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Supreme Court No. \_\_\_\_\_  
Court of Appeals No. 63297-3-1

IN THE COURT OF APPEALS  
OF THE STATE OF WASHINGTON  
DIVISION ONE

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CONCORD CONCRETE PUMPS, INC.,

Appellant/Defendant,

v.

RALPH'S CONCRETE PUMPING, INC.,

Respondent/Plaintiff.

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ANSWER TO PETITION FOR REVIEW OF  
APPELLANT/DEFENDANT  
CONCORD CONCRETE PUMPS, INC.

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RIDDELL WILLIAMS P.S.  
Gavin W. Skok, WSBA No. 29766  
Mindy L. DeYoung, WSBA No. 39424  
Christopher Schenck, WSBA No. 37997  
1001 Fourth Avenue, Suite 4500  
Seattle, Washington 98154-1065  
Telephone: (206) 624-3600  
Attorneys for Appellant/Defendant  
Concord Concrete Pumps, Inc.

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## I. INTRODUCTION

In a unanimous published decision, Division One Court of Appeals held that Washington's long-arm statute, RCW 4.28.185, prescribes the method of out-of-state service of process on a foreign defendant over whom a plaintiff seeks to assert long-arm jurisdiction: personal service after establishing by affidavit that in-state service is impossible.

Because Ralph's Concrete Pumping, Inc. ("Ralph's") neither attempted personal service of process nor filed an affidavit establishing that personal service could not be made in-state, the Court of Appeals correctly held that Ralph's attempted out-of-state service on Concord Concrete Pumps, Inc. ("Concord") by mail was invalid and voided the default judgment entered against Concord for lack of personal jurisdiction.

Ralph's presents only two reasons to justify the Court's review of this holding, neither of which is compelling. Ralph's first asserts that the Court of Appeals' opinion in this case conflicts with Division Three's decision in *Marriage of Tsarbopoulos*. That is plainly incorrect. *Tsarbopoulos* had nothing to do with service under the long-arm statute, and in fact, the court in *Tsarbopoulos* affirmed that the long-arm statute "requires that the respondent be personally served."

Ralph's second argument is that the Court of Appeals' decision does harm to Civil Rule 4(i). That argument relies on faulty assumptions

and a strained interpretation of the rule that ignores its plain language and context.

By its terms, CR 4(i) requires independent authorization for out-of-state service; it is inapplicable until other authorization is found. Ralph's relies on the long-arm statute for such authorization. But, as the Court of Appeals correctly held, the long arm statute does not generally authorize out-of-state service, and conditions its authorization of a specific method of service (personal service) on a plaintiff first establishing by affidavit that in-state service is impossible. The Court of Appeals rightly held that CR 4(i) is inapplicable because of plain language in CR 4(e) and the long-arm statute, which prescribe personal service as the proper method of service when attempting to invoke long-arm jurisdiction.

There is no direct conflict between decisions of Division One and Division Three of the Court of Appeals, and this is not an issue of broad public import because the statutory scheme is clear. The guidelines for discretionary review are not satisfied. The Court should deny further review of this case.

## **II. ISSUES**

(1) Does Ralph's failure to personally serve Concord in accordance with Washington's long arm statute, RCW 4.28.185(2), render Ralph's attempt to serve process by mail invalid and prevent long-arm

jurisdiction from attaching, thereby voiding the entry of default and default judgment against Concord?

(2) Does the long-arm statute require a plaintiff who seeks to invoke long-arm jurisdiction to establish by affidavit pursuant to RCW 4.28.185(4) that in-state service is impossible before any out-of-state service is authorized, such that Ralph's failure to make such an affidavit renders its attempted service of process by mail invalid and prevents long-arm jurisdiction from attaching, thereby voiding the entry of default and default judgment against Concord?

(3) Does Ralph's fail to meet the requirements necessary to merit Supreme Court review when the Court of Appeals' decision is entirely consistent with the only case on which Ralph's relies and when Washington's long-arm statute is clear that a plaintiff seeking to invoke long-arm jurisdiction over a foreign defendant through out-of-state service must first establish by affidavit that in-state service is impossible and then personally serve the defendant out-of-state?

### **III. STATEMENT OF THE CASE**

Concord is a family-owned Canadian business that manufactures and sells concrete pump trucks for use in various industrial and construction applications. CP at 39-40. Concord maintains its corporate headquarters in Port Coquitlam, British Columbia, Canada. CP at 39. It is

not a resident of the State of Washington, has no offices or employees in Washington State and has no registered agent to accept service in Washington. CP at 40.

