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42643-9-II  
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IN THE SUPREME COURT  
OF THE STATE OF WASHINGTON

KARL WOOLERY,

Petitioner,

v.

STATE OF WASHINGTON and COUNTY OF SPOKANE,

Respondents.

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APPEAL FROM THE SUPERIOR COURT  
OF THURSTON COUNTY

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BRIEF OF RESPONDENT COUNTY OF SPOKANE

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STEVEN J. TUCKER  
Prosecuting Attorney

Dan L. Catt  
Deputy Prosecuting Attorney  
Attorneys for Respondent Spokane County  
Spokane County Prosecutor's Office  
W. 1115 Broadway, 2<sup>nd</sup> Floor  
Spokane, Washington 99260  
(509) 477-5719

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CLERK OF THE SUPREME COURT  
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## I. INTRODUCTION

This appeal is from the Thurston County Superior Court's CR 12(b)(6) dismissal of appellant Karl Woolery's collateral attack on discretionary rulings to continue his trial date, made by the Spokane County Superior Court, in a civil case brought by Woolery in Spokane County. CP at 83-86.

To avoid redundancy and in the interest of judicial economy, Spokane County hereinafter, largely adopts the State's Response Brief by reference. Whenever clarification or expansion of an area within State's Response is made, it will be noted as follows:

Spokane County hereby agrees with the State's INTRODUCTION and hereby adopts the same by reference.

### **In Addition:**

State's INTRODUCTION references the "Legislature". Spokane County notes that the Spokane County Board of County Commissioners is also a legislative body. Accordingly, when State references legislative action in the Response Brief, Spokane County requests the Court recognize it applies legislative bodies and

legislative actions rather than limiting it to the State Legislature, unless specifically noted otherwise.

**II. RESPONDENT'S ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERRORS**

Spokane County hereby agrees with the State's "ISSUES PRESENTED ON APPEAL" and hereby adopts the same by reference.

**III. COUNTERSTATEMENT OF THE CASE**

Spokane County hereby agrees the content and presentation of State's "COUNTERSTATEMENT OF THE CASE" is accurate and hereby adopts the same by reference.

**IV. LEGAL ARGUMENT**

**A. Standard of Review**

Spokane County hereby agrees with the State's "Standard of Review" and hereby adopts the same by reference.

**B. Woolery's Appeal Is Moot As There Is No Relief That A Court Can Award To Address His Alleged Injuries.**

Spokane County hereby agrees with the State that "Woolery's Appeal Is Moot As There Is No Relief That A Court Can Award To

Address His Alleged Injuries” and hereby adopts the same by reference.

**In Addition:**

State’s Response Brief addresses a court’s discretionary review of an otherwise moot case when it “involves recurring issues of substantial or continuing public interest”. Discretionary review of Woolery’s case is not necessary as there already exists safe guards to ensure the funding process.

Title 36 RCW is the principal source of powers for Code Counties within the State of Washington<sup>1</sup>. As such the powers of the legislative authority, Board of County Commissioner’s is defined in RCW 36.32.120. One of the obligations or duties of imposed on the Commissioners’ is adoption of a budget for the operations of the county. The budgeting process is detailed in chapter 36.40 RCW. The budgeting process begins under RCW 36.40.010 with a request for itemized estimates of financial needs<sup>2</sup>. RCW 36.40.030 imposes a

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<sup>1</sup> Spokane County is a Code county governed by Title 36 RCW.

<sup>2</sup> Presiding Judge for Spokane County Superior Court is responsible for submitting the Court’s estimate.

duty on the various officers to respond with the estimates or face a penalty. The budgeting process includes creation of a “preliminary budget” under RCW 36.40.040. A public hearing process under RCW 36.40.060 provides for notice and public hearing prior to adoption of a budget. RCW 36.40.070 provides that “. . . any taxpayer may appear thereat and be heard for or against any part of the budget.” At the public hearing, the individual official responsible for submitting the request presence is required and both the Commissioners and the taxpayers may question them concerning the estimates. *Id .070*

Chapter 36.40 RCW also provides for supplemental appropriations under RCW 36.40.100 and emergencies under RCW 36.40.140. For example, if a Superior Court in any county were to require additional funds due to unforeseen higher expenditures, the Presiding Judge could petition the Board of County Commissioners for additional funding.

