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42917-9-II

COURT OF APPEALS, DIVISION II,
OF THE STATE OF WASHINGTON

JAMES BYRON HOLCOMB, individually
And as Personal Representative
Of the Estate of Karen R. Holcomb (1)

Appellants,

-vs-

ASSIGNED JUDGE FOR THE KITSAP COUNTY DISTRICT COURT NO. 1002203333; et. al

Respondents,

MOTION FOR DISCRETIONARY REVIEW

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(1) Karen Holcomb died on January 17, 2011, and James Byron Holcomb appears also as the Personal Representative of her Estate.

A. IDENTITY OF PETITIONER. James Byron Holcomb ("Holcomb") individually, and as the Personal Representative of the Estate of Karen R. Holcomb, as Petitioner is the party filing the within Petition.

B. DECISION. The issues in the within Petition occurred post briefing and in the Panel Opinion of the Court of Appeals, as are set forth in the attached Motion for Reconsideration (App.2) and the attached Order Denying Reconsideration (App.1). The latter was not signed by the Panel, but by the Chief Judge of Division II, after reviewing said Motion for Reconsideration, with full knowledge of the problems without any comment or action. This Motion for Reconsideration, to repeat and emphasize, was based on the following issues and relief requested:

a. To vacate this Panel's Opinion dated August 20, 2013, (App. 3) under the above number based on numerous, excessive, deliberate, and repeated errors by citations not found in the Record in the Panel's Opinion thereby representing and

identifying them in totality and cumulatively when done to achieve a predetermined result as judicial misconduct standing alone;

b. For reassignment of this Appeal to a different Panel for a new hearing;

c. For oral argument before this new Panel;

d. For an Order prohibiting the new Panel from seeing or otherwise having for review the above Opinion before a new Opinion is issued and filed by this new Panel;

e. For an Order requiring publication of this new Opinion;

f. For an Order requiring a proper authority to investigate the failure of the Clerk's office, with the persons interviewed placed under oath, for the deliberate action to fail to provide Notice of Filing of the Opinion dated October 20 to Holcomb; to determine who authorized, or ordered, in whatever manner this failure; with the focus of said investigation to be on judicial misconduct, properly described as a second issue in the Panel's action as judicial misconduct; with an additional focus to be on

to preclude and prevent Holcomb from responding; and to file a report containing the findings and recommendations are of that investigator.

C. ISSUES PRESENTED FOR REVIEW:

(1) Did the Court of Appeals, Division II, violate the XIV Amendment to the Constitution of the United States, Section 1 with reference to Due Process, by (a) committing judicial misconduct in each manner referred to above standing alone and/or twice, (b) by repeated, excessive references to the record which are and were not found in the record to achieve a predetermined outcome, (c) in a "finding"/contending that the Petitioner had an adequate remedy at law when there is no such remedy, (d) when there is no reference to the court possessing the authority to hear and order such remedy as a matter of law, (e) where the Panel of Division II recognized in its Opinion that Superior Court below did not decide the count seeking relief against enforcement and without remanding the same to that court for additional findings and conclusions, and (f) showing

bias and prejudice in favor of the Kitsap County Health District generally and specifically where and when said District offered no Constitutional authority interpreting the Fifth and Fourteenth Amendment for the District's imposed contract to be entered into by a property owner, including Holcomb, allegedly contained in its rules and regulations.

D. STATEMENT OF THE CASE: Holcomb refers this Honorable Court to his Motion for Reconsideration by reference and incorporation herein (App. 2), which reference meets the requirements of Rules on Appeal in Rule 13.4 and Form 3 as to this particular requirement.

E. ARGUMENT. In summary, the Panel decision and the Order Denying Reconsideration represent judicial pettifoggery.

1. The pertinent XIV Amendment provision to this matter is found in Section 1, where it states, "; nor shall any State deprive any person of life, liberty, or property, without due process of law;" The issue of imposing a contract on Holcomb by the Health District is included within the meaning

of depriving "liberty". *Meyer v. Nebraska,* 262 U. S. 390 (1923), recently affirmed in the "Obamacare" cases in the District Court and the Court of Appeals, *Sibelius,* 648 F.3d 1235, rvsd. on other grounds, (11 Cir. Fla. 2011).

2. Actions in and by State courts by judicial officers in instances which violate Due Process are within the depriving liberty language and the protections of this Amendment. *Kinney v. Fox,* 232 F.2d 288 (4th C.A. Mich., 1955), cert. den. 352 U.S. 855; *Joy v. Daniels,* 479 F.2d 1236 (C.A. S.C. 1973).

3. As to the means by which a claim demonstrates violation of Due Process standards, these means can be asserted under this Amendment in the instant case under the term "liberty". Liberty was deprived in the instant case both by either, or certainly both, instances of judicial misconduct and then with the Opinion laced with numerous erroneous citations to the record to achieve a predetermined result, as are argued below.

No known case refers to judicial misconduct specifically as coming within the meaning of denying "liberty", but this is unnecessary, since this State has already acted by adopting a "Code of Judicial Conduct", which, in itself, must be taken implicitly as an expression of expected judicial "Due Process" for the citizens of this State without more.

