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Division I
State of Washington**

NO. 76360-1-I

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

TERESA BANOWSKY,

Appellant,

v.

GUY BACKSTROM, D.C.,

d/b/a Bear Creek Chiropractic Center,

Respondent.

BRIEF OF RESPONDENT

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I. INTRODUCTION

After filing a medical negligence complaint against Guy Backstrom, DC, in King County District Court alleging damages in excess of the district court jurisdictional limit, Theresa Banowsky asked the district court to transfer her case to the superior court. Because well-established Washington law provides that a court lacking subject matter jurisdiction can do nothing but enter an order of dismissal, the district court dismissed Ms. Banowsky's case. The King County Superior Court affirmed the dismissal upon Ms. Banowsky's RALJ appeal.

Before this Court, Ms. Banowsky argues that the Washington Supreme Court, through the means of revising a single court rule, intended to extend the power of the district court to act in cases in which it lacks jurisdiction. Because Ms. Banowsky's interpretation of that rule is contrary to all other relevant rules and statutes defining the jurisdiction of the district courts, this Court should affirm the dismissal of her suit against Dr. Backstrom.

II. COUNTERSTATEMENT OF ISSUES PRESENTED

(1) Did the district court correctly determine it lacked subject matter jurisdiction over Ms. Banowsky's claim because her complaint alleged, and she subsequently confirmed, her damages exceeded the district court's jurisdictional limit of \$100,000?

(2) Having correctly ruled it lacked subject matter jurisdiction over Ms. Banowsky's claim, did the district court properly deny her motion for transfer and dismiss the claim?

(3) Can CRLJ 14A(b) be easily harmonized with other court rules and statutes, including CRLJ 12 and CRLJ 82, without upending existing Washington law?

(4) Should the Court award sanctions against Ms. Banowsky because she failed to address the sole issue for review—the relationship between CRLJ 14A(b) and other court rules and statutes—confirming there are no debatable issues or merit to her appeal?

III. COUNTERSTATEMENT OF THE CASE

A. Nature of the Case and Appeal

Appellant Ms. Banowsky filed a medical negligence complaint against Respondent Dr. Backstrom in King County District Court seeking damages in excess of \$100,000, the upper limit of the district court's jurisdiction under RCW 3.66.020.¹ App. Br. at 5; CP at 106-07. Acknowledging she filed her complaint in the wrong court and that she

¹ RCW 3.66.020 provides in pertinent part as follows:

If, for each claimant, the value of the claim or the amount at issue does not exceed one hundred thousand dollars, exclusive of interest, costs, and attorneys' fees, the district court shall have jurisdiction and cognizance of the following civil actions and proceedings: . . .

should have filed it in the superior court, Ms. Banowsky asked the district court to transfer her case to superior court pursuant to CRLJ 14A(b).² App. Br. at 5; CP at 95-96. Dr. Backstrom opposed the motion and requested dismissal for lack of subject matter jurisdiction. App. Br. at 5; CP at 45.

After oral argument, the district court dismissed the complaint without prejudice, finding Ms. Banowsky had failed to invoke the subject matter jurisdiction of the court. App. Br. at 5; CP at 27-28. Ms. Banowsky appealed the dismissal to the superior court, which affirmed the order granting dismissal. App. Br. at 6; CP at 174-75. Ms. Banowsky sought and obtained limited discretionary review from this Court under RAP 2.3(d)(3) regarding CRLJ 14A(b) and its relationship to other rules and statutes. *See* May 31, 2017 Notation Ruling (Comm. Neel).

B. Factual Background.

Ms. Banowsky filed this medical negligence lawsuit against her longtime chiropractor, Dr. Backstrom, alleging that she sustained a fall on February 25, 2013, which caused injuries to her hip, pelvis, and thigh. CP 105. She sought chiropractic treatment from Dr. Backstrom the following day. *Id.* During treatment, Ms. Banowsky claimed Dr. Backstrom negligently performed a “lumbar spine manipulation,” causing her

² Ms. Banowsky called her motion a “motion to transfer,” but CRLJ 14A(b) refers to “removal” from district court to superior court.

hamstring to “detach.” CP 106. Ms. Banowsky alleged Dr. Backstrom’s negligence forced her to undergo surgery and medical treatment costing “more than \$100,000 in medical expenses.” *Id.*

C. Procedural Background.

Ms. Banowsky filed her medical negligence complaint in King County District Court on February 25, 2016, one day before the statute of limitations expired. CP 105. Her complaint alleged “actual compensatory damages in an amount exceeding \$100,000.00, together with attorney’s fees, court costs, and whatever other damages deemed appropriate by the Court.” CP 106-07 (emphasis added). She filed her complaint *pro se*. CP 107.