Ralph's filed a Complaint against Concord in King County Superior Court, alleging that Ralph's purchased a 2007 model year concrete pump, but was delivered a 2006 model year concrete pump. CP at 1-4. Ralph's attempted to invoke long-arm jurisdiction over Concord. Petition at 6.

It is undisputed that Ralph's never personally served or attempted to personally serve Concord, either in Washington or at its headquarters in British Columbia. CP at 40. It is also undisputed that Ralph's did not establish by affidavit made under RCW 4.28.185(4) that Concord could not be served in Washington, either prior to attempting service or at any time prior to entry of judgment.

Instead, Ralph's attempted to serve Concord simply by mailing the Summons and Complaint to Concord in Canada via Federal Express. CP at 9. The cover letter accompanying that mailing stated that "[y]ou are being served under the provisions of RCW 4.28.185 and Washington Court Rule 4(i)(D)." CP at 43.

Ralph's then sought and obtained entry of an order of default against Concord and a default judgment. CP at 13-14, 24-26. Ralph's

attempted to enforce that judgment in February 2009 by seizing a Concord concrete pump truck at a trade show in Nevada. CP at 40-41. The pump truck was released after Concord posted a \$180,000.00 cash bond. CP at 40-41.

On February 10, 2009, Concord made a special appearance to seek an order vacating and setting aside the default judgment based on Ralph's failure to make valid service or to establish jurisdiction over Concord. CP at 27-37. In its Opposition to Concord's motion, Ralph's argued that it had made proper service on Concord under Washington Superior Court CR 4(i). Ralph's also argued that it did not need to comply with the RCW 4.28.185(4) affidavit requirement. CP at 64.

The King County Superior Court denied Concord's motion to vacate in a short form order that included no analysis. CP at 154-56. Concord filed a timely appeal of the Superior Court's decision to the Court of Appeals Division One. CP at 157-62. In a unanimous published decision, the Court of Appeals reversed the Superior Court. The Court of Appeals held that personal jurisdiction did not attach because Ralph's failed to personally serve Concord and failed to file an affidavit as required by Washington's long-arm statute, RCW 4.28.185.

#### IV. ARGUMENT

**A. Personal Service on Out-Of-State Defendants is a Well-Established Rule, Not the Exception.**

Statutes authorizing out-of-state service on parties are in derogation of common law personal service requirements, so must be strictly construed. *Haberman v. Washington Pub. Power Supply Sys.*, 109 Wn.2d 107, 177, 744 P.2d 1032 (1987). That rule applies with equal force to service under the long-arm statute. *Hatch v. Princess Louise Corp.*, 13 Wn. App. 378, 379, 534 P.2d 1036 (1975) (because out-of-state service “is of purely statutory creation and is in derogation of common law,” the long-arm statute is strictly construed).

Consistent with that rule of strict construction, mere receipt of service outside the state is not sufficient. *Haberman*, 109 Wn.2d at 177. Nor is mailed service sufficient under the long-arm statute. *Id.* at 177-78 (out-of-state service by mail insufficient to meet requirements of the long-arm statute).

Instead, the well-established rule is that only personal service is authorized by the long-arm statute. *Marriage of Tsarbopoulos*, 125 Wn. App. 273, 285, 104 P.3d 692 (2004) (“[t]he long arm statute, nevertheless, requires that the respondent be personally served.”); *Kennedy v. Korth*, 35 Wn. App. 622, 624-25, 668 P.2d 614 (1983) (holding trial court committed reversible error by allowing plaintiff to serve a defendant

residing in West Germany by mail instead of requiring personal service); Karl B. Tegland, 14 Wash. Prac. Civil Proc. § 8.15 at 213-14 (2008) (“*The statute requires personal service*, inside or outside the state of Washington. *The long-arm statute does not authorize service by publication or mail.*”) (emphasis added).<sup>1</sup>

**B. Ralph’s Incorrectly Relies on the Long Arm Statute, RCW 4.28.185, As Its Grant of Authority for Out-of-State Service by Mail.**

Because out-of-state service is in derogation of the common law, Ralph’s must establish that such service is specifically authorized by the long-arm statute as strictly construed.