The Panel's actions represent judicial misconduct and violations of the Code of Judicial Misconduct. The Order Denying Reconsideration in itself affirms this. This case is a case of first impression before this Court to hear, interpret, and decide a matter under this recent Code of Judicial Conduct generally, and in the instant matter specifically to Canon 2 (App. 3). Research has not revealed any known authority describing or defining what "judicial misconduct" means under these Rules of Judicial Misconduct, but Holcomb argues and asks this Honorable Court thereby, that in the absence of authority, his reference to the Panel's decision and numerous, excessive, and erroneous citations to the record satisfy any such

definition for the judicial misconduct in the Panel decision. Without a doubt such judicial misconduct existed with a direction from the Panel to the clerk's office to withhold notice of their decision to order to put Holcomb in a position of not being able to file a timely Motion for Reconsideration, or even this Petition, thereby leaving its decision unchallenged.

Unfortunately for the Panel, an honest source with conscience, who shall remain unnamed for the source's protection from retribution or reprisal, disclosed such judicial misconduct to Holcomb about this failure to provide this Notice, and its reason, before its purpose could be accomplished. As a result, Holcomb found that this source was correct (5 days before the time for any action expired).

After Holcomb's then timely and bitter complaint, the clerk's office allegedly protected itself by extending the time for filing. (See, however, App. 2 for the reasons this action was disingenuous). Even so, the impermissible judicial misconduct had already occurred, remains to date, and needs to be

addressed in this matter by the Supreme Court to prevent recurrence--ever.

What Holcomb has argued above by way of fact has been established. In that vein, it should be noted that the Chief Judge in his Order denying Reconsideration (App. 1) expressed no denial of the facts and charges in App. 2, and such denial should have been clearly stated given that this is and was an extremely serious charge. This Supreme Court would expect this for and in its review. Given this, the lack of denial establishes Holcomb's charge. Nor did the Chief Judge order an investigation, as Holcomb moved for, to determine what occurred and who is responsible. For these two reasons the fact of misconduct has been established as true. Ordinarily, the Supreme Court investigates this, but this failure to give Notice Issue to Holcomb should be considered as establishing the charges without more, and relief granted accordingly.

To go on, the Panel violated Canon Rule 2.2, entitled "Impartiality and Fairness", and its Comments in (1) (in passing

with the two instances of judicial misconduct established and the excessive, repeated, and clearly erroneous citations to the record, the Panel's actions cannot and must not be considered impartial or fair), and in Comments (2) (in passing, it is obvious that the numerous and erroneous citations to the record not found in the record cannot be considered under any notion to be "good faith", or under that nostrum not even considered as "error", but are, indeed and worse yet, as charged, deliberate.

The Panel also violated Canon 2.3, entitled "Bias, Prejudice and Harassment". Under 2.3(A) such conduct referred to by this Canon includes "administrative duties", which, as applied to the instant matter, include supervising the Clerk's office. Moreover, 2.3(B) applies to Judges in refusing to permit the kind of conduct, which occurred in this matter as to the Clerk's office and to "others", if it is found to be outside the Clerk's office. Returning for the moment to what constitutes "Due Process", Comment (1) refers specifically to impairing the fairness of the proceeding, and both instances of

judicial misconduct impair fairness. Comment (3) includes avoiding conduct which gives the "appearance" of bias and prejudice, as do both instances of judicial misconduct unassailably do.

The Panel also violated Rule 2.6, entitled "Ensuring the right to be heard". In the instance of the judicial misconduct relating to deliberately denying Holcomb the right to be heard on post-decision matters, this act was designed to deny such right, including this Petition for Review.

The Panel also violated Rule 2.12, entitled "Supervisory Duties" refers to court personnel to require them to act with "fidelity". Both the Panel and the Presiding Judge, once advised, as Holcomb did in his Motion for Reconsideration, and "acted on", or more particularly failed to act on, violated Rule 2.12. This Rule requires court personnel to act with "fidelity". By any measure the Clerk's office did not so act, but, even more so, and egregiously, tried to protect themselves with a

make-weight argument that notice was not mailed to Holcomb (see App. 2 for more detail).

4. Underscoring all of the above violations of Canon 2 is the bias and prejudice of our court systems in favor of the Health District. An endemic issue running throughout this whole instant case deals with judicial misconduct, including this Panel and the Presiding Judge, and extends to all courts below Division II at all levels of this State indulging in this false notion that somehow exempts the Health District from ordinary and customary jurisprudence because of its status, implicitly allowing it to be above the law.

Holcomb provided to the courts at all levels an endless list of misconduct by the Health District officials, including but not limited to, criminal convictions and imprisonment for use/misuse of insider information, committing unsupported acts not within the powers of the Health District, conclusive evidence of error on the part of Health District officials, a probable bribe of a judge established on its face but not

investigated after notice, and of a scam being conducted by its on-site septic system unit (or someone having access to the information possessed by that unit) involving huge sums of money spent of record in various ways and places to support activities of the Health District, with no apparent financial means or resources by or from any employee, or anyone advancing its interests, capable of providing such funds, with the focus of the scam being against the elderly, the retired, and those about to retire (Holcomb's forthcoming status and their objective as to him), and then in the procedure followed, wherein an unfounded "notice" to repair was sent to one member of these classes who had a septic tank, followed by an investor who offered 10¢ on the dollar for the owner's property, with the owner accepting it in the face of having to spend a multi-thousand dollar cost to install a new septic system and having no funds to do this, then after title was obtained following all of this by re-sale of said property at fair market value, and ending up with disbursement of the difference in