On April 14, 2016, attorney James R. Banowsky appeared as counsel of record for Ms. Banowsky. CP 101. Represented by counsel, Ms. Banowsky moved to transfer her case to superior court pursuant to CRLJ 14A(b). CP 95. Her motion stated that she filed her complaint *pro se* to preserve the statute of limitations. CP 95. It further stated: “Plaintiff’s claim exceeds the \$100,000.00 District Court Limit” and “should have been filed in Superior Court.” CP 96; *see also* CP 103.

Dr. Backstrom opposed the motion, noting that according to the complaint and the motion, the amount in controversy exceeded the \$100,000 jurisdictional limit of the district court. CP 45-46. He argued that

Ms. Banowsky had not invoked the subject matter jurisdiction of the district court and therefore its only option was dismissal. CP 48-50.

Dr. Backstrom cited to *Howlett v. Weslo, Inc.*, 90 Wn. App. 365, 367, 951 P.2d 831 (1998), a case in which the Court of Appeals held that a district court order of transfer was void because the claimant's amended complaint sought damages in excess of the district court jurisdictional limit at the time of transfer. Dr. Backstrom noted that Ms. Banowsky's reliance on CRLJ 14A(b) as a source of authority for transfer was misplaced because civil court rules are merely procedural; they are not a source of subject matter jurisdiction. CP 50-52. Dr. Backstrom cited to well-established case law holding that a court lacking subject matter jurisdiction can do nothing but dismiss. CP 47-48.

Ms. Banowsky advanced three arguments in reply. First, she argued the district court had subject matter jurisdiction over the first \$100,000 of her claim and she should be allowed to proceed in district court. CP 30-31. Second, she argued *Howlett* was no longer good law because CRLJ 14A had been amended. CP 31-33. Third, she argued she "substantially complied" with "procedural requirements" and the district court should "grant jurisdiction based on substantial compliance." CP 33-35.

The district court agreed with Dr. Backstrom, holding it had no subject matter jurisdiction over the suit and no choice but to dismiss. CP 134:214-135:215. The district court denied Ms. Banowsky's motion for removal and dismissed her suit without prejudice. CP 136:262.

Ms. Banowsky appealed the order of dismissal to superior court, renewing her equitable arguments and claiming that revised CRLJ 14A(b) required the district court to remove her case to superior court because of the term, "shall." Dr. Backstrom relied on the same arguments made at the district court, namely that the court had correctly determined it lacked subject matter jurisdiction and, under *Howlett*, it had no choice but to dismiss. He reaffirmed that court rules are procedural and cannot confer subject matter jurisdiction where it does not exist, thus CRLJ 14A could not authorize transfer of Ms. Banowsky's claim, regardless of its language.

The superior court affirmed the district court's order of dismissal, holding that it properly dismissed the case for lack of subject matter jurisdiction. RP at 18:5-6. The court noted that CRLJ 14A applies to claims over which a district court "already has jurisdiction." RP at 18:15-16. Addressing Ms. Banowsky's claim that the equities favored reversal, the court responded, "[W]hen one party waits to the last moment to file [a

lawsuit], they run the risk of not being allowed to correct any errors [or] defects.” RP at 17:25-18:1.

D. Scope of Review

Ms. Banowsky sought discretionary review in this Court under RAP 2.3(d)(3), renewing her arguments made to the lower courts. By notation ruling dated May 31, 2017, Commissioner Mary Neel denied discretionary review as to the substantial compliance and limited damages arguments, but granted review “to address the issues raised by CRLJ 14A(b) and its relationship with other rules and statutes, including CRLJ 12(h)(3) and CRLJ 82.”

Despite Commissioner Neel’s clear statement of the single issue accepted for review, Ms. Banowsky’s opening brief focuses only on her interpretation of CRLJ 14A(b) without citing CRLJ 12(h)(3) or CRLJ 82 or addressing the relationship between CRLJ 14A(b) and those rules. Ms. Banowsky also repeats her limited damages and substantial compliance arguments, *see* App. Br. at 19-20, without acknowledging that Commissioner Neel specifically denied review of those issues.

IV. STANDARD OF REVIEW

An order of dismissal for lack of subject matter jurisdiction is reviewed de novo. *Fontana v. Diocese*, 138 Wn. App. 421, 425, 157 P.3d 443 (2007).

V. ARGUMENT

The focus of this case is the relationship between the laws and statutes establishing the jurisdiction of the district courts and the court rules governing their procedures. As Commissioner Neel observed when granting discretionary review, Ms. Banowsky's claims regarding CRLJ 14A(b) require consideration of CRLJ 12(h)(3) and CRLJ 82.

CRLJ 12(h)(3) provides: "Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action."

