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Court of Appeals, Division II No. 35823-9-II-\_\_\_\_\_  
CLERK

**SUPREME COURT OF THE STATE OF WASHINGTON**

MICHAEL SEGALINE,

Appellant,

v.

STATE OF WASHINGTON,  
DEPARTMENT OF LABOR AND INDUSTRIES,

Respondents.

**FILED**  
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**RESPONDENTS' ANSWER TO PETITION FOR REVIEW**

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## I. INTRODUCTION

An electrician who regularly obtained electrical permits from the local office of the Washington State Department of Labor and Industries (L&I) sued the agency after agency officials barred him from their building as a result of the electrician's threatening behavior toward agency staff. The court of appeals was correct to affirm the superior court's summary judgment dismissal of the electrician's state and federal claims against L&I and one staff member.

## II. COUNTER-STATEMENT OF CASE

### A. Statement Of Facts

Michael Segaline is an electrical contractor and part owner of Horizon Electric, Inc., located in East Wenatchee, Washington. Horizon Electric is often required to obtain electrical permits for the projects it is working on from L&I. Mr. Segaline often went to the L&I building in East Wenatchee to obtain these permits. CP at 36.

On many of his visits to the building, Mr. Segaline would become verbally threatening to L&I staff. He would yell and make threatening and harassing statements. *Segaline v. Dep't of Labor & Indus.*, 144 Wn. App. 312, 182 P.3d 480, 483 (2008); CP at 36. By fall of 2002, many L&I employees were afraid Mr. Segaline might physically harm them. *Segaline*, 144 Wn. App. at 483-84; CP at 37, 44-45.

On June 19, 2003, L&I representatives, David Whittle and Alan Croft, met with Mr. Segaline in an attempt to persuade him to modify his treatment of L&I staff. He refused. *Segaline*, 144 Wn. App. at 484; CP at 52, 377-78. Mr. Segaline stated that he would do business with L&I in the same manner as he always did. At the meeting, Mr. Croft observed that Mr. Segaline's body language did not match his words. Mr. Croft believed Mr. Segaline's temper was about to explode. Mr. Segaline seemed very tense and red in the face. CP at 378-79. Mr. Segaline abruptly left the meeting. Mr. Croft followed him out into the lobby and asked Mr. Segaline to leave the building at least twice and was ignored by Mr. Segaline. Mr. Croft then called 911. Mr. Segaline finally left the building just as the police arrived. CP at 378-79.

The police suggested to Mr. Croft that L&I have a no trespass notice served on Mr. Segaline. CP at 379. At the suggestion of the police, Mr. Croft then contacted the security department at a local shopping mall and obtained a copy of the form the mall used for no trespass notices. Subsequently, Trooper Scott Jarmon, who had been assigned by the Washington State Patrol to assist L&I with workplace violence issues, told Mr. Croft that L&I can serve a no trespass notice on people prohibiting them from entering public buildings. CP at 379.

Mr. Croft then drafted a no trespass notice and emailed it to Jeanne Guthrie, who was a supervisor at the East Wenatchee L&I office. This notice stated that Mr. Segaline was “no longer permitted, invited, licensed or otherwise privileged to enter or remain” at the L&I building in East Wenatchee. The notice also provided that:

To have this notice terminated, the subject must secure the written approval of David Whittle, Electrical Supervisor, prior to re-entry of the East Wenatchee Department of Labor and Industries service location. This trespass notice remains in effect until this approval is obtained.

CP at 48, 379.

On June 30, 2003, Mr. Segaline came into the L&I office and was served with the no trespass notice by Ms. Guthrie and the East Wenatchee Police. CP at 37. On that day, Mr. Segaline was told he had to leave the premises. Mr. Segaline objected and informed L&I personnel that they were denying him service and left the premises. CP at 469.

On August 21, 2003, Mr. Segaline came to the L&I building and was allowed to purchase an electrical permit. Mr. Segaline was given a hard copy of the electrical permit, but was told that the rest of the paperwork would be mailed to him, as he was not supposed to be on the premises. *Segaline*, 144 Wn. App. at 485; CP at 46-47.

