

RECEIVED  
SUPREME COURT  
STATE OF WASHINGTON

2008 APR 14 A 7:59

BY RONALD R. CARPENTER

To be argued by  
ADAM P. KARP

---

h  
CLERK  
Washington Supreme Court

---

Supreme Court No. 81295-1

Ct. of Appeals Div. I Docket No. 264122

Spokane Cy. Sup. Ct. Cause No. 07-1-01318-1

CITY OF SPOKANE VALLEY ex rel. CHRIS ANDERLIK,

*Plaintiff-Petitioner,*

-against-

STATE OF WASHINGTON,

*Defendants-Respondents.*

---

**PETITIONER'S REPLY ON PETITION FOR REVIEW (RAP 13.4)  
AND/OR MOTION FOR DISCRETIONARY REVIEW (RAP 13.5)**

---

ADAM P. KARP, ESQ.  
*Attorney for Plaintiff-Petitioner*  
114 W. Magnolia St., Ste. 425  
Bellingham, WA 98225  
(360) 738-7273  
WSBA No. 28622

**FILED AS ATTACHMENT  
TO E-MAIL**

## **I. REBUTTAL STATEMENT OF FACTS**

1. While the Petitioner did file a petition for a statutory writ of review and constitutional writ of certiorari after Judge O'Connor dismissed her RALJ appeal, the Petitioner expressly undertook such action with respect to the same District Court decision "without waiving the claim that the matter [was] RALJ-appealable[.]" *Exh. 1*, Respondent's Brief, at 5:11-14.<sup>1</sup>

2. Mr. O'Brien's unsworn, footnoted testimony at *Respondent's Brief* 8:fn 3 as to the number of CrRLJ 2.1(c) petitions in Spokane County since 2000 is hearsay, inconclusive, likely violative of RPC 3.7 (lawyer as witness), and should be disregarded.<sup>2</sup>

## **II. REBUTTAL ARGUMENT**

### **A. RAP 13.4 (Petition for Review) Criterion Govern**

Ms. Anderlik asks the commissioner to re-evaluate the deputy clerk's decision to regard her efforts to obtain appellate review as a petition for review (with respect to the motion before the Court of Appeals

---

<sup>1</sup> This was the Petitioner's only option given Judge O'Connor's refusal to hear the RALJ appeal. Indeed, at 2:fn 1 to *Exh. 1*, the Petitioner expressly states her desire to expedite review of the writ petition before the 30 days run on seeking appellate review of Judge O'Connor's decision. See also *id.*, page 6:8-15 (noting that "no adequate remedy at law" prong of statutory writ of review might not have been met "had the superior court not dismissed [the RALJ appeal].")

<sup>2</sup> Mr. Karp could offer his own experiences to counter Mr. O'Brien's, supporting the necessity and use of CrRLJ 2.1(c) for various individuals and organizations. The court may find value in recalling Judge Derr's comments noting that CrRLJ 2.1(c) poses an issue of substantial and fundamental importance, especially to district court judges. Attached please find comments to the Supreme Court on whether to retain CrRLJ 2.1(c). In 1995, the District and Municipal Court Judges' Association asked for its repeal, while the WSBA sought to retain it. See **B-1, attached** (these documents were previously submitted to Judge Derr).

addressing finality) subject to RAP 13.4 in accordance with the argument made in the opening motion. Quite simply, Ms. Anderlik filed a *Notice of Appeal* before the Court of Appeals. The Court of Appeals commissioner, *sua sponte*, noted a motion to determine finality. RAP 13.3 does not regard a *motion to determine finality* as one that is subject only to RAP 13.5. Notwithstanding this determination, Ms. Anderlik will proceed rebutting Respondent's assertions under RAP 13.5.

**B. RAP 13.5(b)(1-2) – Obvious and/or Probable Error**

**1. Probable Error in Determining that RAP 2.2 Prevents Review as of Right.**

Ms. Anderlik asserts that the Court of Appeals committed probable error in determining that the superior court's dismissal of her RALJ appeal was not appealable as of right, which, of course, hinges on its allowing to stand the Superior Court's conclusion that CrRLJ 2.1(c) determinations are not RALJ-appealable. When Judge O'Connor dismissed Ms. Anderlik's RALJ appeal, the "superior court proceeding" was *de novo* with respect to the narrow issue of RALJ-appealability, one that did not involve a traffic infraction. Without evaluating any assignments of error with respect to a record of proceedings, she simply concluded that, as a matter of law, CrRLJ 2.1(c) determinations (regardless of the facts adduced) were not subject to the RALJ. Accordingly, her dismissal of the RALJ appeal fits squarely within the direct review category of RAP 2.2(c).