profit in shares to all persons involved. It is impossible to know all the names employed of and by all persons in committing the scam (after the mid-decade of last decade, the IRS required a tax ID for both buyer and seller in real estate closings and that stopped the perpetrators from using false names). Holcomb has doggedly pursued information to initiate an investigation of the Health District and informed every one, including prosecutors, but all wave it off with a claim of failure "to prove it". (See Appendix 2 and the Record for more details on this scam) Subpoena power and a probable million dollars are needed to investigate this scam fully and charge the perpetrators criminally. Many of the victims, if not all of them, were left totally unaware that they had been scammed. It is and was the most diabolically brilliant scam ever conceived. Holcomb wants this court to know this (for whatever reason).

Concomitantly, the continuing wrongful conduct of our Court systems in this State in review of and rendering decisions in favor of a or the Health District(s) is now rampant, and

evidence of bias and prejudice is unassailable, leaving these brigands free to live at large. An unwritten, but verified, rule exists in the Panel's Opinion in this matter that a reviewing court will approve an action or decision of the Health District no matter how wrong or otherwise in error. Holcomb refers this Panel to pp. 9-11 of his Reply Brief delivering the distressing news to litigants that the Courts of this State routinely support the Health District no matter what the record, no matter what the facts, create facts to suit the opinions reached (and is established in the instant case), no matter what the law, and no matter what the equities. The Courts go to great lengths to create "facts" where those "facts" do not exist, as is the case in this matter. Indeed and accordingly, the same virus that infects the conduct of the Health District has found its way into our Court system, including this Panel for reasons expressed.

Holcomb pleads with the Supreme Court to end this obvious bias and prejudice and to do it in this case.

5. Merits of his Appeal: On the merits of his appeal and in terms of authority, or more specifically, the lack of it, the Health District has never once in all the litigation over this issue over the last 12 years produced any authority upholding the Constitutionality under any Article or Amendment of the U. S. Constitution, or State Constitution for that matter, of its so-called "Operation and Maintenance Contract", herein at issue! The weight of authority is 100% against it. Yet, no court seizes the day.

The conduct, or misconduct if you will, in every court of this State has been set forth in App. 2 and in both of Holcomb's Opening and Reply Brief of the Record. Legal charade after legal charade and fiction has been employed to "protect" the Health District.

The worst, and maybe classic, disregard of law is the conclusion of the Panel that "there is an adequate remedy at law." This is patent nonsense. There is no law to support this, and none advanced nor cited to. The Panel does not refer to any

court which posses such a remedy at law, nor has the Respondent. Conceptually, it is not possible to have an adequate remedy at law against an unconstitutional authority, nor is the opposite true for the proponent of said unconstitutional authority to achieve its same purpose, i.e. to require a Defendant to perform an act, through an alleged remedy at law.. The Health District tried. It filed an "Infraction" violation in an Infraction Court against Holcomb, when, in point of law, the Health District wanted Holcomb to sign one of its "O&M Contracts", not within the jurisdiction of an Infraction court. This Infraction charge lies at the ragged edge of Rule 11, for the reason that even if a monetary amount is ordered as the only remedy available, that does not require Holcomb, or anyone else, to enter into such a contract. Going back in time, the Health District had an opportunity to move for such relief during the initial case in superior court in 2001, the thrust of which was to require Holcomb to "repair" his septic tank system (for which no violation was ever advanced in fact

or law, and the evidence against this was overwhelming. Notwithstanding and nevertheless, the superior court judge ordered Holcomb to "repair" it ((that judge should have known better)) but the bias and prejudice of our court systems was never proven to be more apparent than in and by this decision). Even so, the Health District did not obtain an order for Holcomb to enter into an "O&M contract", because the Health District had no such Constitutional authority then for such a contract and still does not have any today. The Infraction Court indicated that it did not have equity jurisdiction to review any Constitutional objection; nor did the superior court say it had such—twice.

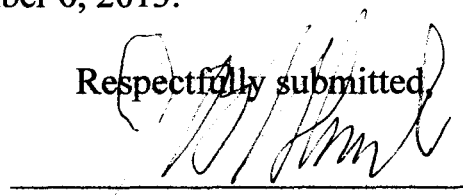
There is no such adequate remedy at law, and the decision of the Panel should be reversed on this ground alone and on the merits as plain error of law, deliberateness aside.

F. CONCLUSION: Once again, Holcomb asks now of this court for the same relief he requested in App. 2. Holcomb requests a new hearing (with a conclusion that there is no

adequate remedy at law to instruct the next Panel), before an unbiased Panel, with oral argument, a published Opinion issued, and along with an investigation of the judicial misconduct of Division II in both matters with a report issued as to what happened in each instance. Fundamental notions of Due Process require all of this.

Dated: November 6, 2013.