On August 22, 2003, Mr. Segaline again came to the L&I office. Ms. Guthrie called 911. CP at 47. The police arrived and asked

Mr. Segaline to leave the building, but he refused to leave and argued with the officer claiming that he could enter the building anytime he wanted. CP at 55. The police subsequently arrested Mr. Segaline. *Segaline*, 144 Wn. App. at 485; CP at 55. Mr. Croft was not present when Mr. Segaline was arrested, nor had he asked the police, or anyone else, to arrest Mr. Segaline. Mr. Croft learned of the arrest after the fact. *Segaline*, 144 Wn. App. at 491, n.10; CP at 380.

Mr. Segaline was booked and released on August 22, 2003. He was charged with criminal trespass; however the charge was later voluntarily dismissed by the prosecutor. *Segaline*, 144 Wn. App. at 485; CP at 426.

#### **B. Procedural History**

On August 8, 2005, Mr. Segaline filed his complaint seeking damages arising from his arrest against L&I. *Segaline*, 144 Wn. App. at 485; CP at 3-7. L&I moved for summary judgment and asserted it was immune from Mr. Segaline's state law claims under Washington's anti-SLAPP statute, RCW 4.24.510. CP at 16-25. On August 4, 2006, Mr. Segaline's claims against L&I were dismissed on summary judgment. CP at 505-06. On August 3, 2006, Mr. Segaline filed a motion to amend his complaint to add Alan Croft as a defendant under 42 U.S.C. § 1983. *Segaline*, 144 Wn. App. at 485; CP at 220. He claimed Mr. Croft violated

his civil rights by issuing a no trespass notice excluding him from the L&I building. CP at 221. The court granted plaintiff's motion to amend, but refused to relate the filing of the amended complaint back to the date the action against L&I was first filed. The court found that Mr. Segaline did not act with excusable neglect due to the fact that he had been informed through interrogatory answers in December 2005 that Mr. Croft drafted and designed the no trespass notice. Mr. Segaline had also confirmed Mr. Croft's involvement in issuing the notice when he deposed Mr. Croft on June 9, 2006, 21 days before the three-year limitations period ran. *Segaline*, 144 Wn. App. at 490; CP at 230, 220.

The trial court ruled that the filing of the amended complaint would relate back to August 3, 2006, the date the motion to amend was filed. CP at 500-01. Subsequently, the trial court dismissed Mr. Segaline's claim against Mr. Croft on summary judgment ruling that the claims were barred by the statute of limitations. In the alternative, the court found that Mr. Croft did not violate Mr. Segaline's constitutional rights and that he was also entitled to qualified immunity. CP at 489-91.

Mr. Segaline then appealed, arguing: (1) L&I is not immune from civil liability under RCW 4.24.510, (2) summary judgment was improperly granted on various grounds, and (3) the trial court abused its discretion when it refused to allow Mr. Segaline's amended claim to relate

back to the original pleading date. *Segaline*, 144 Wn. App. at 483. L&I argued that the trial court's rulings should be affirmed based upon the immunity afforded by RCW 4.24.510 and common law defenses. The court of appeals affirmed the trial court and held that the immunity afforded by RCW 4.24.510 was applicable to L&I. The court of appeals did not address many of the common law defenses raised by L&I. These common law defenses provide an alternative basis for this Court to affirm the decisions of the lower courts.

### **III. STATEMENT OF THE ISSUES**

- A. Did the court of appeals properly conclude that the statutory immunity provision in RCW 4.24.510 applies to the state?
- B. Did the court of appeals properly determine that no constitutional question was presented by the application of statutory immunity in this case?
- C. Did the court of appeals properly affirm the dismissal of the malicious prosecution claim based upon RCW 4.24.510?
- D. Did the court of appeals properly affirm the trial court's determination of the accrual date of plaintiff's claims, including the proper relation back following a motion to amend the complaint?

#### IV. REASONS WHY REVIEW SHOULD BE DENIED

RAP 13.4(b) provides the exclusive means for accepting review of a court of appeals decision:

A petition for review will be accepted by the Supreme Court only: (1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or (2) If the decision of the Court of Appeals is in conflict with another decision of the Court of Appeals; or (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

RAP 13.4(b).

Mr. Segaline argues the court of appeals decision below misinterpreted Washington's anti-SLAPP statute, RCW 4.24.510. He argues that, in doing so, the court of appeals decision conflicts with other Washington appellate decisions and statutes, and that his petition for review involves issues of substantial public interest and significant questions of constitutional law. However, as shown below, Mr. Segaline has failed to meet the criteria for review set by RAP 13.4(b).