Ralph’s bases its argument that mailed service was proper on CR 4(i), which by its terms applies only “[w]hen a statute or rule authorizes service upon a party not an inhabitant of or found within the state.” Accordingly, Ralph’s must establish authorization somewhere other than in CR 4(i) to make service outside Washington. Only then can it invoke the methods listed in CR 4(i).

Ralph’s does not dispute that such authorization is required.

Ralph’s asserts two purported sources of authorization for out-of-state

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<sup>1</sup> Furthermore, while Ralph’s may be correct that RCW 4.28.185(6) does not restrict other ways to serve, at the same time, it does not authorize them. Subsection 6 provides: “Nothing herein contained limits or affects the right to serve any process in any other manner now or hereafter provided by law.” First, the statute says that it does not “affect” methods of service, *i.e.*, it does not authorize other methods of service. Second, it has no affect on “any other manner [of service] now or hereafter provided by law,” *i.e.*, a manner otherwise authorized outside the long-arm statute.

service. First, Ralph's argues that "RCW 4.28.185(1) authorizes service upon any party who is subject to the jurisdiction of the courts of this state." Petition at 12.<sup>2</sup> Ralph's cites no authority for that assertion. By its plain language, RCW 4.28.185(1) simply lists the circumstances in which a person or entity may be subject to long-arm jurisdiction.<sup>3</sup> The word "service" does not even appear in that subsection, and Ralph's has not brought forth any authority holding that subsection 1 of the long-arm statute authorizes out-of-state service. Indeed, if merely authorizing long-arm jurisdiction also authorized out-of-state service, there would be no need for RCW 4.28.185(2) (authorizing personal service). Ralph's conclusion that RCW 4.28.185(1) authorizes service is not supported by the statutory language.

Second, Ralph's argues that RCW 4.28.185(2) generally authorizes out-of-state service on any party subject to long-arm jurisdiction under subsection 1. Petition at 6. Ralph's is incorrect. Subsection 2 does not grant broad, general authority to serve out-of-state. On the contrary, the

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<sup>2</sup> Concord contests that it is subject to jurisdiction under the long-arm statute. The Court of Appeals did not reach this issue because it held service was insufficient.

<sup>3</sup> RCW 4.28.185(1) reads:

Any person, whether or not a citizen or resident of this state, who in person or through an agent does any of the acts in this section enumerated, thereby submits said person, and, if an individual, his personal representative, to the jurisdiction of the courts of this state as to any cause of action arising from the doing of any of said acts: [enumerating acts] . . . .

narrow authorization in subsection 2 prescribes the single method of personal service:

Service of process upon any person who is subject to the jurisdiction of the courts of this state, as provided in this section, may be made by *personally serving* the defendant outside this state, as provided in RCW 4.28.180, with the same force and effect as though personally served within this state.

(emphasis added).

More importantly, RCW 4.28.185(2) must be read in conjunction with RCW 4.28.185(4), which states that the personal service discussed in RCW 4.28.185(2) is not available unless a plaintiff establishes by affidavit that in-state service is impossible:

Personal service outside the state shall be valid only when an affidavit is made and filed to the effect that service cannot be made within the state.

RCW 4.28.185(4). *State v. Chapman*, 140 Wn.2d 436, 448, 998 P.2d 282 (2000) ("Under rules of statutory construction each provision of a statute should be read together (*in pari materia*) with other provisions in order to determine the legislative intent underlying the entire statutory scheme. The purpose of interpreting statutory provisions together with related provisions is to achieve a harmonious and unified statutory scheme that maintains the integrity of the respective statutes.")

Read together, subsections 2 and 4 stand for the proposition that no out-of-state service is authorized by the long arm statute until the required

affidavit is filed, and then only personal service is authorized. Ralph's proposed reading would impermissibly amend and broaden the long-arm statute by eliminating the subsection 4 affidavit requirement (which modifies the subsection 2 authorization) and expanding subsection 2 into a general authorization for out-of-state service by any means at any time. Such a reading is contrary to the plain language of the statute and the rules of strict construction that govern its interpretation.<sup>4</sup>

**C. Out-of-State Service Was Not Authorized by the Long Arm Statute Because Ralph's Failed to File the Affidavit Required by that Statute.**

The Court of Appeals correctly held that the long arm statute does not authorize any out-of-state service unless and until a plaintiff files an affidavit under RCW 4.28.185(4) establishing that service within Washington is impossible.<sup>5</sup> Without such an affidavit, service is invalid.