Respectfully submitted,



James Byron Holcomb, Pro Se (2)
(Address, phone numbers, and FAX are on Title page)

(2) For the information of the Court, just in case this court is wondering, my Bar Number is 1695. I am currently in a "suspended" status. I could have had my license renewed and suspension lifted as of almost 4 years ago from the above date and have not done so, and proudly so, out of committed protest against the disciplinary process of both the Bar and this court. The Bar lost this outstanding lawyer for basically de minimus, out of touch, over-reaching, and lacking in common sense reasons. I ask this court to read my legal autobiography entitled. "The Backcountry Lawyer Remembers', which chronicles my many successes in 400 some pages, especially with my many successes in very difficult cases. I am not going to renew my license until such time as there is a provision for expungement of alleged discipline, akin to a pardon but, more in meaning, to obliteration. I am very proud of what I have

done as a lawyer and fear no one. Great lawyering requires great courage plus doing the right thing for the right reason, as the above matter represents. Unfortunately, the Bar and this court through the RPC's are a distinct impediment to great lawyering and cause an hegira to timidity. I am proud of the above arguments in this case, also, when "punches" should not, and do not, have to be "pulled". Our State court system is a shambles of judicial miasma, as this case is a cardinal example of judicial misconduct barred by the Code of Judicial Conduct in each court hearing the same, and this court must do something now to correct this development, which has become atavistic. I so state and advise this court.

2917-9-II

COURT OF APPEALS, DIVISION II,
OF THE STATE OF WASHINGTON

JAMES BYRON HOLCOMB, individually
And as Personal Representative
Of the Estate of Karen R. Holcomb (1)

Appellants,

-vs-

ASSIGNED JUDGE FOR THE KITSAP
COUNTY DISTRICT COURT NO.
1002203333; et. al

Respondents,

APPENDIX TO PETITION FOR REVIEW
Index:
(1) Denial of Motion for Reconsideration
(2) Motion for Reconsideration
(3) Code of Conduct, Canon 2

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(1) Karen Holcomb died on January 17, 2011, and James Byron Holcomb appears also as the Personal Representative of her Estate.

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

JAMES B. HOLCOMB, individually and as the Personal Representative of the Estate of Karen R. Holcomb,
Appellants,
v.

ASSIGNED JUDGE FOR THE KITSAP COUNTY DISTRICT COURT IN NO. 1 00203333; DIRECTOR, KITSAP COUNTY HEALTH DISTRICT; and PROSECUTING ATTORNEY KITSAP COUNTY,
Respondents.

No. 42917-9-II

ORDER DENYING MOTION FOR RECONSIDERATION

APPELLANT moves for reconsideration of the Court's **August 20, 2013** opinion. Upon consideration, the Court denies the motion. Accordingly, it is

SO ORDERED.

PANEL: Jj. Quinn Brintnall, Johanson, Fearing

DATED this 14th day of October, 2013.

FOR THE COURT:

Johanson, A.C.J.
ACTING CHIEF JUDGE

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2917-9-II

COURT OF APPEALS, DIVISION II,
OF THE STATE OF WASHINGTON

JAMES BYRON HOLCOMB, individually
And as Personal Representative
Of the Estate of Karen R. Holcomb

Appellants,

-vs-

ASSIGNED JUDGE FOR THE KITSAP
COUNTY DISTRICT COURT NO.
1002203333; et. al

Respondents,

COMBINED MOTION & DECLARATION OF APPELLANT FOR RECONSIDERATION OF THIS DIVISION'S UNPUBLISHED OPINION DATED AUGUST 20, 2013

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1. IDENTITY OF MOVING PARTY. James Byron Holcomb ("Holcomb") individually, and as the Personal Representative of the Estate of Karen R. Holcomb as Appellant, is the party filing the within Motion.

2. STATEMENT OF RELIEF SOUGHT. Holcomb seeks multiple relief for Orders as follows:

a. To Vacate this Court's Opinion dated August 20, 2013, under the above number;

b. For Reassignment of this Appeal to a different Panel for a new hearing;

c. For Oral argument before this new Panel;

d. For an Order prohibiting the new Panel from seeing or otherwise having for review the above Opinion before a new Opinion is issued and filed by this new Panel;

e. For an Order requiring publication of this new Opinion;

f. For an Order requiring a proper authority to investigate the failure of the Clerk's office, with persons interviewed placed under oath, for failure to provide Notice of Filing of the above

Opinion to Holcomb and to file a report as what the findings and recommendations are of that investigator, with the focus of said investigation to be on improper actions, perhaps properly described as misconduct, by whatever authority in instructing, in whatever manner done, and authorizing the Clerk to fail to give notice to Holcomb deliberately of said Opinion.

3. FACTS RELEVANT TO MOTION: Holcomb requires that the Opinion above, Holcomb's Opening Brief, Holcomb's Reply Brief, the letter as Ex. "B" attached, the record of emails on this matter of this Panel, and other documents of record, as are applicable in the text of this Motion, contain and present the facts necessary for reconsideration..

4. GROUNDS FOR RELIEF AND ARGUMENT: The continuing wrongful conduct of our Court systems in this State in review and decisions in favor of the Health District is now rampant. An unwritten, but verified, rule exists in the Opinion in this matter that a reviewing court will approve an action or decision of the Health District no matter how wrong or

otherwise in error. Holcomb refers this Panel to pp. 9-11 of his Reply Brief delivering the distressing news to litigants that the Courts of this State routinely support the Health District no matter what the record, no matter what the facts, create facts to suit the opinions reached, no matter what the law, and no matter what the equities. The Courts go to great lengths to create "facts" where those "facts" do not exist, as is the case in this matter. Indeed, the same virus that infects the conduct of the Health District has found it way into our Court system, including this Panel for reasons expressed below. THIS VIRUS NEEDS TO BE CURED NOW! Holcomb has placed himself in great peril before this Panel for good and necessary reasons; to wit, to call an end to this nonsense NOW! Holcomb appeals to the courage and integrity of the members of this Panel to do so NOW! No Constitutional authority appears in the Brief of the Respondent supporting the Health District.