If, on the other hand, Ms. Anderlik were seeking appellate review of Judge O'Connor's decision on the merits of her RALJ appeal, there would be no question that RAP 2.2(c) would bar appeal as of right. Ms. Anderlik believes that the Court of Appeals committed probable (if not obvious) error in not accepting Ms. Anderlik's appeal.

The respondent argues that the *Spears*, *Northwestern Elec. Co.*, *Western American Co.*, and *Chubb* cases prevent RALJ appeals unless prescribed by statute or court rule. It adds that the "decision resulting from a proceeding not mentioned in the RALJs as being subject to direct appeal indicates that the matter is not subject to direct review." *Resp.*, at 7. This is not supported by any of the authorities cited. Instead, they address the right to appeal to the Court of Appeals, in accordance with statute and the Constitution. None addresses the right to appeal to the Superior Court from a court of limited jurisdiction.<sup>3</sup> Importantly, the proceeding outlined

---

<sup>3</sup> The question in *Spears* dealt with the \$200 jurisdictional limit of RCW 2.06.030 and review of a case involving a traffic infraction with a penalty under \$200, has no bearing on this matter. *City of Bremerton v. Spears*, 134 Wn.2d 141, 147 (1998). *Northwestern Elec. Co.*, a 1947 case, does not even reference the RAP or RALJ but focuses on the propriety of seeking a writ of certiorari from a decree of public use and necessity in eminent domain proceedings conducted by a PUD, not a district court. Even if the RALJ did exist in 1947, by its current terms, the RALJ would not apply. RALJ 1.1(a) (applying only to courts of limited jurisdiction). *Western American Co.*, a 1900 case, involves the right to appeal from a condemnation action filed in superior court. Again, it does not cite to the RAP or the RALJ, which did not exist then. The RALJ would not even apply to such a statutory proceeding initiated in superior court. The *Chubb* case addresses what types of proceedings, if not listed, are subject to appeal. *In re Chubb*, 112 Wn.2d 719 (1989). But *Chubb* deals with the RAP, not the RALJ. In *Chubb*, the question presented was whether the petitioner could RAP-appeal a dependency review hearing under RCW 13.34.130(3). RAP 2.2(a) allowed for appeal of an order depriving a person of all parental rights in a child and a finding of dependency by a juvenile court. RAP 2.2(a)(5,6); *Chubb*, at 721-722. The review hearing under RCW 13.34.130(3) was interlocutory and not final. *Id.*, at 724.

in CrRLJ 2.1(c) is established by Supreme Court rule, the same body that adopted the RALJ – not a statute through a special proceeding, as in the *Chubb, Northwestern Elec. Co., or Western American Co.* cases.

Ms. Anderlik attempted to initiate a criminal prosecution in a similar manner to that of the public prosecutor. If the court were to dismiss the prosecutor's complaint due to lack of probable cause, suppressed evidence, failure to state a charge, or other grounds, a RALJ appeal would be permitted under RALJ 2.2(a)(1) and RALJ 2.2(c)(1). Simply because Ms. Anderlik's complaint was dismissed on constitutional grounds does not deprive her of the same remedy to appeal as granted to the prosecutor. The CrRLJ 2.1(c) proceeding is not one that must be identified with particularity in the RALJ in order to afford a right of appeal, and the Respondent has provided no authority to this effect. As explained above, a probable cause hearing (which is what the CrRLJ 2.1(c) hearing amounted to in large part) is not a special proceeding that must be specifically mentioned for purposes of the RALJ. Judges decide probable cause with respect to arrest and search warrants every day. While the mechanism for introducing the probable cause issue before Judge Derr was different than the ordinary course, the determination made by the district court was routine. Furthermore, the RALJ expressly states that the rules shall be "liberally interpreted to promote justice and facilitate the decision of cases on the merits." RALJ 1.2(a).