"Subsection (4) of the statute . . . conditions the validity of out-of-state service on the filing of the affidavit." *Schnell v. Tri-State Irrigation*, 22 Wn. App. 788, 790, 591 P.2d 1222 (1979); *see also RCL Northwest, Inc. v. Colorado Resources, Inc.*, 72 Wn. App. 265, 270, 864 P.2d 12

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<sup>4</sup> Nor is RCW 4.28.185(6) a general authorization for out-of-state service. Subsection 6 provides: "Nothing herein contained limits or affects the right to serve any process in any other manner now or hereafter provided by law." By the terms of subsection 6, the long-arm statute does not "affect" methods of service other than personal service, *i.e.*, it neither authorizes nor prohibits them, requiring Ralph's either to personally serve under the long-arm statute or find a general authorization for out-of-state service elsewhere.

<sup>5</sup> RCW 4.28.185(4) reads: "Personal service outside the state shall be valid only when an affidavit is made and filed to the effect that service cannot be made within the state."

(1993) (“The validity of out-of-state service is conditioned on the filing of an affidavit that service cannot be made within the state.”). The same rule of strict construction applies to the affidavit requirement as to other out-of-state service provisions, all of which are in derogation of the common law. *Boyd v. Kulczyk*, 115 Wn. App. 411, 415, 63 P.3d 156 (2003).

It is undisputed that Ralph’s did not file the affidavit required by RCW 4.28.185(4) before attempting out-of-state service on Concord under the long arm statute, or at any point before the default judgment was entered. *Ralph’s Concrete Pumping, Inc. v. Concord Concrete Pumps, Inc.*, \_\_\_ Wn. App. \_\_\_, 225 P.3d 1035, 1036 (2010). There is nothing in the record indicating that service in-state was impossible. In fact, Ralph’s for the first time asserts in its petition for review – without any record citation or other evidence – that it was “[u]nable to serve Concord in Washington.” Petition at 3. That unsupported assertion in an appellate brief does not satisfy the affidavit requirement, either in substance or in timing.

When a plaintiff seeking to invoke long-arm jurisdiction fails to make the affidavit required by RCW 4.28.185(4) before the entry of a default judgment, the attempted out-of-state service was not authorized and the default judgment therefore is void for lack of personal jurisdiction. *Morris v. Palouse River & Coulee City Railroad, Inc.*, 149 Wn. App. 366, 372, 203 P.3d 1069 (2009) (attempted out-of-state service under RCW

4.28.185 invalid when plaintiff failed to comply with RCW 4.28.185(4) affidavit requirement); *Sharebuilder Securities, Corp. v. Hoang*, 137 Wn. App. 330, 335, 153 P.3d 222 (2007) (“If a plaintiff has not complied with RCW 4.28.185(4), then there is no personal jurisdiction and the judgment is void.”); *Boyd*, 115 Wn. App. at 415 (“Filing of the required affidavit [under RCW 4.28.185(4)] must precede the entry of judgment, or the judgment is void.”) (citing *Barer v. Goldberg*, 20 Wn. App. 472, 482, 582 P.2d 868 (1978)); *Schnell*, 22 Wn. App. at 791-92 (vacating default judgment against out-of-state defendant due to plaintiff’s failure to file RCW 4.28.185(4) affidavit before personally serving outside of the state); *Hatch*, 13 Wn. App. at 380 (default judgment was void for failure to file RCW 4.28.185(4) affidavit).

Ralph’s argues that the Court of Appeals’ ruling creates a conflict between the long-arm statute and CR 4(i). Ralph’s argument rests on the premise that the long-arm statute generally authorizes out-of-state service merely by listing in subsection 1 the circumstances under which long-arm jurisdiction can exist (*see* Petition at 12) or by referring to the specific method of personal service in subsection 2 (Petition at 6). But when the plain terms of the long-arm statute are read as drafted and in context, e.g., in context of subsection 4, it is apparent that no service of any kind is authorized under the long-arm statute until after the RCW 4.28.185(4)

affidavit is made. The validity of the only method of service specified in the long-arm statute (personal service) is conditioned upon the making of such an affidavit.