CRLJ 14A, titled "Removal to Superior Court," includes the following:

(b) Claims in Excess of Jurisdiction--Generally. When any party in good faith asserts a claim in an amount in excess of the jurisdiction of the district court or seeks a remedy beyond the jurisdiction of the district court, the district court shall order the entire case removed to superior court.

CRLJ 82, titled "Jurisdiction and Venue – Unaffected," provides: "These rules shall not be construed to extend or limit the jurisdiction of the courts of limited jurisdiction or the venue of actions therein."

Viewed in the proper context of the statutes defining the jurisdiction of the district courts and case authority interpreting those statutes, as well as the plain language of CRLJ 12 and CRLJ 82, Ms. Banowsky's interpretation of CRLJ 14A(b) must fail.

- A. A court lacking subject matter jurisdiction has no authority to act and must enter an order of dismissal.

In adopting CRLJ 12(h)(3), the Supreme Court acknowledged the paramount importance of resolving questions of subject matter jurisdiction whenever they arise during the pendency of an action. Subject matter jurisdiction involves a court's authority to hear and decide a particular kind of case. *Bour v. Johnson*, 80 Wn. App. 643, 648, 910 P.2d 548 (1996); Karl B. Tegland, 14 *Washington Practice* §3:1 (Supp. 2016). Subject matter jurisdiction is a prerequisite to the exercise of judicial power. *Matheson v. City of Hogniam*, 170 Wn. App. 811, 819, 287 P.3d 619 (2012).

If it appears at any time that a court lacks subject matter jurisdiction, the action will be dismissed. *Hunter v. Dep't of Labor and Indust.*, 19 Wn. App. 473, 476, 576 P.2d 69 (1973); CR 12(h)(3); CRLJ 12(h)(3). A court lacking subject matter jurisdiction may do nothing other than enter an order of dismissal. *Fontana*, 138 Wn. App. at 425; *Inland Foundry v. Air Pollution Auth.*, 98 Wn. App. 121, 124, 989 P.2d 102 (1999); *Crosby v. Spokane County*, 87 Wn.App. 247, 253, 941 P.2d 687 (1997) (overturned on alternate grounds).

An order entered by a court without subject matter jurisdiction is void as a matter of law. *Bour*, 80 Wn. App. at 646; *Marley v. Dep't of*

Labor & Indus., 125 Wn.2d 533, 543, 886 P.2d 189 (1994); *In re Marriage of Furrow*, 115 Wn. App. 661, 667, 63 P.3d 821 (2003) (in the absence of subject matter jurisdiction, “any judgment entered is void, and is, in legal effect, no judgment at all”).

Subject matter jurisdiction turns on the “type of controversy.” *ZDI Gaming, Inc. v. Wash. State Gambling Comm’n*, 173 Wn.2d 608, 617, 268 P.3d 929 (2012). The type of controversy is determined by the facts alleged in the complaint and the relief requested. *Silver Surprise v. Sunshine Mining Co.*, 74 Wn.2d 519, 522, 445 P.2d 334, 336 (1968). Subject matter jurisdiction exists or does not exist as a matter of law. *In re Marriage of Furrow*, 115 Wn. App. at 667; *Silver Surprise*, 74 Wn.2d at 523 (“Jurisdiction is not a light bulb which can be turned off or on during the course of the trial.”).

B. The Civil Rules for the Courts of Limited Jurisdiction do not expand the subject matter jurisdiction of the district courts.

By adopting CRLJ 82, the Supreme Court expressly denied any intention to expand the subject matter jurisdiction of the district courts. This is consistent with case law providing that court rules do not expand or confer subject matter jurisdiction. *Diehl v. Growth Mgmt. Hearings Bd.*, 153 Wn.2d 207, 216, 103 P.3d 193 (2004); *Vasquez v. Dept. of Labor & Indus.*, 44 Wn. App. 379, 383, 722 P.2d 854 (1986); *see* CR 12(h)(3);

CRLJ 12(h)(3). “[T]he existence of subject matter jurisdiction is a matter of law and does not depend on procedural rules.” *ZDI Gaming, Inc.*, 173 at 617 (citing Tegland, § 3.1 at 20). “[C]ivil rules are procedural rules, applicable only after the commencement of an action,” and they “do not purport to extend subject matter jurisdiction of the court.” *Diehl*, 153 Wn.2d at 216.