**A. There Is No Conflict Within The Court Of Appeals Regarding Whether The State Is A Person Under RCW 4.24.510**

Mr. Segaline argues that the court of appeals decision below conflicts with *Skimming v. Boxer*, 119 Wn. App. 748, 82 P.3d 707 (2004), as to whether a governmental entity is a person under RCW 4.24.510. In

*Skimming*, Division III stated that a county was not entitled to immunity under RCW 4.24.510. However, the statement was *dicta*, as the communication at issue in the case involved a communication by the Spokane County executive to a newspaper. *Skimming*, 119 Wn. App. at 758. The communication was not made to a branch of government as required by the statute. As Division II noted in the *Segaline* opinion:

In *Skimming*, Division Three concluded, in *dicta*, that a county was not entitled to immunity under RCW 4.24.510 *Gontmakher*, 120 Wash.App. at 372, 85 P.3d 926; *Skimming*, 119 Wash. App. at 757, 82 P.3d 707. Division One declined to follow *Skimming* because the statement was “made without analysis, and the conclusion is not central to the court's holding.” *Gontmakher*, 120 Wash.App. at 373, 85 P.3d 926. We agree.

*Segaline*, 144 Wn. App. at 487 (citing *Gontmakher v. City of Bellevue*, 120 Wn. App. 365, 85 P.3d 926 (2004)).

The *Skimming* opinion cites *Right-Price Recreation, LLC v. Connells Prairie Cmty. Council*, 146 Wn.2d 370, 382, 46 P.3d 789 (2002). However, *Right-Price Recreation* does not hold that “person” under RCW 4.24.510 excludes governmental entities. *Right-Price Recreation* does cite an article discussing anti-SLAPP statutes in general:

A SLAPP primarily involves “communications made to influence a governmental action or outcome.” George W. Pring & Penelope Canan, *SLAPPs: Getting Sued for Speaking Out* 8 (1996). The communications result “in (a) a civil complaint or counterclaim (b) filed against nongovernment individuals or organizations . . . on (c) a

substantive issue of some public interest or social significance.” *Id.* at 8-9.

*Right-Price Recreation*, 146 Wn.2d at 382 (emphasis added).

It appears that this article, not any holding by this Court in *Right-Price Recreation* or language within RCW 4.24.510, was what the *Skimming* court relied upon when it stated that “person” does not include governmental entities.

In contrast, Division I, in *Gontmakher*, 120 Wn. App. at 85, made a detailed analysis of why the City of Bellevue was a “person” entitled to immunity under the statute. First, the court relied upon RCW 1.16.080(1) which provides:

[t]he term ‘person’ may be construed to include the United States, *this state*, or any state or territory, or any public or private corporation or limited liability company, as well as an individual.

(Emphasis added).

The court also noted that RCW 4.24.510 has already been applied to entities, as opposed to natural persons, including a community council and a bank. See *Right-Price Recreation*, 146 Wn.2d at 384; *Dang v. Ehredt*, 95 Wn. App. 670, 977 P.2d 29 (1999). Finally, the court found a strong public policy for including governmental entities within the protection offered by the statute. The court noted that the type of statement made by the city in *Gontmakher* are common and important to proper agency

functioning. *Gontmakher*, 120 Wn. App. at 371-72.

Other than the *Skimming* case, Mr. Segaline fails to cite any case in which a Washington appellate court has even suggested that a governmental entity may not be a “person” under the statute.

There is no conflict within the court of appeals on this issue and this Court should deny review.

**B. The Issue Of Whether The Immunity Afforded By RCW 4.24.510 Is Limited To Communications Made In Good Faith Does Not Merit Review**

**1. There Is No Issue Of Substantial Public Interest As To Whether The Protections Afforded By RCW 4.24.510 Are Limited To Communications Made In Good Faith**

Mr. Segaline claims there is an issue of substantial public interest as to whether the protections afforded by RCW 4.24.510 are limited to communications made in good faith, because the statute has not been interpreted regarding its good faith requirement since it was amended in 2002. No such public interest exists.

When RCW 4.24.510 was originally enacted, it contained a “good faith” requirement. At that time, RCW 4.24.510 limited immunity to “a person who in good faith communicates a complaint” to an agency. However, in 2002, RCW 4.24.510 was amended and the “good faith”

language was eliminated.<sup>1</sup> Since its amendment, the court of appeals for Divisions One and Two, and the U.S. District Court for the Western District of Washington have all interpreted the statute as granting immunity to persons making the communications, regardless of whether they acted in good or bad faith. See *Gontmakher*, 120 Wn. App. at 372; *Segaline*, 144 Wn. App. at 487; *Harris v. City of Seattle*, 302 F. Supp. 2d 1200, 1202 (2004) (In *dicta* stating “in 2002, the statute was amended to remove the good faith requirement”).