If not this, at least this Panel should go on record in and with an opinion that the policy of the State of Washington

Court system is to uphold the Health District in whatever it does or wants in any kind of matter.

This wrongful conduct, as set forth below, must be reviewed by our Supreme Court to correct it, and, if not by that Court, by the Supreme Court of the United States. Judicial misconduct hangs in abeyance also as to this Panel and its employees, depending on what is Ordered, investigated, and found.

The conduct, or misconduct if you will, in every court of this State has been set forth in both Holcomb's Opening and Reply Brief. Legal charade after legal charade has been employed to "protect" the Health District.

By the same token, the conduct, or misconduct as you will, of the Health District itself has also been set forth in those two filings. Additionally, Holcomb refers to the criminal convictions of the employees of the Health District for use, or misuse, of "insider information", as is set forth in Ex. "D" in the record. By the same token and based on the same insider

misconduct, Holcomb refers this Court to footnote (2) of his Opening Brief as to the scam being perpetrated on citizens of Kitsap County. As to this scam, Holcomb has volumes of evidence to present to a prosecutor, including, but not limited to, huge amounts of money spent by these employees in totally unjustified ways or unsupported by common sense (all of record); money having been missing from a trust account but "suddenly" now re-appearing in that trust account of a member of the Bar without explanation one week after the decision by the Superior Court to order "repair"; expensive personal spending of former employees without any possible relation to retirement salaries; and more, a lot more. All of the above is of record. The details of how the scam was perpetrated remain for another filing, but have been told to Holcomb. But, each time, the answer comes back, "Prove it".

That answer is correct in that Holcomb estimates it will take well over a million dollars to determine how this scam was put together, who the victims are (as Holcomb would have been

but for his training and experience as a lawyer), and where the money went. Holcomb does not have this kind of money. Notwithstanding, the circumstantial evidence supporting this scam is unassailable and available; yet, no authority does anything about it. It is undoubtedly the most diabolically and brilliantly conceived scam on record in this country.

It has, perhaps, ended because, as of the middle of the last decade, the IRS required tax ID numbers to be recorded at escrow in real property closings and thereby making it virtually impossible to use false names, addresses, and associations.

Holcomb asks this Court to note this fact also. When this scam became apparent to Holcomb, he moved for reconsideration by the trial judge of the court's Order to "Repair". Holcomb then noted up the deposition of one Scott Campbell, as his card appears in the record, to record Campbell's testimony of what he told Holcomb. Holcomb delivered it to Ken Palmer, Process Server. Palmer came back and reported that (a) there is no such address as appears on the

card, (b) no business license issued in the name of "Scott Campbell Investments" (SCI Investments), and no such name found in Kitsap County!

The following day after Campbell's visit, in which Holcomb refused to sell, the Health District cancelled all of some 20 waivers given to install the Glen Bio-Filter System. With the false evidence represented by Campbell's card (probably with a false name also) and now the waiver cancellation coming out of the blue, so to speak, for unknown reasons, Holcomb argued before the superior court for the Health District to provide the name or names of the person authorizing this cancellation. Said court refused, allegedly and incredibly, on the ground there is no basis for proceeding to pursue evidence of a scam!

Worse, not word about any of this appears in the Opinion of this Panel!

Back to this Panel and to Ex. "B" attached, which is a letter from one "David C. Ponzoha, Court Clerk" dated

September 12, 2013, The essence of Holcomb's complaint is and was that he never received "Notice" of any kind from any source associated with this Court about the filing of the within Opinion. Holcomb found out about this on or about September 4, 2013, from a source, who had a pang of conscience, suggesting that maybe Holcomb should check the docketing since there has been an Opinion filed, and suggesting concurrently that maybe that Holcomb was not being, or going to be, notified. Accordingly, Holcomb obtained the Opinion and immediately called Syl Field, Clerk of this Court . Such an occurrence had never happened to Holcomb ever in 50 years of practicing law.

Holcomb wishes to add here, that when he filed his last brief and hadn't heard by the end of July, and by shear instinct, thought something was awry here. He called Lisa Nickels of the Kitsap County Prosecutor's office (an outstanding young lawyer and honest as the day is long) and asked her if she had heard anything. She had not. Holcomb asked her to report to

Holcomb if and when she received something. She agreed. Again, Holcomb had no information of any flim-flam going on, just instinct born over 50 years and, above all, prior experience with all courts of this State in matters relating to the Health District. As it turned out, she did not call Holcomb, because she noted an alleged affidavit of service on Holcomb by a Clerk, and she assumed Holcomb had been notified. Of course, Holcomb had not been. His instincts were affirmed. Neither Field nor Ponzoha refer to the affidavit of that Clerk, and Holcomb has never seen it.