Washington’s district courts are courts of limited jurisdiction created by the legislature. Wash. Const. art. IV, §§ 1, 12. “A district court cannot act without jurisdiction.” *Rasmussen v. Chase*, 44 Wn. App. 71, 74, 720 P.2d 860 (1986). The “legislature has the sole authority to establish the jurisdiction and duties of district and municipal courts” and that jurisdiction “must be expressly defined by statute.” *Exendine v. City of Sammamish*, 127 Wn. App. 574, 580, 113 P.3d 494 (2005); *Young v. Konz*, 91 Wn.2d 532, 540, 588 P.2d 1360 (1979); *State v. Davidson*, 26 Wn. App. 623, 626, 613 P.2d 564 (1980) (citing *McCall v. Carr*, 125 Wash. 629, 216 P. 871 (1923)) (“The jurisdiction of courts of limited jurisdiction must clearly appear in a statute.”).

Accordingly, the subject matter jurisdiction of district courts is limited to that affirmatively granted by statute. *Smith v. Whatcom Cty. Dist. Court*, 147 Wn.2d 98, 104, 52 P.3d 485, 488 (2002). Under RCW 3.66.020, the legislature has authorized the district courts to hear civil

claims involving \$100,000 or less, exclusive of interest, costs, and attorney fees.

Given these principles, nothing in CRLJ 14A—or any civil court rule for that matter—can expand or limit the subject matter jurisdiction of the district courts established by statute. The legislature alone has the power to grant or limit the jurisdiction of the district courts. *Young*, 91 Wn.2d at 540; *Exendine*, 127 Wn. App. at 580. Thus, the existence of CRLJ 14A(b) as a procedural rule for removal is immaterial to the threshold inquiry of whether a district court has subject matter jurisdiction and, therefore, authority to do anything but dismiss the case.

C. Ms. Banowsky alleged, and then confirmed, her damages exceeded the district court’s jurisdictional limit, thereby confirming it lacked subject matter jurisdiction.

There can be no dispute that the district court lacked subject matter jurisdiction over Ms. Banowsky’s claim. From the instant she filed suit, Ms. Banowsky alleged compensatory damages exceeding \$100,000. CP 62. As such, her complaint does not allege the “type of controversy” that the legislature authorized the district courts to adjudicate under RCW 3.66.020. *City of Seattle v. Sisley*, 164 Wn. App. 261, 265, 263 P.3d 610, 612 (2011) (“[D]istrict courts have no jurisdiction if a claim exceeds [\$100,000]”). Any ambiguity on this issue was unequivocally resolved when Ms. Banowsky, with assistance of counsel, filed a motion explicitly

affirming her damages exceeded the district court's jurisdictional limit and admitting she should have filed in superior court. CP 96; *see* CP at 113.

This is not a situation in which Ms. Banowsky filed an ambiguous complaint or sought relief that may or may not exceed the jurisdiction of the district court. She expressly alleged damages exceeding the jurisdiction of the district court. Then she confirmed this was not a mistake and that she should have filed in superior court—but asked that the district court exercise jurisdiction and transfer the case anyway.

D. Concluding it lacked jurisdiction, the district court properly dismissed Ms. Banowsky's claim pursuant to *Howlett v. Weslo, Inc.*

A district court lacking subject matter jurisdiction has no authority to transfer a case to superior court and must dismiss the action. *Howlett*, 90 Wn. App. at 367. In *Howlett*, the plaintiff filed suit in Asotin County District Court and later moved to amend her complaint to assert damages in excess of \$25,000, the amount-in-controversy limit at the time. *Id.* She also moved to transfer her case to superior court. *Id.* The district court granted both motions. *Id.* Four years later, the defendant moved to void the order of transfer and to dismiss the case based on the lack of subject matter jurisdiction. *Id.* The superior court granted the motion, voiding the order of transfer and dismissing the case. *Id.* On review, the Court of Appeals affirmed, holding that the district court lacked subject matter

jurisdiction if the amount in controversy exceeded the jurisdictional limits set forth in RCW 3.66.020. *Id.* at 369-70. Once the district court lacked subject matter jurisdiction, its only option was dismissal:

“A court lacking jurisdiction of any matter may do nothing other than enter an order of dismissal.” *Crosby v. Spokane County*, 87 Wn. App. 247, 253, 941 P.2d 687 (1997). A lack of subject matter jurisdiction voids a court order. *Marley v. Dep’t of Labor & Indus.*, 125 Wn. 2d 533, 886 P.2d 189 (1994). Thus, the transfer order was void.

Id. at 367.

In light of *Howlett*, the district court properly dismissed Ms. Banowsky’s case here. The district court lacked subject matter jurisdiction over Ms. Banowsky’s claim because the amount in controversy exceeded its jurisdictional limits. Having recognized there was no subject matter jurisdiction, the district court could only dismiss. Any other order would have been void as a matter of law. *Deschenes v. King County*, 83 Wn.2d 714, 716, 521 P.2d 1181 (1974) (“The rule is well known and universally respected that a court lacking in jurisdiction of any matter may do nothing other than enter an order of dismissal”), *overruled on other grounds by Clark Cty. Pub. Util. Dist. No. 1 v. Wilkinson*, 139 Wn.2d 840, 848 n.8, 991 P.2d 1161, 1166 (2000); *see* CRLJ 12(h)(3).

