

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF SPOKANE

CITY OF SPOKANE VALLEY,)
a municipal corporation,)
Plaintiff,)
v.) SPOKANE COUNTY SUPERIOR COURT
No: 25-2-00710-32
ALBERT W. MERKEL, an)
individual,)
Defendant.)

HONORABLE RACHELLE ANDERSON
VERBATIM REPORT OF PROCEEDINGS
RULING ONLY
July 18, 2025

APPEARANCES:

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ALSO PRESENT: John Hohman, City Manager

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GENERAL INDEX

July 18, 2025

	PAGE
RULING ONLY	
THE COURT	3
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	
21	
22	
23	
24	
25	

VERBATIM REPORT OF PROCEEDINGS

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THE COURT: All right. Thank you very much.

Obviously I can tell from the declaration and the volume of materials that I've reviewed for this motion that there really is a lot at stake. And I'm balancing everything that I've heard in argument and what I've read in my declarations.

9 Starting with the reason that we're here today is
10 defendants brought a motion under CR 12(b)(6) asking for the
11 Court to find that there is no claim upon which relief can be
12 granted and that I should dismiss the case outright for
13 failure of stating a claim.

14 That's a pretty significant request for relief,
15 because what is required for that motion would be that there
16 is no set of facts upon which the Court could, if I look at
17 the complaint and I take all the facts alleged in the
18 complaint in the light most favorable to the plaintiff, that
19 there is no set of facts that would support any relief they're
20 asking for.

21 That's a real high standard. And I know that there's
22 been a lot of argument about things, such as -- and I didn't
23 get into a lot of it in oral argument, but in the written
24 argument, people's First Amendment rights, their rights of
25 association. We're dealing with some big issues here.

1 But when it comes to the heart of what this lawsuit
2 was filed for, according to the statement in the complaint,
3 it's to ask that there be court intervention to direct the
4 defendant, if the court grants it, to comply with certain
5 documents to which he's obligated himself. It's like a
6 contract.

7 The allegation is that when Mr. Merkel became a city
8 council member for the Spokane -- City of Spokane Valley, he
9 agreed to the manual that outlines his duties and things he's
10 responsible for. And what's being alleged is that there are
11 some issues with social media accounts that the plaintiff are
12 saying he has not been fully forthcoming with, complying with
13 his duties.

14 So I guess I feel like I'm talking in circles right
15 now. What I'm hearing is that I understand Mr. Merkel didn't
16 make -- he didn't choose to maintain a council member's
17 specific social media account. I think everybody has agreed
18 he has not had a social media account through his council
19 member specific e-mail.

20 Where the City is coming to the Court is saying that
21 they have specific requirements of their city council members,
22 that if they choose not to create a city council specific
23 social media site, which would then be maintained by their IT
24 department for ease of getting those pieces of information for
25 PRA disclosure, that the person has to take it upon themselves

1 to go through their own social media and then monitor those
2 things and turn them over if there's a public request for his
3 records. So I think we're getting into some semantics with
4 regard to the dependent.

5 Bottom line, the request from the City is that they're
6 saying that one of their members is violating terms of an
7 agreement that he signed off on when he became a city council
8 member, that there were certain things he agreed he would do
9 and he hasn't been doing them.

10 These are the allegations, I want to be clear. And
11 when I'm looking at a CR 12(b) (6), that's all I need to look
12 at are the allegations. I'm not saying they're true. I'm not
13 saying they've been proved true. But if I take those
14 allegations as true, there is a claim that can be stated on
15 behalf of the City.

16 They have shown that there is a potential cause of
17 action. They've stated that they have three causes of action.
18 They're asking the Court to find that there is a basis to
19 grant the Writ of Mandamus, to direct a specific performance
20 of an action. They're asking for injunctive relief, which
21 would again put up some parameters with regard to what can and
22 cannot be disclosed. And they're also asking the Court to
23 make a declaratory judgment, meaning a direction or to say
24 something that should happen.

25 Those are causes of action that can potentially be

1 fortuitous for the City if they can prove all those things
2 that they've mentioned in their complaint. That really is the
3 bare bones basis for a 12(b)(6) motion. And I haven't heard
4 anything that would tell me, persuade me from that, that they
5 don't have a cause of action. They have to prove it. Just
6 because they've said it in their complaint doesn't mean that
7 it makes it a fact. But when I'm looking at 12(b)(6), that's
8 the standard the Court has to look at. So from that
9 standpoint, I won't be dismissing the case under 12(b)(6).