In response to Holcomb's initial telephone call to complain, Syl Field initially accused Holcomb of deleting this out of his received emails. Another red flag went up because of this peroration. Accordingly, Holcomb checked his Internet server, America On Line and his "deleted files" back on or about the date of August 20, 2013, and there is and was no email deleted out. Holcomb complained bitterly to Fields about this.

Holcomb interrupts the sequence of what followed to affirm at this point that he had never once failed to receive any email from Fields or anyone else with the Court, never once had something mailed by regular mail to him once emailed, and never once had this experience in 50 some years of practicing law!

As a result of his complaint to Fields, Fields sends a new email announcing that a new date of September 12, 2013, will be the new seminal date for the clock to start running. Next, a regular mail letter arrived as Ex. "B" signed by Ponzoha attached hereto, sent to Holcomb's P.O. Box dated with the same date.

Holcomb does not believe a word of this letter as Ex. "B". Holcomb trusts his source and affirms his prior experience with the Clerk's office. Most telling, Field's follow up email did not refer at all to a "paper copy", as Ponzoha did. This is and was the first time that a "paper copy" has been mailed to him, notwithstanding the wording of this letter "...as

we customarily do...". With reference to "pro se" in Ex. "B", the Clerk's office knows Holcomb is a lawyer.

Holcomb demands that this issue be investigated on the ground of misconduct by someone, somewhere, that misconduct being that that person instructed the Clerk responsible not to give Holcomb notice so that the time would pass for reconsideration and a petition for review without any action on his part and, worse, that the onus would then be put on him so as not to extend the time after the time had expired!

And, Holcomb will, unfortunately go one step farther. His Instinct, as aforesaid, tells him that a Judge of this Panel is behind this in some fashion, with maybe his or her instruction to his or her law clerk, and maybe from that law clerk to the court clerk to keep Holcomb out of the loop for the reasons stated. Holcomb was absolutely right in July when he contacted Ms. Nickels.

Accordingly, Holcomb has for good reason moved for the Opinion of this Panel to be vacated and the matter re-

assigned to a new Panel for hearing based on what has to be misconduct by the Panel and/or its employees. Where does the misconduct begin and end, then?

While the preceding paragraphs is one obvious reason for reconsideration. Holcomb is not going to leave it at that. In addition, Holcomb cites page by page, word by word to this Opinion to point equally obvious and glaring falsehoods and other plain errors allegedly "justifying" the Panel's Opinion.

P. 1, first paragraph, last sentence: "We hold that the trial court properly denied his writ." That is a false statement. At issue was Count III of the complaint and the Constitutional question, as made plain by Holcomb's Opening and Reply Briefs. The record clearly shows that Judge Haberly did not decide Count III. Holcomb properly raised this record before this Court. Holcomb submits that such an obvious matter could not be missed unless by design. Holcomb goes on.

P. 2, footnote 1: "Holcomb maintains that he never had an O&M Agreement." That is an equally a false statement. As

was made absolutely clear in both of Holcomb's briefs, he was forced into having an O&M contract in 2001, not by Order of the Court (more on this below), but by the installer of the Glendon Bio-Filter system, who had no authority to require this in the first place, and Holcomb had to obtain one then notwithstanding his vigorous protest. The Opinion does not address the failure of the superior court to order this (again see below), nor Holcomb's protest, leaving the impression that Holcomb is bald-faced liar in saying he never had one. The second sentence of the footnote is true. Holcomb submits that such an obvious matter could not be missed unless by design. Holcomb goes on.

P. 3, first sentence: Holcomb did apply for a building permit, but the rest of the sentence is false, as follows: "...to rebuild his existing detached garage." This is equally a false statement. While on its surface, such a statement might be considered minor, in point of fact it is a huge matter, almost in itself calling for this appeal. The reason is that this building

permit is for his new house, which is planned to be four bedrooms, 4 stories, three baths, etc! The requirements of the Health District to have an O&M contract to do this are not honest in that these requirements are simply to prevent Holcomb from building his house in the first place, nothing more! In part, if not in major part, this dishonesty is because Holcomb has fought them over the years to require them to live under, by, and within the law. This bunch of, yes, brigands have destroyed a dream, and, worse, with the aid of the courts continue to get away with it! Not one word of mention about this by the Panel. Holcomb submits that such an obvious matter could not be missed unless by design. Holcomb goes on.

P. 3, third paragraph, line 1: "The superior court denied all three writs." That is a false statement. The record clearly shows that Judge Haberly did not act at all as to Count III, even on reconsideration, which is the Count specifically directed to the Constitutionality of the contract at issue! Holcomb submits

that such an obvious matter could not be missed unless by design. Holcomb goes on.

P. 3, last paragraph: This paragraph is as stated true insofar as it goes, but what is not true is that the reason the Infraction court did not decide the Constitutional issue is that the Infraction Judge said her court was not a court of equity nor did it have jurisdiction to decide a Constitutional law question. That is true. Numerous matters raised on reconsideration of the Infraction court's decision are set forth in Ex. "B" to Holcomb's Reply Brief. But, the Constitutional issue was on appeal, standing alone, as being considered by the superior court. The import of this paragraph is that Holcomb is a bald-faced liar, which is plainly unfounded and inappropriate for a court to imply, infer, or cause to be alluded to.