The statute is not ambiguous and the amendment of the statute has been interpreted as having eliminated the good faith requirement. There is no substantial public interest in this Court reviewing this issue.

**2. The Issue Of Whether RCW 4.24.510, Without An Implicit Good Faith Requirement, Unconstitutionally Limits Access To The Courts Was Not Decided Below And Does Not Present A Significant Question Of Constitutional Law**

In the alternative, Mr. Segaline argues RCW 4.24.510 violates the constitutional right to access to courts unless a good faith requirement is read into it. Without such a requirement, Mr. Segaline claims the statute denies him access to the courts and is overly broad and vague.

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<sup>1</sup> The legislative history for the 2002 amendment provides, in part: “Chapter 232, Laws of 2002 amends Washington law to bring it in line with these court decisions which recognizes that the United States Constitution protects advocacy to government, regardless of content or motive, so long as it is designed to have some effect on government decision making.” [2002, ch. 232, § 1.] (emphasis added).

However, the court of appeals did not reach this issue in rendering its decision below, noting that “[b]ecause there is no evidence in this record that L&I’s communication was not in good faith, we affirm on nonconstitutional grounds.” *Segaline*, 144 Wn. App. at 487. There is no need for this Court to review an issue never decided by the court of appeals below.

Nor is there merit in Mr. Segaline’s argument. He relies upon *Richmond v. Thompson*, 130 Wn.2d 368, 922 P.2d 1343 (1996), and other cases in which courts interpreted federal and state constitutional free speech provisions. See Pl.’s Pet. for Review at 15-21. These cases concern the interplay between the right of free speech and the right to petition the government. These cases are not concerned with the power of the legislature to enact laws creating immunity from suit. These cases are not interpreting an anti-SLAPP statute. Mr. Segaline was arrested because he violated a no trespass notice, not because of his speech.

In *Richmond v. Thompson*, this Court held that citizen complaints regarding police conduct are not absolutely privileged under either the federal or state constitutions or common law. This Court did not declare as unconstitutional a statute providing protection to persons who make their own complaints to government, which is itself a form of protected speech.

The legislature has the authority to create immunities limiting who

can be sued for tortuous acts. *See, e.g.*, RCW 4.24.300 (Washington's Good Samaritan Law granting immunity from liability for certain types of medical care). By enacting Washington's anti-SLAPP statute, the legislature simply created another immunity.

The immunity afforded by RCW 4.24.510 does not chill Mr. Segaline's First Amendment rights, it only affects his ability to sue in tort based upon a legislative policy decision to protect persons who have made complaints to governmental agencies. Indeed, prior to the waiver of sovereign immunity, his claims would have been barred. *See* Const. art. II, §26.

**C. The Appellate Court's Decision Applying The Immunity Created By RCW 4.24.510 To Actions For Malicious Prosecution Is Not In Conflict With Other Cases**

Plaintiff also argues that the court of appeals erred in applying the immunity created by RCW 4.24.510 to his claim for malicious prosecution. Mr. Segaline argues the court of appeals decision abolishes malicious prosecution actions and is in conflict with RCW 4.24.350 which permits defendants to assert counterclaims for malicious prosecution.

However, RCW 4.24.350 merely sets forth the elements of malicious prosecution. It does not address what defenses may be available to defeat such a cause of action. Nor did the court of appeals abolish

malicious prosecution actions by applying the anti-SLAPP statute immunity to Mr. Segaline's claims.

RCW 4.24.510 only acts as a defense to an action for malicious prosecution when the action is based upon a communication made to a government official. In instances, such as civil malicious prosecutions, where a communication with a government official may not be involved, it would not be a defense. *See, e.g., Clark v. Baines*, 150 Wn.2d 905, 911, 84 P.3d 245 (2004) ("While actions for malicious prosecution began as a remedy for unjustifiable criminal proceedings, Washington law also recognizes this remedy where a civil suit has been wrongfully initiated."):

Malicious prosecution actions may also exist where the communication which forms the basis for the malicious prosecution is not based upon a "matter reasonably of concern to that agency or organization" as required by RCW 4.24.510.