10 With regard to the protective order, what I'm
11 understanding is that there is a public request, public
12 disclosure request of the City with regard to some e-mails or
13 social media posts. And Mr. Merkel has on his personal e-mail
14 or personal social sites some things that are undoubtedly a
15 hundred percent personal. He has some things that are
16 probably undoubtedly a hundred percent business. I'm not
17 saying I want to be the one to look at those, but I'm saying
18 that that's the state we're in right now.

19 So it's up to Mr. Merkel to go through his social
20 media, his e-mails. And his job is to first go through those,
21 without having anybody else's eyes on those, to determine what
22 is a hundred percent work related. And I think some of those
23 things can be pretty easy to find. There also are some things
24 that are pretty easy to identify as completely unrelated.

25 If there is something that doesn't mention his

1 co-workers, his job, the city council, we all have those
2 things, that's a hundred percent personal. Nobody needs to
3 see those or should see those things.

4 Where it's going to get dicey, and the Court might need
5 to have some intervention, is those in-between things, the
6 things that it's not clear. Is this because I've mentioned
7 one person's name does it make it work related, is it because
8 I've mentioned upcoming events, is it because I've mentioned I
9 want to solicit input from my constituents, those are things
10 that are going to get a little more dicey.

11 But again, that is required to be vetted, first of
12 all, by Mr. Merkel to comply with a public request act. And
13 again, partly that's why you have social media accounts
14 attached to your employment that you use for those things, so
15 it isn't combined with your personal account. Because at some
16 point -- and I'm saying that for today I'm not sure I have
17 enough information to grant a protective order other than to
18 say that you will have to disclose information. You know
19 you'll have to. There has been a public records request.

20 I will say that the City of Spokane, I will direct
21 that they are not to disclose any of those answers to those
22 requests for production or interrogatories to the public.
23 They stay within your office for now. But I'm also not saying
24 that they can't discuss that with their client. But those
25 things are not to be disseminated outside of the law office,

1 not to be shared, because discovery doesn't necessarily mean
2 it's shared to the public, it means it's information for a
3 purpose. In this case the purpose is to comply with the
4 request the City has from someone with a PRA.

5 If it gets to the point where you all cannot agree on
6 those in-between things, there has to be some attempt to
7 describe some of those and not just not turn them over. So
8 some sort of a description of what the in-between things are
9 before Mr. Merkel and his counsel can simply say you're not
10 going to get these things. Some brief description so that Mr.
11 Johnson can come back to this Court, if need be, and ask for
12 the need to do an in camera review, something that I might
13 need to look at.

14 But again, I do not want to read every e-mail. There
15 are some things that are quite obviously personal that you
16 would not need to disclose. And I'm asking you to make your
17 best faith effort to disclose those things that are reasonably
18 in the public interest. And when you're looking at things
19 that are private, just to let you know, I'm not making, you
20 know, pre-judging, but just to give some guidance. When
21 you're sharing something with a group of 45 people, I'm not
22 sure how private that is. So I would be wanting some
23 discussion about why that's a private discussion if it's about
24 business if it's shared with 45 or 12 people. If it's a
25 one-on-one conversation, that's much easier for me to

1 understand how that could be a private conversation. But
2 again, these are the things that are going to need to be
3 fleshed out for me before I can weigh in on that.

4 So for today's purposes, I'm denying the request for a
5 dismissal. I'm granting a very brief protective order,
6 inasmuch as I've just gone over on the record, to not disclose
7 outside of the office and outside of the discussions in your
8 office with your client. And then directing you all to come
9 back to court as necessary. I hate to do that.

10 All right. Mr. Kirby, do you have any questions?

11 MR. KIRBY: Yes, Your Honor. Just clarification. You
12 mentioned that you would like some sort of description of
13 these documents that are in the gray area.

14 THE COURT: Uh-huh.

15 MR. KIRBY: Is that similar to a privilege log that
16 you were thinking of?

17 THE COURT: Yes, sir.

18 MR. KIRBY: Okay. And who should Mr. Merkel provide
19 that to, the Court or Mr. Reid (sic) and his office?

20 THE COURT: MR. Reid and his office first, because
21 there might be some things, again, that you all could agree on
22 to cull out before you come to me, which would be my
23 preference.