Both Woolery and the State’s adequately sets forth the caselaw authority of a Superior Court to request and order funding is necessary to carry out the court’s statutory mandates. What neither Woolery nor

the State address is the mechanism by which an individual that allows an individual to address concerns regarding court funding.

RCW 36.32.330 provides for an appeal process to challenge a Board of County Commissioner's action. Thus, if an individual believed either the Commissioner's decision was wrong the State Legislature has provided a means by which to challenge the action. The appeal would apply to the Commissioner's adoption of a budget as well as to any decisions made concerning supplemental or emergency appropriations.

If the Board of Commissioners in Spokane County or county officials simply refused to follow the dictates of chapter 36.40 RCW, any aggrieved party could force the issue through a Writ of Mandamus. Similarly, if the Presiding Judge for Spokane County Superior Court failed to participate in the budgeting process by submitting estimates itemizing expenses setting forth financial needs, they could also be forced to do so through a Writ of Mandamus. A writ of mandate will be issued to a superior court to compel its performance of an act which it is enjoined by law to perform. *State ex rel. Mauerman v. Superior Court for Thurston County*, 44 Wn. 2d

828, 831, 271 P.2d 435, 437 (1954), citing *State ex rel. Massart v. Kinne*, 168 Wash. 612, 616, 12 P.2d 919 (1932).

While Writs of Mandamus will not lie to direct the outcome of a discretionary decision, they will lie to force compliance with a clear duty. *Lillions v. Gibbs*, 47 Wn.2d 629, 633, 289 P.2 203 (1995), *O'Connor v. Matsdorff*, 76 Wn.2d 589, 458 P.2d 154 (1969). Writ of Mandamus also lie when an official's abuses their discretion. The court has describing the abuse standard in the mandamus area as “**arbitrary or capricious**, ... prompted by wrong motives, [such that] there is not only an abuse of discretion, but, in contemplation of law, there has been no exercise of the discretionary power.’ ” *Brown v. Owen*, 165 Wn.2d 706, 726, 206 P.3d 310, 320 (2009) citing *State ex rel. Reilly v. Civil Serv. Comm'n*, 8 Wn.2d 498, 501, 112 P.2d 987 (1941) (quoting *State ex rel. Yeargin v. Maschke*, 90 Wn. 249, 253, 155 P. 1064 (1916)).

The Presiding Judge in any given Superior Court is in the best position to determine if it has been provided the necessary financial resources to provide mandated services. Furthermore, given the current state Washington State law that largely exempts courts from

disclosure under the Public Records Act, chapter 42.56 RCW, it is highly unlikely that the decision making process in any discretionary act would be revealed<sup>3</sup>.

In addition, if a judge failed to participate, the judge would likely also have violated an ethical duty imposed through the Washington State Code of Judicial Conduct (CJC). Failure by a judge to comport with the ethical canons could result in disciplinary action against the judge through the Washington State Discipline Rules For Judges (DRJ).

Sufficient avenues of process already exist for both individuals and institutions to address funding adequacy for individual superior courts within the State of Washington. As such there is no need for this Court to grant discretionary review of Woolery's moot case.

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<sup>3</sup>*City of Federal Way v. Koenig*, 167 Wn.2d 341, 217 P.3d 1172 (2009) Recognizing the general exemption of courts from PRA.

**C. Alternatively, The Thurston County Superior Court's Dismissal On CR 12(b)(6) Grounds Was Appropriate.**

Spokane County hereby agrees with the State's alternative grounds for Thurston County Superior Court's dismissal of Woolery's case.

