

FILED  
SUPREME COURT  
STATE OF WASHINGTON  
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BY SUSAN L. CARLSON  
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No. 98897-8

(King County No. 20-2-10455-8 SEA)

SUPREME COURT OF THE STATE OF WASHINGTON

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IN THE MATTER OF THE RECALL CHARGES AGAINST CITY OF  
SEATTLE MAYOR, JENNY DURKAN

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RESPONSE TO EMERGENCY MOTION TO SET BRIEFING  
SCHEDULE

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*Attorneys for City of Seattle Mayor Jenny A. Durkan*

## **I. INTRODUCTION**

Mayor Durkan does not dispute that recall proceedings in this Court are subject to accelerated review. This urgency, however, should be balanced with the need to provide adequate time for the parties to present considered arguments to the Court, particularly in light of the complex issues this cross-appealed matter presents. Mayor Durkan therefore respectfully requests that the Court adopt the following briefing schedule:

- Brief of Appellant: September 28, 2020
- Brief of Respondent/Cross Appellant: 30 days after filing of Brief of Appellant
- Reply Brief of Appellant/Cross Respondent: 30 days after filing of Brief of Respondent/Cross Appellant
- Reply Brief of Respondent/Cross Appellant: Mayor Durkan defers to Petitioners and the Court to set an appropriately expedited deadline for Petitioners' Reply Brief<sup>1</sup>

## **II. PROCEDURAL HISTORY**

On July 10, 2020, the trial court held that one of the seven charges in the above-referenced Petition was factually and legally sufficient. The trial court dismissed the remaining six charges. Mayor Durkan moved for

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<sup>1</sup> Should Petitioners wish to file their Reply or any other brief prior to the deadline, they are, of course, free to do so.

reconsideration; Petitioners purported to do the same.<sup>2</sup> On July 29, 2020, the trial court denied Mayor Durkan’s motion for reconsideration and stated that Petitioners’ “cross motion for reconsideration” was not noted for hearing and was therefore “not properly before the court for consideration.”

On August 12, 2020, Mayor Durkan timely filed a Notice of Appeal. The same day, Petitioners filed a Notice of Cross-Appeal, stating that they sought review with regard to (1) the trial court’s dismissal of two of their charges, (2) the trial court’s denial of their purported cross-motion for reconsideration, and (3) the trial court’s decision not to “expand” the approved charge.

### **III. AUTHORITY AND ARGUMENT**

This Court is not bound by statutory deadlines for review of recall proceedings. *See* RAP 1.1(g) (“These rules supersede all statutes and rules covering procedure in the Supreme Court and the Court of Appeals, unless one of those rules specifically indicates to the contrary.”); RAP 18.22(a) (“Rule 1.1(g) provides that these rules supersede all statutes and rules

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<sup>2</sup> In reciting the procedural history of this matter, Mayor Durkan does not concede that Petitioners’ “cross motion for reconsideration” was timely filed or appropriately noted for consideration.

covering procedure in the appellate courts, unless a particular rule indicates that statutes control.”).<sup>3</sup>

Petitioners’ proposal is untenable. Under the standard appellate briefing schedule, an appellant would have, at minimum, four and a half months to file the opening brief.<sup>4</sup> Mayor Durkan does not dispute that recall proceedings in this Court are subject to accelerated review. However, the Petitioners’ proposal is neither reasonable nor practical in that it does not allow for a reasoned presentation of the issues for the Court’s timely consideration.

Mayor Durkan’s scheduling proposal appropriately balances the need for urgency in recall matters with sufficient time for the parties to meaningfully brief complex legal issues to the Court.<sup>5</sup> Mayor Durkan reasonably anticipates that the legal issues briefed in this appeal will include, without limitation, analysis of Washington’s recall statute, this

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<sup>3</sup> The Motion notes that Mayor Durkan, like Petitioners, did not file any “briefing” with her Notice of Appeal. RCW 29A.56.270 states that with regard to recall petitions, “[a]ppellate review of a decision of any superior court shall be begun and perfected within fifteen days after its decision.” It is long settled in this Court that only a Notice of Appeal is required to perfect an appeal on a recall matter. *See White v. Sanders*, 99 Wash. 172, 174, 168 P. 1140 (1917) (holding that recall appellant being required to serve briefs within 15 days of entry of judgment was “untenable”).

<sup>4</sup> *See* RAP 9.6(a); RAP 9.2(a); RAP 9.5(a); RAP 10.2(a).

<sup>5</sup> Consistent with this Court’s instruction, Mayor Durkan will file her Designation of Clerk’s Papers and Statement of Arrangements as soon as possible. In their Motion, Petitioners claimed that “oral argument below is not relevant to this Court’s review,” citing *In re Recall of Telford*, 166 Wn.2d 148, 206 P.3d 1248 (2009). *Telford* does not stand for this proposition.

Court's extensive case law addressing the recall statute, the state and federal constitutions, the Seattle City Charter and the duties for public officials outlined therein, the provisions of the Consent Decree entered by Judge James Robart in *United States of America v. City of Seattle*, and the orders entered by Judge Richard Jones in *Black Lives Matter Seattle-King County v. City of Seattle*. Moreover, the factual background in this case involves the most extensive civil unrest the City of Seattle has experienced in over two decades. Such complex issues require attention and considered analysis, particularly given that both parties are appealing the trial court's rulings. Additionally, Respondents have noted a cross-appeal. That cross-appeal will raise arguments that the Appellant will need a reasonable opportunity to respond to.

Mayor Durkan therefore respectfully reiterates the following proposed schedule:

- Brief of Appellant: September 28, 2020
- Brief of Respondent/Cross Appellant: 30 days after filing of Brief of Appellant
- Reply Brief of Appellant/Cross Respondent: 30 days after filing of Brief of Respondent/Cross Appellant

- Reply Brief of Respondent/Cross Appellant: Mayor Durkan defers to Petitioners and the Court to set an appropriately expedited deadline for Petitioners' Reply Brief<sup>6</sup>

#### IV. CONCLUSION

For the foregoing reasons, Mayor Durkan respectfully requests that this Court deny Petitioners' proposed briefing schedule and adopt the proposed briefing schedule outlined herein.

DATED this 14th day of August, 2020.

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*Attorneys for City of Seattle Mayor Jenny A. Durkan*

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<sup>6</sup> The presence of a cross-appeal is the reason the Appellant believes the Court should adopt Mayor Durkan's proposed schedule.

## CERTIFICATE OF SERVICE

I, Sabrina Mitchell, declare under penalty of perjury of the laws of the State of Washington that on this 14th day of August 2020, I caused the attached true and correct copy of the Notice of Appeal to Washington Supreme Court, and its exhibits to be filed with the Clerk of the King County Superior Court and served on plaintiff/respondent's counsel via the King County Superior Court E-service application, as well as by email and U.S. Mail, First Class postage prepaid, addressed as follows:

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DATED this 14th day of August, 2020.

*/s/Sabrina Mitchell*  
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**August 14, 2020 - 12:22 PM**

**Transmittal Information**

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**Appellate Court Case Title:** In Re the Matter of the Recall Charges Against City of Seattle Mayor, Jenny Durkan

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