The decision of the court of appeals did not hold that all malicious prosecution claims are barred, just those that come within the specific terms of RCW 4.24.510. This ruling is not in conflict with any decision of this Court.

**D. The Court Of Appeals Decision Holding That Plaintiff's Claims Against Alan Croft Were Barred By The Statute Of Limitations Need Not Be Reviewed By This Court**

**1. The Appellate Decision Holding That Plaintiff's § 1983 Claim Against Alan Croft Was Barred By The Statute Of Limitations Does Not Conflict With State And Federal Law And Does Not Present An Important Issue Of Public Policy**

Mr. Segaline claims the appellate court's decision holding that his § 1983 claim against Alan Croft was barred by the statute of limitations conflicts with state and federal law and presents an important issue of public policy. Mr. Segaline errs.

The federal standard for accrual of a § 1983 action is when a plaintiff "knows or has reason to know of the injury which is the basis of the action." *Trotter v. Int'l Longshoremen's & Warehousemen's Union*, 704 F.2d 1141, 1143 (9th Cir. 1983); *Cloud v. Summers*, 98 Wn. App. 724, 731, 991 P.2d 1169 (1999). The general three-year limitations period for personal injuries under Washington law applies to § 1983 claims. *Robinson v. City of Seattle*, 119 Wn.2d 34, 85, 830 P.2d 318 (1992).

The court of appeals properly applied the general three-year limitation period for personal injuries to Mr. Segaline's § 1983 claim. *Segaline*, 144 Wn. App. at 491. The appellate court found that Mr. Segaline's claim against Mr. Croft, accrued, at the very latest, when the police served Mr. Segaline with L&I's "no trespass" notice on June 30, 2003. *Ibid.* On that date, Mr. Segaline knew or had reason to know of the injury which is the basis of the action because the notice on its face barred

him from the L&I premises. On that day, Mr. Segaline was told he had to leave the premises. Mr. Segaline objected and informed L&I personnel that they were denying him service and left the premises. CP at 469. Mr. Segaline's argument that he suffered no damages until his arrest is contrary to the position he took before the trial court and contrary to his deposition testimony. *See* CP at 199, ll. 1-19; CP at 471 (Segaline Dep. at 76, ll. 17-24).

Because Mr. Segaline did not seek to amend his complaint to name Mr. Croft as a defendant until August 3, 2006, his claim that Mr. Croft unconstitutionally deprived him of his right to remain and do business in a public state office was properly barred by the three-year statute of limitations.

Mr. Segaline attempts to avoid this result, by arguing that Mr. Croft did not violate his constitutional rights until he was arrested on August 22, 2003. However, Mr. Croft was not involved in the arrest of Mr. Segaline. Mr. Croft was not present when it occurred and only learned of the arrest after the fact. CP at 380. To hold a defendant liable for damages under 42 U.S.C. § 1983, the wrongdoer must personally cause the violation. *Leer v. Murphy*, 844 F.2d 628, 633 (9th Cir. 1988). There is no *respondent superior* liability under § 1983. *Taylor v. List*, 880

F.2d 1040, 1045 (9th Cir. 1989). Mr. Segaline has no § 1983 action against Mr. Croft arising from the arrest.

Finally, Mr. Segaline argues that the arrest and the issuance of the no trespass notice are part of a pattern of deprivation of Mr. Segaline's constitutional rights such that the continuing violation doctrine applies. The doctrine of continuing violations applies to certain types of employment discrimination claims. It allows a plaintiff to reach back and recover for earlier acts occurring outside the limitations period. *Antonius v. King Cy.*, 153 Wn.2d 256, 262, 103 P.3d 729 (2004). This issue should not be reviewed by this Court for several reasons. First, Mr. Segaline never raised the continuing violation doctrine in either the trial court or the court of appeals. Under RAP 2.3, an appellate court may refuse to review any claim of error which was not raised in the trial court. Second, the continuing violation doctrine applies to employment discrimination claims and Mr. Segaline's claim is not an employment discrimination claim. Third, there is no evidence Mr. Croft engaged in systemic violations of Mr. Segaline's rights as Mr. Croft did not participate in arresting Mr. Segaline and only learned of it after the fact.

The appellate decision holding that Mr. Segaline's § 1983 claim against Alan Croft was barred by the statute of limitations does not conflict with state or federal law and does not present an important issue

of public policy.