The only salient difference between *Howlett* and Ms. Banowsky’s situation is that, unlike *Howlett*, the district court here never had subject

matter jurisdiction over Ms. Banowsky's case because her complaint alleged damages in excess of \$100,000 from the moment she filed suit. It follows that Ms. Banowsky never invoked the subject matter jurisdiction of the district court, and the district court properly dismissed her claim.

E. Ms. Banowsky's arguments are not supported by Washington law.

1. The "plain language" of CRLJ 14A(b) is irrelevant because subject matter jurisdiction is a prerequisite to judicial action.

Ms. Banowsky argues that CRLJ 14A(b) mandates transfer of her case because it utilizes the term "shall," not "may." This puts the cart before the horse. "[C]ivil rules are procedural rules, applicable only after the commencement of an action." *Diehl*, 153 Wn.2d at 216. They do not extend or confer subject matter jurisdiction where it does not otherwise exist. *Id.*; CRLJ 82.

This means that before a party can employ CRLJ 14A(b) as a procedural tool for removal to superior court, the party must invoke the court's authority to act by pleading subject matter jurisdiction. *Matheson*, 170 Wn. at 819. If subject matter jurisdiction is established, the plain language of CRLJ 14A(b) *would* require the district court to remove the case upon a good faith assertion that the plaintiff's damages may exceed \$100,000. But, when Ms. Banowsky clearly pled damages exceeding \$100,000 from the outset, and confirmed there was no dispute about the

amount in controversy, the district court had no choice but to dismiss. *Deschenes*, 83 Wn.2d at 716; CRLJ 12(h)(3).

For these reasons, Ms. Banowsky's reliance on the 2004 revision to CRLJ 14A(b) is entirely unavailing. The legislature alone has authority to establish the jurisdiction of the district courts, whereas the Washington Supreme Court lacks both the authority and intent to extend the subject matter jurisdiction of the district courts by court rule. *See* CRLJ 82; CRLJ 12(h)(3). It follows that Ms. Banowsky's argument that revised CRLJ 14A(b) mandates removal or transfer of her case in the absence of subject matter jurisdiction is plainly wrong.

Equally problematic is Ms. Banowsky's suggestion that the Washington Supreme Court overturned *Howlett*, abandoned one hundred fifty years of jurisprudence relating to subject matter jurisdiction, and usurped the legislature's sole authority to establish the jurisdiction of the district courts merely by revising CRLJ 14A(b). Ms. Banowsky maintains this is a "reasonable inference" because an early version of the revision used the language "a plaintiff in an amended complaint," while the final version of the rule reads "any party." App. Br. at 9-10. But Ms. Banowsky only reaches this conclusion by ignoring the actual comment accompanying revised CRLJ 14A(b), providing the revision was intended to facilitate removal of cases properly filed before it. In addition, Ms.

Banowsky fails to account for CRLJ 82, which provides that the rules should not be read to expand jurisdiction. Her interpretation of CRLJ 14A(b) is unreasonable and untenable.

2. Ms. Banowsky's interpretation of CRLJ 14A(b) cannot be applied without upending Washington law, while Dr. Backstrom's position is consistent with existing law.

Ms. Banowsky next claims that CRLJ 14A(b) *must* allow the district court to transfer a claim after the filing of a request for damages over \$100,000 because, "as a practical matter," the rule cannot be applied as interpreted by Dr. Backstrom. This is plainly false.

First, there are at least two situations in which CRLJ 14A(b) can be applied exactly as interpreted by Dr. Backstrom without contradicting Washington law. One situation is when a plaintiff has properly filed a claim in district court but later seeks to remove the case to superior court on the good faith belief that her damages may exceed the jurisdiction of the district court. This is the situation expressly contemplated by the comments accompanying the revised rule. *See* 03-23-018 Wash. Reg., In the Matter of the adoption of the Amendments to CRLJ 14A(b) and RALJ 1.1, Order No. 25700-784 (Nov. 6, 2003) (hereinafter "Comments to CRLJ 14A(b)"). Another instance is when a plaintiff properly invokes the jurisdiction of the district court and, via third-party practice, recognizes the need to assert a claim against a new party that exceeds the

jurisdictional limit of the district court. In both instances, CRLJ 14A(b) can be utilized to a plaintiff's benefit without violating or ignoring any Washington law or rule. Of course, fundamental to both situations is the filing of a lawsuit that invokes the jurisdiction of the district court by alleging an amount in controversy within the limits of RCW 3.66.020. In such cases, the practicality of Dr. Backstrom's interpretation of CRLJ 14A(b), as well as its harmony with CRLJ 12, CRLJ 82, and other Washington law, is obvious.