While on the subject of the Infraction Court, Holcomb refers to footnote (6) of his Opening Brief wherein it is true that the Infraction Court does not have jurisdiction to grant the relief the Health District wants, i.e. for Holcomb to get an O&M

contract, since that court has jurisdiction to order a monetary penalty only. Holcomb assures this Panel that he will never comply with that until and unless a court properly decides the Constitutional issue. BUT THIS PANEL SHOULD ALSO BE REMINDED AT THIS POINT THAT THERE IS NO ADEQUATE REMEDY AT LAW FOR HOLCOMB ON THE CONSTITUTIONAL ISSUE FOR THIS REASON, SINCE AN INFRACTION COURT CAN ONLY GRANT MONETARY RELIEF. IN ITS ESSENCE, THIS INFRACTION ACTION IS NOTHING MORE, NOR LESS, THAN HEALTH DISTRICT HARASSMENT, AND NO COURT, INCLUDING THIS PANEL, CAN FIND OTHERWISE BASED ON NO REMEDY. Holcomb submits that such an obvious matter could not be missed unless by design. Holcomb goes on.

P.4, last full paragraph, last sentence; "We note, however, that the superior court never remanded the case to the district [the correct word is 'Infraction'] court. " This sentence is, at best, a half-truth, in that the sentence, as it is written, is

true, but that sentence wildly leaves unanswered what this Panel should do as a result of this finding! Holcomb is at an absolute loss to understand how an appellate court can leave hanging such a sentence without ordering appropriate relief as a result. If the relief is as ordered by the Opinion, which is to dismiss the appeal, how can that be possible in light of this comment? What court does have jurisdiction in light of this finding, not explained? Moreover, and worse, how can this Panel say that Holcomb has an adequate remedy at law? Aside from the illogic of this lack of explanation and on top of this, why is this paragraph in the Opinion at all? As it stands, its import is to make Holcomb out as flaming incompetent! How in the world can an advocate respond to such an implication? This paragraph needs to be stricken as improvident. This Opinion must be vacated for this reason standing alone. Holcomb submits that such an obvious matter could not be missed unless by design. Holcomb goes on.

P. 5, second line down from top of the page: "Second, has not filed a petition for a writ with this court..." That is plainly false, since Holcomb plainly did so. But, to go on, "....but only filed a notice of appeal from the superior court." Again, this sentence is, at best, a half-truth, in that the sentence as it is written is true, but that sentence misses wildly in terms of what this Panel has before it and should do! What is an advocate to do when the superior court decides "half a loaf", so to speak, in a decision on Counts I and II leaving hanging without decision Count III? Worse, by the next three lines, this Panel answers this inquiry by citing to the very authority allowing its independent review under and by a Writ of Prohibition, which this Panel opines it does not have! This is plain, glaring error calling for reconsideration. Moreover, this Panel uses the phrase "may not have independent jurisdiction." The Panel does not say, "does not have" said jurisdiction by its own admission. If there is any question and in the interests of economy of court action, why not decide such issue now?

Holcomb submits that such an obvious matter could not be missed unless by design. Holcomb goes on.

Finally, the last part of the Opinion, refers to Holcomb having an "adequate remedy at law." This panel persists in the notion that Infraction Jurisdiction is a "one-size, fits all", so to speak, jurisdiction, including jurisdiction for this Constitutional matter. This issue is discussed above and incorporated here, and the Panel is unassailably wrong. This jurisdiction is what the Health District filed for, not an action in a proper jurisdiction having a remedy for relief in the form of requiring Holcomb to execute an O&M contract. As an aside on this point, and further referenced above, they have no authority to support such an action now and had none in 2001. This is the reason at that time for not moving for an order for Holcomb to have such an agreement. Additionally, the Order of the infraction court supports this. Moreover, and conclusively on this jurisdiction point, the infraction court statute does not on its face provide for the relief Holcomb seeks here as to Count III.

Accordingly, *State ex. rel. Martin v. Hinkle,* 47 Wash. 156 (1907), cited to by this Panel, is entirely irrelevant and has no application to the instant case. On top of that Martin did not raise any Constitutional issue. Moreover, Holcomb did appeal to the superior court. That court denied relief, except for the Constitutional issue. There is and was no other appeal for Constitutional relief available then, even then for monetary relief ordered under Infraction jurisdiction and, perforce, no other kind of appeal is even possible then for Constitutional relief. It was strictly within the jurisdiction of the superior court and filed ab initio and appeal from that. This court has that jurisdiction; whereas, the infraction court does not.

This brings this Motion back full circle to ask the question of this Panel, as to its contention about an available remedy at law, where and in what court? This Panel did not answer this question, calling for reconsideration. Holcomb submits that such an obvious matter could not be missed unless by design. Holcomb goes on.

Apart from a specific reference to the wording of the Opinion herein, other matters should be pointed out as grounds for granting reconsideration. This panel rightly refers to *Skagit County Pub. Hosp. Dist. No. 304 v. Skagit County Pub. Hosp. Dist. No. 1* (below Holcomb will use the proper citation and, apparently, the Panel did not have this when the Opinion was first drafted in July, 2013, which thereby raises the issue of when this decision was finalized? From that, the most important point is now apparent, did the other Panel members actually read through the Opinion before signing off on it, which had to have occurred at a time earlier than is found in relation to the filing date of August 20, 2013? If they didn't catch this lack of citation as was readily available, as they didn't and should have, what Holcomb asks above then follows and is answered, that they didn't read it.) The correct citation is 177 Wn.2d 718, 305 P.3d 1079 (2013).

