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2 The Honorable Marshall Ferguson
3 Hearing Date: Friday, December 13, 2019
4 Without Oral Argument
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7 SUPERIOR COURT OF THE STATE OF WASHINGTON
8 FOR KING COUNTY

9 GARFIELD COUNTY TRANSPORTATION
10 AUTHORITY; KING COUNTY; CITY OF
11 SEATTLE; WASHINGTON STATE
12 TRANSIT ASSOCIATION; ASSOCIATION
13 OF WASHINGTON CITIES; PORT OF
14 SEATTLE; INTERCITY TRANSIT;
15 AMALGAMATED TRANSIT UNION
16 LEGISLATIVE COUNCIL OF
17 WASHINGTON; and MICHAEL ROGERS,

18 Plaintiffs,

19 and

20 WASHINGTON ADAPT,

21 Intervenor-Plaintiff,

22 v.

23 STATE OF WASHINGTON,

24 Defendant.
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NO. 19-2-30171-6 SEA

ORDER DENYING MOTION TO
APPOINT OUTSIDE COUNSEL

21 THIS MATTER, before the Court upon the Motion To Appoint Outside Counsel
22 (“Motion To Appoint”) brought by proposed intervenors¹ Permanent Offense, Timothy Eyman,
23 Jack Fagan, and Michael Fagan (“Proposed Intervenors”), and the Court, having considered the
24 Motion To Appoint, the supporting declarations of Timothy D. Eyman, Michael Fagan, and Jack

25 ¹ See below the Court’s admonition regarding adherence to court rules.

1 Fagan with the exhibits thereto, defendant State of Washington's Opposition To Intervenor's
2 Motion To Appoint Outside Counsel, the supporting Declaration of Karl D. Smith with the
3 exhibits thereto, the Proposed Intervenor's Reply to the Opposition with the exhibits thereto, and
4 the Court file; and the Court, being fully apprised as to the arguments and authorities therefor, it
5 is hereby

6 ORDERED, ADJUDGED AND DECREED that Proposed Intervenor's Motion To
7 Appoint Outside Counsel is DENIED.

8 The Court does not herein address all of the parties' motion arguments. The Court notes,
9 however, that at several points in their motion materials, Mr. Eyman, the Fagans, and Permanent
10 Offense appear to argue that discovery is needed in this case. *See, e.g.*, Reply, pp. 4-5 (Sub. No.
11 109). Nothing in this Order precludes any party from requesting relief from the Court's
12 December 5, 2019 Scheduling Order On Dispositive Motions on the basis that discovery should
13 occur (or on any other valid basis). At a minimum, however, a party seeking discovery would
14 need to make a showing that there exists a material fact in dispute for which discovery is
15 necessary, especially in light of the strong likelihood that permitting discovery would prolong
16 considerably the pendency of this lawsuit in the King County Superior Court. If there exist
17 disputed issues of fact for a trial, that trial would not occur until the current trial date of
18 November 9, 2020. In light of the urgency of this lawsuit, any party seeking relief from the
19 Scheduling Order On Dispositive Motions on the basis that discovery needs to occur concerning
20 a triable issue should do so without undue delay.

21 On a procedural note, the Court observes that Proposed Intervenor filed their Motion To
22 Appoint on December 4, 2019, nine days before the Court entered today's separate order
23 granting them intervenor status. The Proposed Intervenor noted the Motion To Appoint to be
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1 heard without oral argument on December 13, 2019, the same hearing date as their intervention
2 motion. Sub. Nos. 73, 75. This was improper.

3 Prospective intervenors are not parties and do not possess standing to seek any relief
4 other than leave to intervene. *See River Park Square, LLC v. Miggins*, 143 Wn.2d 68, 17 P.3d
5 1178 (2001) (motion for change of judge properly denied because prospective intervenor did not
6 have standing as a party to make motion). Court rules do not permit prospective intervenors to
7 bring motions to be heard on the same date as their motions for intervention under the assumption
8 that the court will grant intervention.² To do so would be unfair to existing parties who, not
9 knowing whether the court will grant or deny intervention, must guess as to whether to file
10 materials in opposition to a non-party's motion.

11 Here, defendant State of Washington filed an opposition to the Motion To Appoint and
12 did not object based upon the Proposed Intervenors' lack of standing. Intervenor-plaintiff
13 Washington ADAPT, which was granted intervenor status on December 10, 2019, was deprived
14 of notice and an opportunity to be heard as to the Motion To Appoint. Nonetheless, in the interest
15 of judicial economy and the efficient administration of this case, the Court exercised its
16 discretion and considered the Motion To Appoint instead of striking the motion without ruling
17 on its merits based upon lack of standing or lack of due process for Washington ADAPT. The
18 Court will not permit parties or proposed intervenors to run roughshod over court rules and
19 procedural requirements, however. The Court maintains its authority to deny relief to future
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22 ² In the Motion To Appoint, the Proposed Intervenors cite only "CR 24" without citing any subsection of the rule
23 or explaining how CR 24 allows non-party prospective intervenors to bring motions other than a motion to intervene.
24 To the extent that the proposed intervenors contend that the Motion To Appoint constitutes the "pleading" required
25 by CR 24(c), the Court rejects such contention on the grounds that (1) the Proposed Intervenors separately filed the
Motion To Appoint, separately noted it for a hearing, and provided a separate proposed order, instead of merely
providing the Motion To Appoint with the intervention motion, as expressly contemplated by CR 24(c), and (2) the
Motion To Appoint is a request that the Court take action now, not just a pleading setting forth claims and defenses
for the Court's ultimate determination in the case.

1 proposed intervenors who note substantive motions for hearing on the same date as their
2 intervention motion.³

3 DATED this 13th day of December, 2019.

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6 JUDGE MARSHALL FERGUSON

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³ The Court would allow a proposed intervenor to bring a motion to shorten time to hear the intervention motion, as
25 a motion to shorten time would not be substantive but would relate solely to the limited issue of the timing of hearing
the intervention motion.