance in keeping with the dignity of the court and to be sufficiently familiar with the court proceedings to conduct themselves so as not to interfere with the proceedings, or to distract counsel, witnesses, jurors, or the court.

18. Counsel's conduct is governed by Rules 3.6 and 3.8 of the Rules of Professional Conduct.

19. Seating in the courtroom is limited, approximately 14-20 seats will be reserved for media who will obtain their credentials from the court. All others will be seated in the overflow courtroom. With the exception of engineers and camera operators (both still and broadcast) passes will be limited to one per organization.

20. Communication between the court and media representatives shall be through the court's bailiff.

DATED this 4 day of May, 2017

Honorable Veronica Alicea-Galván

DECLARATION OF SERVICE

On said day below, I electronically served a true and accurate copy of the ***Petition for Review*** in Court of Appeals Division I Cause No. 77019-5-I to the following parties via the method indicated:

Lincoln C. Beauregard
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Original E-filed with:
Court of Appeals, Division I
Clerk's Office

I declare under penalty of perjury under the laws of the State of Washington and the United States that the foregoing is true and correct.

DATED: October 16, 2018 at Seattle, Washington.

Matt J. Albers, Paralegal
Talmadge/Fitzpatrick/Tribe

TALMADGE/FITZPATRICK/TRIBE

October 16, 2018 - 2:38 PM

Transmittal Information

Filed with Court:	Court of Appeals Division I
Appellate Court Case Number:	77019-5
Appellate Court Case Title:	Lincoln C. Beauregard, Appellant v. Mayor Edward Murray, Respondent
Superior Court Case Number:	17-2-09152-9

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Comments:

The filing fee for the PFR will be sent directly to the Supreme Court.

Sender Name: Matt Albers - Email: matt@tal-fitzlaw.com
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