**1. Woolery's Adequate Remedy At Law In The Spokane Court Rules And Procedures Precluded The Declaratory/Injunctive/Mandamus Relief He Requested From The Thurston Court.**

Spokane County hereby agrees with the State's argument that "Woolery's Adequate Remedy At Law In The Spokane Court Rules And Procedures Precluded The Declaratory/Injunctive/Mandamus Relief He Requested From The Thurston Court" and hereby adopts the same by reference.

**2. Woolery Had No Claim For Monetary Relief.**

Spokane County hereby agrees with the State's argument that "Woolery Had No Claim For Monetary Relief" and hereby adopts the same by reference.

**3. Woolery Lacks Standing To Obtain Relief On Behalf Of Other Persons And Entities, Including The Spokane Superior Court.**

Spokane County hereby agrees with the State's argument that

“Woolery Lacks Standing To Obtain Relief On Behalf Of Other Persons And Entities, Including The Spokane Superior Court” and hereby adopts the same by reference.

**4. Const. Art. I, § 10 Does Not Guarantee Or Require A “Speedy Civil Trial”**

Spokane County hereby agrees with the State’s argument that “Const. Art. I, § 10 Does Not Guarantee Or Require a ‘Speedy Civil Trial’” and hereby adopts the same by reference.

**In Addition:**

Spokane County notes that this Court has held in criminal cases “[t]here is “no constitutional basis for holding that the speedy trial right can be quantified into a specified number of days or months.” *State v. Carson*, 128 Wn.2d 805, 821, 912 P.2d 1016, 1024 (1996) quoting *State v. Russell*, 101 Wn.2d 349, 351, 678 P.2d 332 (1984).

**V. CONCLUSION**

The County requests that the Court decline review of Woolery’s appeal or in the alternative affirm Thurston County Superior Court’s dismissal for the reasons set forth above.

Respectfully submitted this 15<sup>th</sup> day of August, 2011.

STEVEN J. TUCKER  
Prosecuting Attorney

A handwritten signature in black ink, appearing to read "Dan L. Catt", written over a horizontal line.

Dan L. Catt, WSBA# 11606  
Deputy Prosecuting Attorney  
Attorneys for Respondent Spokane County

**PROOF OF SERVICE**

I hereby declare under the penalty of perjury and the laws of the State of Washington that the following statements are true.

On the 15<sup>th</sup> day of August, 2011, I caused to be served a true and correct copy of the foregoing document by the method indicated below, and addressed to the following:

Scott Blair, Esq.	<u>   </u>	Personal Service
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4711 Aurora Avenue North	<u>   </u>	Hand-Delivered
Seattle, Washington 98103-6515	<u>   </u>	Overnight Mail
(Attorneys for Petitioner)	<u>  X  </u>	E-Mail

William G. Clark, Esq.	<u>   </u>	Personal Service
Office of the Attorney General	<u>  X  </u>	U.S. Mail
800 5 <sup>th</sup> Avenue, Suite 2000	<u>   </u>	Hand-Delivered
Seattle, Washington 98104-3188	<u>   </u>	Overnight Mail
(Attorneys for Respondent State of WA)	<u>  X  </u>	E-Mail

Dated this 15<sup>th</sup> day of August, 2011, in Spokane, Washington.

  
\_\_\_\_\_  
Donna Monroe

## OFFICE RECEPTIONIST, CLERK

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**To:** Monroe, Donna  
**Cc:** 'Billc2@atg.wa.gov'; 'scott@theblairfirm.com'  
**Subject:** RE: Woolery v. State, No. 858390

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Sent on behalf of Dan L. Catt, WSBA# 11606

[dcatt@spokanecounty.org](mailto:dcatt@spokanecounty.org)  
(509) 477-2816

***Donna***

*Donna Monroe, Paralegal  
Spokane County Prosecuting Attorney's Office  
W. 1115 Broadway Avenue  
Spokane, WA 99260  
(509) 477-2881*

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