RALJ 1.1(c) merely states that statutory writs are retained, not that they are the only procedural path for appeal. Statutory writs are typically only appropriate when seeking appellate review of interlocutory (not final) decisions in district court. *See Alwood v. Aukeen Dist. Court*, 94 Wash.App. 396, 400-401 (I, 1999)(defining “interlocutory” as an order that does not finally determine a cause of action but requires further steps to be taken to enable full adjudication on the merits). Judge Derr clearly stated that her decisions were final (as opposed to interlocutory) orders. A-9, at 22:11—23:7; 23:15-20, 25:5-8. As much was acknowledged in *Commanda v. Cary*, 143 Wn.2d 651, 656, 23 P.3d 1086 (2001), in denying the writ of review for an interlocutory decision and stating:

The fact that an appeal will not lie directly from an interlocutory order is not a sufficient basis for a writ of review if there is an adequate remedy by appeal from the final judgment. ... Under the RALJ [Rules for Appeal of Decisions of the Courts of Limited Jurisdiction], an interlocutory order is reviewable on appeal from the ultimate judgment.

## **2. Probable Error in Denying Review under RAP 2.3(d) Due to Mootness.**

While the Court of Appeals intimated that the lower courts committed error, mootness was the only explanation given for failing to accept discretionary review. In denying discretionary review, the Court of Appeals did not find that Ms. Anderlik failed to persuade that either RAP 2.3(d)(2) or RAP 2.3(d)(3) was satisfied. Rather, the court concluded that discretionary review was not warranted “as it appears the matter is now

moot and this Court could not grant any relief[.]” A-2. Given that this was the only reason offered by the Court of Appeals for denying discretionary review, and that it failed to consider the numerous exceptions to mootness, it follows that Ms. Anderlik otherwise satisfied the grounds for review under RAP 2.3(d)(2) and/or RAP 2.3(d)(3). Only the Supreme Court is in the position of determining the constitutionality of its own rule.<sup>4</sup> Thus, it follows that only the Supreme Court should decide whether an exception to mootness operates to bar appellate review. To deprive the Supreme Court of this opportunity constitutes probable (if not obvious) error.<sup>5</sup>

**C. RAP 13.5(b)(3) – Departure**

In sanctioning the Superior Court’s denial of Ms. Anderlik effort to obtain appellate review under the RALJ with respect to the constitutionality of a rule enacted by the Supreme Court, the Supreme Court is the perfect forum to exercise its revisory jurisdiction.

**D. Res Judicata and Law of the Case**

Respondent argues that in not appealing the findings of the Spokane County Superior Court Judge Allan Nielson, his ruling establishes the law of the case and is res judicata. This assertion cannot stand for the purpose offered, viz., that the District Court did not act

---

<sup>4</sup> See *Comm. v. Brown*, 447 Pa.Super. 454, 462-63 (1995), *aff’d o.g.*, 550 Pa. 580 (1998), where the appellate court found it lacked jurisdiction to interpret the Supreme Court-enacted citizen criminal petition Rule 106, and any attempt to do so would amount to “an unwarranted intrusion into the supreme court’s authority.”

<sup>5</sup> Denying discretionary review on grounds of mootness at the Court of Appeals level might be appropriate if it did not involve issues peculiar to Supreme Court authority.

arbitrarily or capriciously or illegally. It would stand as to the issue of whether Judge Nielson erred in not granting the writ – an issue not challenged by Ms. Anderlik in this appeal.

Technically, Judge Nielson’s findings as to Judge Derr’s actions were *ultra vires, dicta*, and not binding on any aspect of this appeal, since the only role of the Superior Court on hearing a motion for a writ of review is to determine whether there are grounds to issue the writ, not whether to rule for the petitioner on the merits once the writ has been granted. RCW 7.16.040 identifies the grounds for granting the writ. Once granted, the writ must be served. RCW 7.16.100. Then, and only then, may the court address the questions involving merits to be determined per RCW 7.16.120. RCW 7.16.120(3) asks the court to determine, on the merits, whether the law was violated by the lower tribunal – precisely what Judge Nielsen decided *sua sponte* in the order on reconsideration.

