

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

PAUL TRUMMEL,)	
)	
Appellant,)	No. 48662-4-I
)	
v.)	AMICUS CURIAE <i>SEATTLE</i>
)	<i>WEEKLY'S</i> RESPONSE TO
STEPHEN MITCHELL and)	RESPONDENTS' MOTION
COUNCIL HOUSE, INC.,)	TO STRIKE SEATTLE
)	WEEKLY'S STATEMENT OF
Respondents.)	ADDITIONAL
)	AUTHORITIES

Seattle Weekly is an *amicus curiae* in this proceeding. It filed a brief and appeared at oral argument to provide the Court will information helpful to the Court's determination of issues that will have a significant impact on the *Seattle Weekly* and other news publications and their employees. On November 14, 2003 at oral argument several questions were asked by the Court that the *Weekly* and its counsel felt were not

adequately or accurately addressed by the parties or *amici*. The panel's questions also revealed a desire for additional clarification on relevant topics.

For this reason, *Seattle Weekly* prepared and filed a Statement of Additional Authorities merely pointing the Court to these binding cases. Respondents seek to strike this Statement and to hold amicus *Seattle Weekly* liable for fees. Contrary to Respondent's motion, nothing in RAP 10.8 limits Statements of Additional Authorities to decisions handed down after briefs are filed. Respondents provide no citation to authority for this claim. To counsel's knowledge, none exists.¹ In fact, a review of cases dealing with submissions under RAP 10.8, show this argument to be false. *See, e.g., State v. Tili*, 148 Wn.2d 350, 374, 60 P.3d 1192 (2003) (citing a 2001 case in a Statement of Additional Authorities); *Germain v. Pullman Baptist Church*, 96 Wn. App. 826, 837 n.3, 980 P.2d 809 (1999) (accepting as additional authorities cases from 1992 and 1994); *Hern v. Looney*, 90 Wn. App. 519, 531-32, 959 P.2d 1116 (1998) (accepting Statement of additional authority cases from 1992 and 1984).

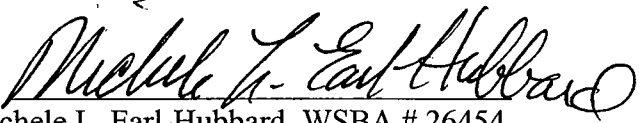
¹ Failure to cite any authority for an argument shows that the argument lacks merit. *State v. McNeair*, 88 Wn. App. 331, 340, 944 P.2d 1099 (1997); *accord, In re Infant Child J.*, 99 Wn. App. 473, 994 P.2d 279, (2000); *Mannington Carpets, Inc. v. Hazelrigg*, 94 Wn. App. 899, 910, 973 P.2d 1103 (1999) (refusing to review motion for reconsideration where appellant failed to present authority or argument in support of claim).

Seattle Weekly filed its Statement of Additional Authority because it was clear from questions by the panel that additional information was needed and sought. It also became clear that Respondents were urging the Court to take a course that was in direct contravention of doctrines set forth in binding decisions, none of which had been cited to this Court. Nothing in RAP 10.8 prevents an amicus from filing, or a Court from considering, binding authority on point. Respondents are free to cite to additional authorities challenging the authorities cited by *Seattle Weekly*, should they have any. But there is no basis for seeking sanctions against an amicus for the filing of such a statement.

Seattle Weekly is an outsider to these proceedings, but the decision this Court reaches will impact its publication and employees. *Seattle Weekly*'s efforts to supply this Court with additional authorities was done in response to issues raised by the Court at oral argument. It was not done in an effort to circumvent the Rules of Appellate Procedure. The current motion should be denied.

DATED this 6th day of December, 2003.

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Weekly*

By 

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CERTIFICATE OF SERVICE

I, Deborah Linkowski, hereby certify and declare:


1. I am over the age of 18 years and am not a party to the within cause;
2. I am employed by the law firm of Davis Wright Tremaine. My business and mailing address are 2600 Century Square, 1501 Fourth Avenue, Seattle, Washington 98101;
3. On the 5th day of December, 2003, I caused to be served by telefax and first class mail Amicus Curiae *Seattle Weekly's* Response To Respondents' Motion To Strike Seattle Weekly's Statement of Additional Authorities upon:

Eric G. Broman Nielsen, Broman & Koch 1908 E. Madison Seattle, WA 98122	Richard A. Du Bey Short Cressman Burgess 999 Third Avenue, Suite 3000 Seattle, WA 98104
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I declare under penalty of perjury, under the laws of the State of Washington, that the foregoing is true and correct to the best of my knowledge and belief.

EXECUTED this 5th day of December, 2003, at Seattle,

Washington.


Deborah Linkowski