**2. The Appellate Court Decision Limiting The Relation Back Of The First Amended Complaint To August 3, 2006, Does Not Conflict With *Gildon v. Simon Prop. Group, Inc.*, 158 Wn.2d 483, 145 P.3d 1196 (2006)**

Mr. Segaline filed his complaint naming L&I as a defendant on August 8, 2005. On August 3, 2006, he filed a motion to amend his complaint to add Alan Croft as a defendant under 42 U.S.C. § 1983. CP at 220. The court granted Mr. Segaline's motion, but found he did not act with excusable neglect as Mr. Segaline had been informed in December 2005 that Mr. Croft had drafted and designed the no trespass notice. Furthermore, Mr. Segaline deposed Mr. Croft on June 9, 2006, 21 days before the limitations period ran, yet did not file his motion seeking to add Mr. Croft as a party until August 3, 2006. CP at 230, 220. As a result, the trial court held that the filing of the amended complaint would only relate back to August 3, 2006. The court of appeals affirmed the trial court in this regard.

A determination of the relation back of an amendment rests within the trial court's discretion and will not be disturbed on appeal absent manifest abuse of discretion. CR 15(c); *Teller v. APM Terminals Pac., Ltd.*, 134 Wn. App. 696, 142 P.3d 179 (2006).

Defendant argues that the court of appeals decision erred when it

required the Mr. Segaline to show that his failure to timely name Mr. Croft as a defendant was due to inexcusable neglect. Mr. Segaline claims *Gildon v. Simon Prop. Group, Inc.*, 158 Wn.2d 483, 145 P.3d 1196 (2006) holds that the inexcusable neglect requirement does not apply if the defendant is not prejudiced and has notice of the claim. *Gildon* cannot be read so broadly. Rather, this Court indicated in footnote 10 of the *Gildon* opinion “[t]hus, the inexcusable neglect standard should not be applied to preclude relation back under CR 15(c) where the defendant's actions or misrepresentations mislead the plaintiff as occurred in this case.” *Id.* at 492, n.10 (emphasis added). Neither L&I nor Mr. Croft misled Mr. Segaline as to who drafted the no trespassing notice. L&I informed Mr. Segaline months before the limitations period ran that Mr. Croft had drafted the notice.

*Gildon* does not represent a departure from prior case law; the inexcusable neglect standard is still generally applicable. The standard remains as was stated in *Tellinghuisen v. King Cy. Coun.*, 103 Wn.2d 221, 223, 691 P.2d 575 (1984):

[A]n amendment adding a party will relate back to the date of the original pleading if three conditions are met. First, the added party must have had notice of the original pleading so that he will not be prejudiced by the amendment. CR 15(c)(1). Second, the added party must have had actual or constructive knowledge that, but for a mistake concerning the proper party, the action would have been brought against him. CR 15(c)(2). Finally, the

plaintiff's failure to timely name the correct party cannot have been "due to inexcusable neglect."

*Tellinghuisen*, 103 Wn.2d at 223 (citation omitted).

If the parties are apparent, or are ascertainable upon reasonable investigation, the failure to name them will be held to be inexcusable. *Haberman v. Pub. Power Supply Sys*, 109 Wn.2d 107, 174, 744 P.2d 1032 (1987), *as amended*, 750 P.2d 254, *appeal dismissed*, 488 U.S. 805 (1988).

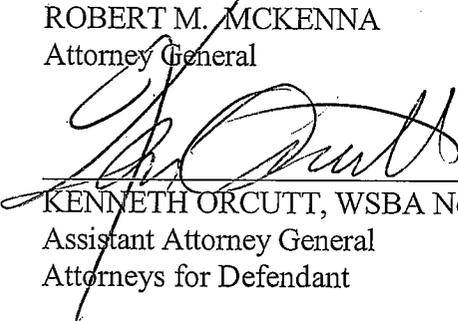
Mr. Segaline neglected to name Mr. Croft as a defendant even though Mr. Croft was identified by L&I as the person who drafted the no trespass notice in interrogatory answers more than six months prior to the expiration of the limitations period. Review should be denied on this issue.

## V. CONCLUSION

The petition for review fails to satisfy any of the criteria for review under RAP 13.4(b) and therefore should be denied.

RESPECTFULLY SUBMITTED this 30<sup>th</sup> day of July, 2008.

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