No mention of the merits of Judge Derr’s decision is found in Judge Nielson’s original order denying the petition, except to say that “a merely erroneous ruling does not come within the purview of establishing a reason to grant a constitutional writ of certiorari in this case.” **B-2, at 3:8-11**. Ms. Anderlik’s motion for reconsideration challenged the court’s conclusion that *Commanda* did not permit constitutional writs to issue for a “merely erroneous ruling” of law. She did not ask the court to rule on the merits of the constitutional question. Indeed, the separation of powers question constituted the entire thrust of the RALJ appeal, which was

before the Court of Appeals prior to Judge Nielsen's reconsideration order, and cannot be deemed waived by a pretended law of the case argument.

Certainly, if Ms. Anderlik believed that Judge Nielsen had ruled on the merits and affirmed Judge Derr's constitutional analysis, she would have sought immediate discretionary review. But had she done that, the respondent would then be arguing that Judge Nielsen's order was not binding on that issue, since *he never granted the writ in the first place*. If Ms. Anderlik could not seek the benefit of such a ruling for purposes of obtaining appellate review before the Court of Appeals, then neither should she be prejudiced by the same nonbinding ruling. Besides, the context of the order on reconsideration speaks only to granting a discretionary constitutional writ of certiorari, not the statutory writ of review or the mandatory appeal under the RALJ.

The law of the case doctrine derives from RAP 2.5(c)(2) and common law. Because RAP 2.5(c)(2) speaks to the prior appellate court decision, and not a superior court exercising appellate jurisdiction, the doctrine is inapplicable. Second, even if applicable, "application of the doctrine may be avoided where the prior decision is clearly erroneous, and the erroneous decision would work a manifest injustice to one party." *Roberson v. Perez*, 156 Wn.2d 33, 42 (2005). Applying Judge Nielson's findings in this instance would unjustly restrict Ms. Anderlik from pursuing appellate review of the assignments of error she made before

Judge Nielson even entered his first order on September 8, 2007. The only way to determine if his *dicta* were clearly erroneous is to grant review. The mere fact that a trial court nullified a Supreme Court rule as unconstitutional as applied strongly suggests a clearly erroneous decision since the inferior courts cannot disturb higher court determinations.

By not appealing Judge Nielson's orders, Ms. Anderlik merely waived her right to appeal the court's failure to issue the writ of review or certiorari. She never waived the right to appeal the dismissal of her timely RALJ appeal, nor the assignments of error underlying it.

Respondent's res judicata argument appears to be conflated with its law of the case argument. For res judicata (claim preclusion) to apply, there must be a final judgment as to the claims challenged – one that does not exist here, particularly since Ms. Anderlik timely filed a notice of appeal from the RALJ dismissal which, if considered, would have obviated the need for the writ of review. *Pederson v. Potter*, 103 Wash.App. 62, 69 (III, 2000). In reality, Respondent attempts to invoke collateral estoppel (issue preclusion) as to errors made by Judge Derr. Respondent cannot prove the necessary elements.<sup>6</sup> Collateral estoppel and

---

6

The party asserting collateral estoppel must prove: (1) the issue decided in the prior adjudication is identical to the one presented in the current action, (2) the prior adjudication must have resulted in a final judgment on the merits, (3) the party against whom collateral estoppel is asserted was a party or in privity with a party to the prior adjudication, and (4) precluding relitigation of the issue will not work an injustice on the party against whom collateral estoppel is to be applied. ... A court may apply collateral estoppel only if all four elements are met.

res judicata do not apply as Judge Nielsen was considering a different issue (and claim) from that of Judge O'Connor (i.e., RALJ-appealability versus grounds for issuance of a writ of review or certiorari), and the merits of Judge Derr's rulings were never decided on the merits resulting in a final judgment, particularly in a fashion where Ms. Anderlik would have received a full and fair hearing on the issue in question (which only would have happened had the writ, in fact, been issued).

### **III. CONCLUSION**

For the reasons stated, the Supreme Court should accept review of a matter that is fully briefed, more than adequately recorded, and ready for an authoritative determination from the only forum capable of offering the State such guidance.