Ralph's interpretation would allow a plaintiff to serve any defendant that has a foreign office at that office by any of the means listed in CR 4(i) without first establishing that in-state service on that defendant was impossible. Such an absurd result that would be contrary to the traditionally narrow view of out-of-state service, the common law rule of strict construction and case law interpreting the long arm statute.

The Court of Appeals correctly held that "[t]he lack of the affidavit required by the long-arm statute is fatal to personal jurisdiction" and voided the default judgment for this reason. *Ralph's Concrete Pumping, Inc.*, \_\_ Wn.App \_\_, 225 P.3d 1035, 1040 (2010).

**D. The Court of Appeals Correctly Held that CR 4(e) Applied Because the Long Arm Statute Prescribes Personal Out-of-State Service.**

In its petition, Ralph's asserts that the Court of Appeals "*sua sponte* at oral argument raised the legal issue whether CR 4(e) conditions the applicability of CR 4(i) to the absence of any provision in RCW 4.28.185 prescribing the manner of service." Petition at 5. Ralph's chides the Court of Appeals for considering CR 4(e) without receiving briefing on that issue. *Id.* It is well-established that an appellate court may raise

issues sua sponte and may rest its decision thereon. *Greengo v. Public Employees Mut. Ins. Co.*, 135 Wn.2d 799, 813, 959 P.2d 657 (1998) (citing RAP 12.1(b)); *Alverado v. Wash. Pub. Power Supply Sys.*, 111 Wn.2d 424, 429, 759 P.2d 427 (1988) (citing RAP 12.1(b)), *cert. denied*, 490 U.S. 1004 (1989)). There was nothing improper with the Court of Appeals raising the CR 4(e) issue *sua sponte*.

The Court of Appeals correctly rejected Ralph's argument that mailed service under CR 4(i)(1)(D) is a permissible alternative to the personal service requirement of the long-arm statute, holding that such an argument ignores the rest of CR 4, namely CR 4(e)(1), which states:

Whenever a statute or an order of court thereunder provides for service of a summons, or of a notice, or of an order in lieu of summons upon a party not an inhabitant of or not found within the state, service may be **made under the circumstances and in the manner prescribed by the statute or order, or if there is no provision prescribing the manner of service, in a manner prescribed by this rule.**

CR 4(e)(1) (emphasis added). *Ralph's Concrete Pumping, Inc.*, \_\_\_ Wn.App. \_\_\_, 225 P.3d at 1039.

As discussed above, Ralph's relies on the long-arm statute as its sole source of authorization for out-of-state service. But, as the Court of Appeals correctly noted, CR 4(e)(1) expressly conditions the availability of CR 4(i) service methods on the absence of any "provision prescribing the manner of service" in the statute claimed to authorize out-of-state

service. *Ralph's Concrete Pumping, Inc.*, \_\_\_ Wn.App. \_\_\_, 225 P.3d at 1039. Here, the long-arm statute prescribes the manner of out-of-state service: (1) personal service; (2) after establishing by affidavit that in-state service is impossible. Under CR 4(e)(1), Ralph's should have effected service "in the manner prescribed by the [long arm] statute." There is no need – or right – to resort to a manner of service prescribed by Rule 4(i).<sup>6</sup>

It is undisputed that (1) Ralph's did not attempt personal service as required by the long arm statute; and (2) Ralph's did not file an affidavit saying in-state service could not be made. Therefore, the Court of Appeals correctly held that service was insufficient and that the default judgment was void.

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<sup>6</sup> Ralph's argues that the presence of a "manner prescribed by the statute" requirement in CR 4(e)(1) and the absence of such a requirement in CR 4(i) shows that personal service under the long-arm statute need not be followed for service under CR 4(i). Petition at 8. This is an attempt to confuse the issues and gloss over the meaning of the long-arm statute. Ralph's concedes that specific authority is required under CR 4(i) and then assumes that the long-arm statute provides general authorization for out-of-state service. It does not. It is only a narrow grant of authority to serve an out-of-state defendant by personal service.

The cases Ralph's cites for this argument are inapt. *State ex rel. Public Disclosure Commission v. Rains*, 87 Wn.2d 626, 633-34, 555 P.2d 1368 (1976) (court analyzed words "may" and "shall" used in the same statute); *State v. Kuberka*, 35 Wn. App. 909, 911, 671 P.2d 260 (1983) (court relied on plain interpretation of rule—statute specifically designated thing on which it operates, so all things omitted were presumably omitted intentionally); *Ockerman v. King Cty.*, 102 Wn. App. 212, 217, 6 P.3d 1214 (2000) (same).