24 MR. KIRBY: And then if Mr. Reid and I cannot agree
25 from the brief description of the document, that's when we

1 come see you.

2 THE COURT: Yes.

3 MR. KIRBY: Thank you, Your Honor.

4 MR. JOHNSON: I do have a question.

5 THE COURT: Sure.

6 MR. JOHNSON: And I'm trying to just reduce what I am
7 envisioning as more motion practice here. So if he believes
8 that there's a protective document, and he's going to give you
9 a privilege log, if I cannot determine what is in the -- I
10 mean, I'm hoping I can work this out with Mr. Kirby, we're
11 professionals, we do this all day every day, we understand
12 what privilege logs would look like -- I am hoping that I am
13 able to see the document before, rather than just a privilege
14 log, before I can come in. And I'm willing to, if there's a
15 disputed issue, I'm willing to agree that attorney's eyes only
16 on a disputed issue so I can confirm what is in the substance
17 of that e-mail.

18 THE COURT: Okay.

19 MR. JOHNSON: Would that be workable if you put that
20 in an order?

21 THE COURT: I don't see a problem with that. If it's
22 attorney's eyes only, and then you are directly instructed not
23 to disclose even to your clients what's in there --

24 MR. JOHNSON: Yeah.

25 THE COURT: -- that would possibly cut down on some of

1 the litigation. So I would grant that as part of the order
2 today too.

3 MR. JOHNSON: Okay. Because that's my goal. If I'm
4 going to get a privilege log and it's short and it doesn't
5 contain enough information, we're going to be fighting over
6 the privilege log first. I just want to skip that.

7 THE COURT: Well, I want to make sure, because I
8 understand Mr. Merkel's concern is not wanting these folks
9 that he says are his adversaries from getting this
10 information. So that is a protection if you are to look at
11 those attorney's eyes only, nothing gets shared with your
12 clients. That has to be part of the order.

13 MR. JOHNSON: That will be fine.

14 THE COURT: Understood? Does that make sense,
15 Mr. Kirby?

16 MR. KIRBY: I'll repeat it just to make sure I
17 understand it. I prepare a privilege log. I'll share it with
18 Mr. Reid.

19 THE COURT: Mr. Johnson.

20 MR. KIRBY: Mr. Johnson. I'm sorry.

21 THE COURT: I will do it the wrong way if you keep
22 doing it that way.

23 MR. KIRBY: I'll share it with Reid Johnson. And if
24 he and I can't agree on whether or not it's covered, it should
25 be protected, I provide it to him attorney's eyes only?

THE COURT: If you can't agree on what -- if he can't make it out from what you're putting in your privilege log.

MR. KIRBY: Right.

THE COURT: Then it's for attorney's eyes only.

MR. KIRBY: Gotcha.

THE COURT: And it's not to be disclosed to anyone other than his co-counsel. Not to his clients.

MR. KIRBY: Gotcha. I understand now. Thank you for clarifying, Judge.

THE COURT: Yes. Okay.

I'm going to ask you to put together an order for me,
Mr. Johnson.

MR. JOHNSON: I can do that.

THE COURT: All right. Anything else anybody needs clarification on today?

MR. JOHNSON: No, Your Honor.

MR. KIRBY: No, Your Honor.

THE COURT: All right. That will end our hearing then. Thank you very much, everybody.

THE CLERK: All rise. Court is in recess.

(END OF PROCEEDINGS.)

C E R T I F I C A T E

I, DEBORAH G. PECK, do hereby certify:

4 That I am an Official Court Reporter for the Spokane
5 County Superior Court, sitting in Department No.12, at
6 Spokane, Washington;

7 That the foregoing proceedings were taken on the
8 date and at the time and place as shown on the cover page
9 hereto;

10 That the foregoing proceedings are a full, true, and
11 accurate transcription of the requested proceedings, duly
12 transcribed by me to the best of my ability or under my
13 direction, including any changes, if any, made by the trial
14 court.

15 I do further certify that I am not a relative of,
16 employee of, or counsel for any of said parties, or
17 otherwise interested in the event of said proceedings, and
18 have no financial interest in the outcome of said
19 proceedings.

21 DATED this 22nd of July 2025.

DEBORAH G. PECK, CCR No. 2229
Official Court Reporter
Spokane County, Washington