Dated this April 14, 2008

ANIMAL LAW OFFICES  
**/s/ Adam P. Karp**

---

Adam P. Karp, WSB No. 28622

---

The determination of whether application of collateral estoppel will work an injustice on the party against whom the doctrine is asserted-the fourth element - depends primarily on " 'whether the parties to the earlier proceeding received a full and fair hearing on the issue in question.' "

*Clark v. Baines*, 150 Wn.2d 905, 913 (2004)(citations omitted).

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on April 14, 2008, I caused a true and correct copy of the foregoing to be served upon the following person(s) in the following manner:

- U.S. Mail, First Class, Postage Prepaid
- U.S. Mail, Certified, Return Receipt Requested
- Email (stipulated)
- Express Mail
- Hand Delivery
- Facsimile Transmission
- Federal Express/Airborne Express/UPS Overnight

Brian O'Brien  
Spokane County Prosecuting Attorney  
1100 W Mallon Ave  
Spokane, WA 99620  
(509) 477-3662  
[bobrien@spokanecounty.org](mailto:bobrien@spokanecounty.org)

**/s/ Adam P. Karp**  
Adam P. Karp, WSBA No. 28622  
Attorney for Plaintiff-Appellant

B-1

GR 9 COVER SHEET

Proposed Amendments

CrRLJ 2.1(c)

1996  
purpose  
Stm. from 1995  
proposal

- (1) Background: CrRLJ 2.1(c) permits citizens to institute a criminal action alleging a misdemeanor or gross misdemeanor by filing the "Affidavit of Complaining Witness" contained in the rule. The judge is required to determine that probable cause exists, and to determine that the complaining witness is aware of the consequences of proceeding in this fashion. The judge may examine on oath the complainant and any witnesses the judge requires.

CrRLJ 2.1(c) should be repealed. In the alternative, if CrRLJ 2.1(c) is not repealed, it should be amended to make the citizen's complaint process more formal.

- (2) Purpose: The District and Municipal Court Judges' Association (DMCJA) continues to have serious concerns that the citizen complaint rule violates the separation of powers principle because it removes from the prosecutor the final say whether or not criminal charges should be filed. Citizen complaints are often poorly drafted and factually questionable. The present rule leaves the court with no choice but to accept the citizen's allegations as verities, since the court has no mechanism to determine if the allegations are true or exaggerated. Citizen complaints are often filed out of improper motives such as retaliation for charges filed against the citizen complainant. Sometimes the complaints are filed to harass law enforcement or public officials. Notwithstanding the existing warnings, it is extremely simple for a citizen complainant to initiate a charge and force a defendant to prepare a defense. The complainant may never show up for trial, but yet succeed in imposing considerable expense on a defendant. It is difficult for defense counsel to prepare a defense in such cases since there is generally no police report or formal investigation to consult. There is no provision under present law to force a prosecutor to go forward with prosecuting such cases, and district courts do not have the authority to appoint special prosecutors. *Ladenburg v. Campbell*, 56 Wn.App. 701, 784 P.2d 1306 (1990).

If the rule is not repealed, the DMCJA feels that the rule should be extensively rewritten to make the whole process more formal. Prosecutors and law enforcement should be given an opportunity to explain why a case has not been charged, and explain all of the defects in a case the citizen complainant may not have revealed, such as availability of witnesses, improper motives by the complainant, and basic untruths in a citizen complainant's account. Finally, if the judge is going to "second guess" a prosecutor, the judge should consider the same factors such as strength of case, credibility of witnesses, etc., that any prosecutor typically has to take into consideration, apart from the technical existence of probable cause.

- (3) Washington State Bar Association Action: No information available.
- (4) Supporting Material: Attached is a copy of the proposed rule amendment.
- (5) Spokesperson: Judge Salvatore F. Cozza, Chair, Court Rules Committee, District and Municipal Court Judges Association.
- (6) Hearing: The DMCJA requests that the Supreme Court grant a hearing on this proposal.



WASHINGTON STATE BAR ASSOCIATION  
500 Westin Building - 2001 Sixth Avenue • Seattle, Washington 98121-2599  
Telephone: (206) 727-8200 • Fax (206) 727-8320

April 13, 1995

Honorable Barbara Durham, Chief Justice  
The Supreme Court of Washington  
P.O. Box 40929  
Olympia, WA 98504-0929

CLERK

BY C. J. HERRITT

95 APR 19 AM 8:25

RECEIVED  
SUPREME COURT  
STATE OF WASHINGTON

**Re: Proposed Repeal of CrRLJ 2.1(c)**

Dear Chief Justice Durham:

The Board of Governors of the Washington State Bar Association has authorized its Court Rules and Procedures Committee, of which I am chair, to comment on the proposed repeal of CrRLJ 2.1(c), dealing with citizen complaints. This proposal was published in January in 125 Wn.2d.