The same cannot be said of Ms. Banowsky's position. In fact, there is no way to accept her interpretation of the rule without infringing upon the legislature's sole authority to establish the jurisdiction of the district courts, violating traditional principles regarding a court's authority to act, overlooking CRLJ 12(h)(3) and CRLJ 82, and ignoring the Supreme Court's comments in adopting CRLJ 14A(b). Dr. Backstrom might concede CRLJ 14A(b) is inartfully drafted, but this does not mean the sensible construction is one that disregards Washington law and the stated intent of the Supreme Court. CRLJ 12(h)(3); CRLJ 82; *see supra* Comments to CRLJ 14A(b).

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3. Ms. Banowsky ignores relevant principles of statutory construction requiring laws and rules to be read as a whole and to avoid constitutional issues.

Ms. Banowsky resorts to “statutory construction” to argue CRLJ 14A(b) mandates removal of her claim. Her arguments are unpersuasive for multiple reasons. First and foremost, CRLJ 14A is a procedural court rule, not a statute. While the Washington Supreme Court has inherent authority to adopt procedural rules for the courts, *State v. Smith*, 84 Wn.2d 498, 502, 527 P.2d 674 (1974), the jurisdiction of the district courts is established by the legislature alone through statute. RCW 3.66.020 is not a mere procedural rule; it is a statute establishing subject matter jurisdiction. Accordingly, construction and application of CRLJ 14A(b) must yield to the threshold issue of whether the district court has authority to act under RCW 3.66.020.

Moreover, Ms. Banowsky ignores several canons of construction showing that her interpretation of CRLJ 14A(b) is unsustainable. For example, statutory schemes and rules should be construed in a manner rendering them consistent as a whole. *Dep’t of Ecology v. Campbell & Gwinn, LLC*, 146 Wn.2d 1, 10-11, 43 P.3d 4 (2002) (enactments should be read in their entirety, giving effect to all language and provisions, not in piecemeal fashion). Ms. Banowsky, however, demands that CRLJ 14A(b) be examined in isolation, thus ignoring CRLJ 82 and CRLJ 12(h)(3). By

contrast, Dr. Backstrom's position fully harmonizes CRLJ 14A(b) with other court rules, the Washington Constitution, and existing case law.

Ms. Banowsky likewise ignores that, when the legislature acts, it can be presumed it was intending to modify existing law, and, by corollary, when the legislature refrains from acting, it is presumed it does not intend to modify the law or the court decisions interpreting it. *See Oostra v. Holstine*, 86 Wn. App. 536, 542, 937 P.2d 195, 198 (1997) (noting the legislature knows how to undo a court decision). Here, the legislature did not expand the jurisdiction of the district courts under RCW 3.66.020 following *Howlett* other than to enlarge the amount-in-controversy limits. The absence of any legislative act evidences it had no issue with *Howlett*'s holding that a district court must dismiss when the controversy before it exceeds the jurisdictional limits established by RCW 3.66.020.

Likewise, Ms. Banowsky ignores that courts generally defer to a rulemaking body's interpretation of their own rule. *Cf. Waggoner v. Ace Hardware Corp.*, 134 Wn.2d 748, 756, 953 P.2d 88 (1998) (“[W]e may give great weight to the interpretation given a statute by the agency charged with its enforcement.”) (internal quotations omitted). Here, the Supreme Court plainly stated in enacting CRLJ 82 that the civil rules

should not be construed to enlarge the jurisdiction of the district courts.³ It also stated in CRLJ 12(h)(3) that the courts shall dismiss a claim if it appears at any time they lack subject matter jurisdiction. The Supreme Court should be taken at its word.

Ms. Banowsky also ignores that courts interpret statutes and rules narrowly, so as to avoid constitutional issues. *Wash. State Republican Party v. Wash. State Pub. Disclosure Comm'n*, 141 Wn.2d 245, 281, 4 P.3d 808 (2000). Dr. Backstrom's interpretation of CRLJ 14A(b) does this by allowing a plaintiff to remove a case *if* the requisite element of subject matter jurisdiction is established, thereby avoiding the issue of whether the Washington Supreme Court usurped the role of legislature by enlarging the jurisdiction of the district courts through court rule. Ms. Banowsky's interpretation invites a constitutional clash, suggesting that the Supreme Court intended to invade the legislature's authority in establishing the jurisdiction of the district courts.