**E. The Court of Appeals' Interpretation of CR 4(e) Does Not Create a Conflict With CR 4(i).**

Ralph's does not argue that the Court of Appeals' interpretation would render CR 4(i) moot or meaningless. Rather, Ralph's argues that CR 4(i) would "rarely be applicable." Petition at 9. However, under a plain reading of the rule, CR 4(i) will continue to apply in some cases, e.g., in cases where the statute invoked as authorizing jurisdiction generally authorizes out-of-state service yet fails to prescribe the manner of service, or in cases where parties contractually agree to submit to jurisdiction.

In any event, even if CR 4(i)(D) was rarely applicable, such a conclusion comports with the strict construction of statutes authorizing out-of-state service. Ralph's is essentially trying to amend and broaden the long-arm statute with its interpretation, but experience and practice teaches that the long-arm statute is functioning exactly as it should by requiring personal service.

**F. The Authority Ralph's Cites in Support of Its Interpretation of CR 4 is Inapplicable and Distinguishable.**

Ralph's does not come forward with any authority supporting its argument that the Court of Appeals was incorrect in holding that CR 4(e) conditions the applicability of CR 4(i) on the lack of any prescribed method in the statute authorizing out-of-state service.

Instead, Ralph's parses the language of CR 4(e) and CR 4(i), attempting to use the headings of those rules to interpret the meaning of their body text. Yet Ralph's never even claims (much less establishes) that the text of CR 4(e) and 4(i) is ambiguous. Petition at 8.

It is a maxim of statutory interpretation that where the text of the rule is clear, the heading will be disregarded. *See State v. Crothers*, 118 Wash. 226, 228, 203 P. 74 (1922) (a headnote should not "be permitted to cast doubt upon that which is not doubtful, and be made an excuse for construing that which, without it, would require no construction."); *State v. Bridges*, 19 Wash. 431, 53 P. 545 (1898) (where legislative intention is evident from the statute's provisions, the subdivisional heads will be disregarded); *State v. Lundell*, 7 Wn. App. 779, 782, 503 P.2d 774 (1972) (same); *City of Spokane v. State*, 198 Wash. 682, 690, 89 P.2d 826 (1939) (the scope and intent of a statute is not controlled by the name given to it by way of designation or description).

Furthermore, the two out-of-state federal cases that Ralph's cites apply different rules in different courts. They are not binding authority on Washington courts. They are readily distinguishable from the present case on their facts and in the rules they apply. *See Louis Dreyfus Corp. v. McShares, Inc.*, 723 F.Supp. 375, 377 (E.D.La. 1989) (foreign insurer could have been served by mail because Louisiana state law specifically

authorized mailed service on a foreign insurer, unlike the Washington long-arm statute which does not authorize mailed service; discussing superseded version of Fed. R. Civ. P. 4); *Pizzabioche v. Vinelli*, 772 F. Supp. 1245, 1249 (M.D. Fla. 1991) (court held personal service on international defendants was sufficient service of process). Neither case cites to the common law rule of strict construction or to the preference under the long-arm statute for personal service, or discuss Washington law or CR 4. Ralph's fails to cite to a single state or federal case that permits a party to do what Ralph's has done.<sup>7</sup>

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<sup>7</sup> Ralph's highlights parts of the Advisory Committee Notes accompanying the adoption of Fed. R. Civ. P. 4(i) in 1963, but ignores important language (in italics):

As indicated in the opening lines of new subdivision (i), referring to the provisions of subdivision (e), *the authority for effecting foreign service must be found in a statute ... of the State in which the district court is held providing in terms or upon proper interpretation for service abroad upon persons not inhabitants of or found within the State.*"

Advisory Committee Note to Fed. R. Civ. P. 4, 1963 Amendment, Subdivision (i) (emphasis added). This reaffirms the need for a statute, unlike Washington's long-arm statute, that generally authorizes out-of-state service.