The Committee's recommendation is that the rule *not* be repealed for the reasons set forth in the enclosed GR 9(d) cover sheet and attachments. The Committee also recommended a minor amendment to make clear that a sworn statement could be used in lieu of an affidavit.

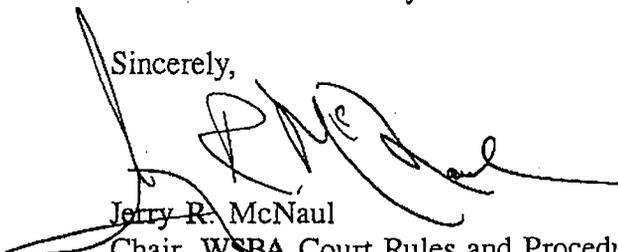
In discussing and approving the Committee's recommendations, the Board acknowledged that certain areas of the rule needed improvement or clarification. For example:

1. The Board believed that a pro-tem judge should *not* be permitted to sign a citizen complaint.
2. The rule should be clarified concerning who actually prosecutes the complaint (if the prosecuting attorney has already determined that a case should not go forward).
3. There should be a sanction of some kind if a complainant fails to appear for trial.

Honorable Barbara Durham  
April 13, 1995  
Page Two

The Board has asked that I suggest referral of the rule to the Court Rules and Procedures Committee for its study and recommendations regarding the issues raised above.

Sincerely,



Jerry R. McNaul

Chair, WSBA Court Rules and Procedures Committee

Enclosures

cc: Clerk of the Supreme Court

cc (w/o encl.): Ron Gould, President, WSBA  
Dennis Harwick, Executive Director, WSBA

B-2

COPY

COPY  
ORIGINAL FILED

SEP 12 2007

THOMAS R. FALLQUIST  
SPOKANE COUNTY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF SPOKANE

CHRIS ANDERLIK,  
Petitioner,  
vs.

No. 07203520-1

ORDER DENYING WRIT OF  
REVIEW/CERTIORARI

THE HONORABLE SARA DERR,  
Spokane County District Court Judge,

And

THE SPOKANE COUNTY DISTRICT  
COURT,

Respondents.

I. OPINION AND ORDER

The Court has reviewed the Petitioner's Application, and other paperwork including the Declaration in support of the Petition for a Writ of Review/Certiorari. The Court has reviewed the Response and Motion of the Respondent as well as the Reply of Petitioner. After hearing oral argument on Monday August 27, 2007, and after reviewing the above pleadings, the Court holds it will not grant the writ for the following reasons:

OPINION AND ORDER DENYING WRIT OF CERTIORARI OR WRIT OF REVIEW

page- 1

Spokane County Prosecuting Attorney  
1100 West Mallon  
Spokane, WA 99260-0270  
509-477-3662 FAX: 509-477-3409

1           1.     The statute of limitations has run on the underlying allegations and the case is  
2 now moot.

3           The such granting of a writ would conflict with the statute of limitations relating to  
4 misdemeanors. No misdemeanor may be prosecuted more than one year after its  
5 commission. RCW 9A.04.080(j). The matter in the instant case is alleged by the Petitioner  
6 to be a misdemeanor occurring on April 12, 2006 and the application for this writ came well  
7 outside of the one-year period ending April 12, 2007.  
8

9           Petitioner urges that there could be some equitable tolling of the Statute of  
10 Limitations. However, the deputies as citizens have a right to protection of the laws,  
11 including the statute of limitations, under the due process clauses of the State and Federal  
12 Constitutions. The Court has reviewed the legal exceptions to the statute of limitations,  
13 where the statute is tolled or does not apply. None of the exceptions apply to this case.  
14  
15

16           Because no complaint was lawfully filed prior to the running of the statute of  
17 limitations, this case is moot and any review of it would serve no purpose.  
18

19           2.     The application for the writ was untimely.