³ Ms. Banowsky's construction of CRLJ 14A(b) also ignores the principle of *ejusdem generis*, providing that a specific statute will supersede a more general one. Here, CRLJ 82's specific mandate that the rules not be construed to supersede the jurisdiction of the district courts follows the general mandate of CRLJ 81, which provides that the "rules supersede all procedural statutes and other rules that may be in conflict." Thus, to the extent RCW 3.66.020 could even be considered procedural, CRLJ 82 forecloses any interpretation of CRLJ 14A(b) that would expand the subject matter jurisdiction of the district court.

4. Ms. Banowsky fails to meaningfully distinguish the case law supporting Dr. Backstrom's position.

Ms. Banowsky makes reference to several Washington cases, none of which favor reversal. First, she argues that *City of Seattle v. Sisley* suggests that revised CRLJ 14A(b) allows a district court to transfer a case over which it has no subject matter jurisdiction. App. Br. at 10. In doing so, she blatantly overreads *Sisley*, which addressed the monetary jurisdiction of municipal courts in adjudicating violations of municipal law, not whether CRLJ 14A(b) expands the subject matter jurisdiction of the district courts. 164 Wn.App. at 265.

Ms. Banowsky also attempts to distinguish *Crosby v. Spokane County* on the basis that it was subsequently overturned and only involved “perfect[ing] an appeal.” App. Br. at 12. However, *Howlett* cited *Crosby* for the proposition that a court lacking subject matter jurisdiction can do nothing but enter an order of dismissal. *Howlett*, 90 Wn. App. at 368. This remains the law in Washington. *E.g., Fontana*, 138 Wn. App. at 425.

In addition, Ms. Banowsky gives brief attention to *Marley v. Department of Labor & Industries*, claiming it is distinguishable as involving a “judgment” not an “order.” App. Br. at 13. Yet she cites to no Washington case addressing the issue of subject matter jurisdiction that meaningfully differentiates between “judgments” and “orders.” To the

contrary, the Supreme Court has said a “lack of subject matter jurisdiction implies that an agency has no authority to decide the claim at all, let alone order a particular kind of relief.” *In re Marriage of Furrow*, 115 Wn.App. at 668 (emphasis added). Here, Ms. Banowsky clearly asked the district court to order a form of relief by transferring her case to superior court. Consequently, *Marley* is unavailing.

5. Ms. Banowsky’s requested relief is inconsistent with Washington law and public policy favoring the finality of cases.

The relief sought by Ms. Banowsky is inconsistent with Washington’s stated public policies of respecting separation of powers, advancing prompt resolution of disputes, and ensuring the finality of cases. As noted above, Ms. Banowsky’s interpretation of CRLJ 14A(b) creates clear constitutional issues where none should exist regarding the authority of the judiciary to enlarge the jurisdiction of the district courts without the legislature. There is no need to entertain this problematic interpretation of CRLJ 14A(b), which is likely to create confusion among litigants and the courts, when Dr. Backstrom offers a clearer alternative that comports with existing law.

Ms. Banowsky is also wrong in asserting Dr. Backstrom suffers no prejudice if her claim is remanded for further proceedings. Dr. Backstrom is inherently prejudiced when venerable legal principles running to his

benefit are ignored to accommodate a plaintiff's inexcusable delay. RP at 6:10-17 (argument from Mr. Banowsky before the superior court that Ms. Banowsky "thought the statute of limitations had already run, realized it didn't the day of or the day before that the statute was actually going to run, because in some states there's a two-year statute of limitations, and Washington's three for this cause of action"). Moreover, the earliest that a trial will possibly occur in this matter is six years after the incident, meaning that Dr. Backstrom will have to deal with classic issues associated with late claims including stale evidence, absent witnesses, and dimmed memories. *See, e.g., Wallace v. Evans*, 131 Wn.2d 572, 585, 934 P.2d 662, 668 (1997).

As to the equities of dismissal, if any party should bear the cost of Ms. Banowsky's error, it is Ms. Banowsky, who had three years to determine where to file her claim or to consult with an attorney. As King County Superior Court Judge Timothy Bradshaw noted at oral argument, "when one waits until the last moment to file [a lawsuit], they run the risk of not being allowed to correct any errors, any defects." RP at 17:24-18:3. Such is the case here. Ms. Banowsky could have filed her claim before expiration of the statute of limitations, which would have given her an opportunity to dismiss and refile in superior court before the statute of

limitations expired. By waiting until the last day to file her claim, she prejudiced herself by not allowing any margin for error.

F. Ms. Banowsky's limited damages and substantial compliance arguments should be stricken as she was not granted discretionary review on these issues.

Ms. Banowsky also renews her arguments that the district court has jurisdiction over the first \$100,000 of her claim and that she substantially complied with the filing requirements of the district court. These arguments should be stricken as Commissioner Neel specifically denied discretionary review on these issues. May 31, 2017 Notation Ruling.