Indeed, by its own terms, the federal rule would not have been satisfied on the facts of this case. The Notes to Fed. R. Civ. P. 4(i)(1) state that "[s]ince the reliability of postal service may vary from country to country, *service by mail is proper only when it is addressed to the party to be served* and a form of mail requiring a signed receipt is used." *Id.* (emphasis added). Here, Ralph's did not even address its mailing to the correct place or person. The mailing was addressed to "Coquitlam, B.C." instead of to Concord's headquarters in Port Coquitlam, an entirely different city in British Columbia. CP at 39-40, 43. The cover letter accompanying the mailing was addressed to "ATTN: Isadore Flores" with the salutation "Dear Madam." CP at 43. There is no Ms. Isadore Flores employed by Concord. CP at 40.

**G. Ralph's Cannot Meet the Requirements for Supreme Court Discretionary Review.**

Ralph's asserts only two reasons to justify review by this Court. Neither is compelling. Ralph's first reason, that there is a conflict with Division Three's decision in *Marriage of Tsarbopoulos*, 125 Wn. App. 273, 104 P.3d 692 (2004), is plainly incorrect. Petition at 7, n. 3. First, *Tsarbopoulos* is a case arising under the Uniform Child Custody Jurisdiction Act (UCCJA). Unlike the limited method of service prescribed by the long-arm statute at issue here, the service statute at issue in *Tsarbopoulos*, RCW 26.27.081, was a general authorization for out-of-state service in "any manner reasonably calculated to give notice." 125 Wn. App. at 281.

Second, the court in *Tsarbopoulos* found that "the long-arm jurisdiction under RCW 4.28.185 *did not apply* factually." 125 Wn. App. at 280 (emphasis added). In fact, the court reaffirmed in dicta that "[t]he long arm statute, nevertheless, requires that the respondent be personally served." *Id.* at 285.

There is nothing inconsistent between *Tsarbopoulos* and the Court of Appeals' holding in the present case. *See* RAP 13.4(b)(2) ("A petition for review will be accepted by the Supreme Court only: ... if the decision of the Court of Appeals is in conflict with another decision of the Court of Appeals"); *accord* RCW 2.06.030(e). Furthermore, the fact that

*Tsarbopoulos* was previously the only published opinion analyzing service by mail under CR 4(i) in the 40-plus years since the adoption of that rule demonstrates that this is not an issue of substantial public interest. *See* RAP 13.4(b)(4).

Ralph's second reason, that the Court of Appeals' decision does harm to CR 4(i), ignores the rule's plain language for the reasons discussed above. There is no conflict between CR 4(i) and RCW 4.28.185 because the rule and the statute are easily reconciled, as done by the Court of Appeals. The long-arm statute simply does not provide general authorization for out-of-state service. It authorizes personal service only, and then only after establishing by affidavit that in-state service is impossible. Ralph's cannot rely on it to authorize service by mail under CR 4(i)(1).

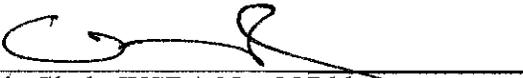
## V. CONCLUSION

Ralph's fails to demonstrate conflict between decisions of Division One and Division Three of the Court of Appeals, or between the long-arm statute and CR 4. Ralph's also fails to show that this case presents an issue of broad public import that merits Supreme Court review. The statutory scheme on out-of-state service of process is clear; the long-arm statute prescribes personal service. It is not a general authorization for out-of-state service.

For these reasons, Concord respectfully requests that the Court deny Ralph's petition for review.

DATED this 23<sup>rd</sup> day of April, 2010.

RIDDELL WILLIAMS P.S.

By   
Gavin Skok, WSBA No. 29766  
Mindy L. DeYoung, WSBA No. 39424  
Christopher Schenk, WSBA No. 37997  
1001 Fourth Avenue, Suite 4500  
Seattle, Washington 98154-1192  
Telephone: (206) 624-3600  
Email: gskok@riddellwilliams.com  
Attorneys for Defendants  
Concord Concrete Pumps

**CERTIFICATE OF SERVICE**

I, Donna Hammonds, an employee of Riddell Williams P.S., hereby declare that I am over eighteen years of age, am competent to testify, and that on April 23, 2010, I caused to be served upon the below-listed parties, via the methods listed below, a true and correct copy of the foregoing and supporting documents:

Service List	
<i>Geoffrey P. Knudsen</i> Smith & Hennessey, PLLC 316 Occidental Avenue South, Suite 500 Seattle, WA 98104	<input checked="" type="checkbox"/> Hand Delivered <input type="checkbox"/> Mailed <input type="checkbox"/> Faxed <input type="checkbox"/> Electronic Mail

  
Donna Hammonds