20           The application for a statutory writ on a case originating in District Court from a  
21 judicial decision had in that Court must be requested within thirty days. *Seattle v. Agrellas*,  
22 80 Wn. App. 130, 906 P.2d 995 (1995), is on point and supports Respondent's position that  
23 the application in this case was untimely. That case held applications for writs of certiorari  
24 to the superior court to review a decision of a court of limited jurisdiction must be filed  
25 within the time period allowed for appeals from that Court which time limit is now 30 days.  
26

27 **OPINION AND ORDER DENYING WRIT OF CERTIORI OR WRIT OF REVIEW**

28 page- 2

29  
Spokane County Prosecuting Attorney  
1100 West Mallon  
Spokane, WA 99260-0270  
509-477-3662 FAX: 509-477-3409

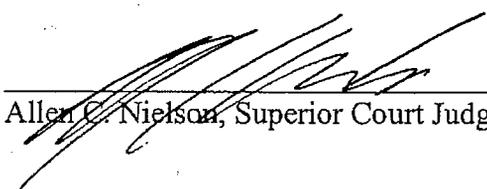
1 See RALJ 2.5. Whether considered a statutory or constitutional writ application, the  
2 Petitioner should have filed her application for a writ before or along with her notice of  
3 appeal. She did not.

4 3. The decision of *Commanda v. Cary*, 143 Wn.2d 651, 655, 23 P.3d 1086  
5 (2001), precludes review, where, as here, the Petitioner concedes the Court had jurisdiction  
6 to hear the matter, and claims only that the trial Court's discretionary decision was  
7 erroneous. See *Commanda*, 143 Wn.2d at 655-56. It is this Court's position that a merely  
8 erroneous ruling does not come within the purview of establishing a reason to grant a  
9 constitutional writ of certiorari in this case.  
10  
11

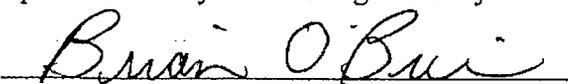
12 **II. ORDER**

13 The Application for a Writ of Certiorari/Review is denied. No writ shall be granted.

14 Dated this 9<sup>th</sup> day of September, 2007

15  
16  
17   
18 Allen C. Nielson, Superior Court Judge

19 STEVEN J. TUCKER  
20 Spokane County Prosecuting Attorney

21   
22 Brian O'Brien, WSBA # 14921  
23 Deputy Prosecuting Attorney

24 Approved as to form only,

25  
26 \_\_\_\_\_  
27 Adam Karp WSBA # 28622  
28 Attorney for Appellant

29 OPINION AND ORDER DENYING WRIT OF CERTIORARI OR WRIT OF REVIEW

page- 3

Spokane County Prosecuting Attorney  
1100 West Mallon  
Spokane, WA 99260-0270  
509-477-3662 FAX: 509-477-3409

## OFFICE RECEPTIONIST, CLERK

---

To: adam@animal-lawyer.com  
Subject: RE: City of Spokane Valley v. State, No. 81295-1

Rec. 4-14-08

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

---

**From:** Adam Karp [mailto:adam@animal-lawyer.com]  
**Sent:** Sunday, April 13, 2008 9:43 PM  
**To:** OFFICE RECEPTIONIST, CLERK  
**Cc:** 'O'Brien, Brian'  
**Subject:** City of Spokane Valley v. State, No. 81295-1

Dear Clerk,

Please accept for filing the attached *Petitioner's Reply on Motion for Discretionary Review*, to be argued orally this Thursday, April 17 at 2:30 p.m. I represent the Petitioner-Plaintiff. This document has been served electronically and first-class mail, by stipulation with Brian O'Brien, the attorney for the Respondent.

Please confirm receipt.

Thank you,  
Adam Karp

### **Animal Law Offices of Adam P. Karp**

114 W. Magnolia St., Ste. 425  
Bellingham, WA 98225  
(360) 738-7273 (RARF)  
Outside Bellingham: (888) 430-0001  
Fax: (360) 392-3936 (FYDO)  
E-Fax: (866) 652-3832  
Web: [www.animal-lawyer.com](http://www.animal-lawyer.com)  
Email: [adam@animal-lawyer.com](mailto:adam@animal-lawyer.com)