Her arguments are also unsupported by authority and should be rejected accordingly. Arguments that are not supported by pertinent authority or meaningful analysis need not be considered by this court. *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 809, 828 P.2d 549 (1992) (arguments not supported by authority); *State v. Elliott*, 114 Wn.2d 6, 15, 785 P.2d 440 (1990) (insufficiently argued claims); *Saunders v. Lloyd's of London*, 113 Wn.2d 330, 345, 779 P.2d 249 (1989) (arguments not supported by adequate argument and authority).

Even if this Court considers the merits, Ms. Banowsky's assertion that the district court "had jurisdiction over the first \$100,000" of her claim is unsupportable. App. Br. at 19. Contrary to her theory, the

legislature authorized jurisdiction to the district court only “if . . . the amount at issue does not exceed one hundred thousand dollars.” RCW 3.66.020. Ms. Banowsky’s complaint explicitly sought damages “in an amount exceeding \$100,000.00.” CP 62. She then confirmed her damages exceeded the district court’s jurisdictional limit. CP 96. Ms. Banowsky’s strained logic that the district court has jurisdiction over the first \$100,000 of her claim leads to the untenable conclusion that district courts have jurisdiction regardless of the amount at issue. This directly contradicts RCW 3.66.020 and existing case law interpreting the jurisdictional authority of the district courts.

Similarly, Ms. Banowsky’s substantial compliance argument cannot withstand scrutiny. She appears to suggest that, because she filed somewhere “within the statute of limitations” and Dr. Backstrom was served within ninety days, she should be allowed to proceed in the court of her choosing. App. Br. at 19-20. Under this logic, Ms. Banowsky could have filed in federal or tribal court, or the court of another state, as long as she did so by the limitations deadline. This is wrong. A plaintiff has the burden and responsibility of invoking the jurisdiction of the court or incurring dismissal. CRLJ 12(h)(3); *see* CR 12(h)(3); Fed. R. Civ. P. 12(h)(3). Filing a lawsuit entirely in the wrong court and failing to provide the tribunal any basis to exercise jurisdiction is not substantial compliance.

- G. Dr. Backstrom should be awarded his costs and attorney fees for having to respond to a frivolous appeal.

The Rules of Appellate Procedure authorize sanctions against a party who files a frivolous appeal. RAP 18.9(a). An appeal is frivolous if there are no debatable issues upon which reasonable minds could differ and it is so totally devoid of merit that there was no reasonable possibility for reversal. *In re Marriage of Obaidi*, 154 Wn. App. 609, 618, 226 P.3d 787 (2010) (citing *Green River Cmty. Coll. Dist. No. 10 v. Higher Educ. Pers. Bd.*, 107 Wn.2d 427, 443, 730 P.2d 653 (1986)).

This Court should award sanctions to Dr. Backstrom in the amount of his attorney fees and costs for having to respond to Ms. Banowsky's frivolous appeal, which does not address the sole issue for which Commissioner Neel granted review: the relationship between CRLJ 14A(b) and other rules and statutes, including CRLJ 12 and CRLJ 82. Focusing almost exclusively on the "plain meaning" of CRLJ 14A(b), Ms. Banowsky's brief fails to once address CRLJ 12 or CRLJ 82. Moreover, Ms. Banowsky makes no effort to harmonize her interpretation of CRLJ 14A(b) with existing Washington law regarding subject matter jurisdiction and the source of a district court's authority to act.

Ms. Banowsky's failure to address the only issue for review is particularly egregious given that she managed to renew her arguments

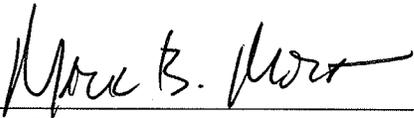
relating to “limited damages” and “substantial compliance.” App. Br. at 19-20. These are not issues for which Commissioner Neel authorized review, and they are meritless for the reasons set forth above. As such, it should be assumed that Ms. Banowsky has no reasonable argument through which she can reconcile her unique interpretation of CRLJ 14A(b) with existing Washington law and that her appeal is devoid of merit. The Court should award Dr. Backstrom sanctions accordingly.

VI. CONCLUSION

For the foregoing reasons this Court should affirm the district court order dismissing Ms. Banowsky’s lawsuit for lack of subject matter jurisdiction and award Dr. Backstrom attorney fees under RAP 18.9(a).

RESPECTFULLY SUBMITTED this 15th day of September,
2017.

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CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that under the laws of the State of Washington that on the 15th day of September, 2017, I caused a true and correct copy of the foregoing document, "Brief of Respondent," to be delivered in the manner indicated below to the following counsel of record:

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DATED this 15th day of September, 2017, at Seattle, Washington.



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FAVROS LAW

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