This case authority is the most recent authority interpreting a Writ of Prohibition. That authority applies this

Writ to the courts below, to the Health District, and to the Prosecutor's office, all joined as Defendants in the instant matter. Of equal importance, our supreme court stated that the rule is that there is no general rule as to what constitutes an adequate "remedy at law", but, as our supreme court teaches, such remedy depends on the facts and circumstances of each case. (*Id.* 733). But, there is an interesting twist. Determination of those facts and circumstances are left to the discretion of the "trial court". *Id.* In the instant case, we have no discretion exercised by the trial court as to this Writ, and to the Constitutional issue along with it. This panel cannot force or engraft this discretion on the superior court by fiat when no discretion was ever exercised. This Panel plainly did not discuss the lack of exercise of discretion, calling for reconsideration. It is impossible to miss this except by deliberate design. Again, the unwritten rule of the courts as to the Health District is reaffirmed. This Panel should now exercise its discretion based on all of the arguments made

above, and, based on all arguments, omissions, and non decision, Holcomb's Motion for Reconsideration should be granted.

That "design" referred to under each argument above means that this Panel and other courts accord special exemption, in fact and law, to the Health District and, additionally, defer to the Health District in any matter in which it is involved.

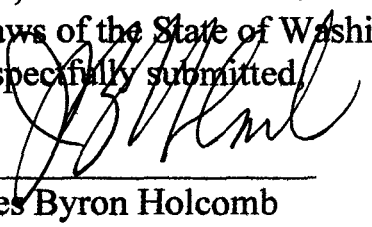
As an aside and further with referenced to this Panel and its upholding the Health District no matter what, the Opinion also should be published. Not doing so and by reason of the number of thousands of persons affected, the millions of dollars, the substance of the Opinion, and the reasons stated, all call into question the good faith of the Panel as is argued above as to Health District matters. This Panel plainly does not want its many errors and omissions known, and the conclusion is unassailable as to according special status to the Health District.

This must end and end now. Millions of dollars and thousands of persons are affected by this Opinion.

Holcomb freely admits that this is a strong criticism of this Panel. It is absolutely necessary, first to get its attention to a very serious issue as to our courts; second, to call this Panel's attention to its, and every court's decision, as to the Health District in order to call an end to this proven bias or prejudice; third, at least to have a court state openly and on the record that the courts of this State are committed to protecting anything and everything the Health District does no matter what the evidence, facts, record, and law happens to be; and, fourth, to present an overwhelming and compelling record in order to require this Panel to grant reconsideration on each ground, which are established on the record and which are as moved for, for all of the above reasons.

Signed at Bainbridge Island, Washington, as evidenced by his signature below, on this 1st of October, 2013, as a Declaration under the laws of the State of Washington

Respectfully submitted,



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CASE #: 42917-9-II/James B. Holcomb v Assigned Judge for Kitsap Dist. Court, et al

Mr. Holcomb:

It appears that we emailed a copy of the opinion to all parties in the above related matter on August 20, 2013, and received no "undeliverable" bounce back. However, we failed to serve you with a paper copy at your P.O. Box as we customarily do for those who represent themselves. Given this oversight, and in the interest of fairness, the time for filing a motion for reconsideration and/or Petition for Review runs from the date of this letter. If the parties have any questions or concerns about this action, please do not hesitate to contact this office.

Very truly yours,

David C. Ponzoha
Court Clerk

DCP:saf

Ex. "B"

CANON 2

A JUDGE SHOULD PERFORM THE DUTIES OF JUDICIAL OFFICE IMPARTIALLY, COMPETENTLY, AND DILIGENTLY

RULE 2.1 Giving Precedence to the Duties of Judicial Office

The duties of judicial office, as prescribed by law,* shall take precedence over all of a judge's personal and extrajudicial activities.

COMMENT

[1] To ensure that judges are available to fulfill their judicial duties, judges must conduct their personal and extrajudicial activities to minimize the risk of conflicts that would result in frequent disqualification. See Canon 3.

[2] Although it is not a duty of judicial office unless prescribed by law, judges are encouraged to participate in activities that promote public understanding of and confidence in the justice system.

RULE 2.2 Impartiality and Fairness

A judge shall uphold and apply the law,* and shall perform all duties of judicial office fairly and impartially.*

COMMENT

COMMENT

[1] To ensure impartiality and fairness to all parties, a judge must be objective and open-minded.

[2] Although each judge comes to the bench with a unique background and personal philosophy, a judge must interpret and apply the law without regard to whether the judge approves or disapproves of the law in question.

[3] When applying and interpreting the law, a judge sometimes may make good-faith errors of fact or law. Errors of this kind do not violate this Rule.

[4] It is not a violation of this Rule for a judge to make reasonable accommodations to ensure pro se litigants the opportunity to have their matters fairly heard.

RULE 2.3 Bias, Prejudice, and Harassment

(A) A judge shall perform the duties of judicial office, including administrative duties, without bias or prejudice.

(B) A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, or engage in harassment, and shall not permit court staff, court officials, or others subject to the judge's direction and control to do so.

(C) A judge shall require lawyers in proceedings before the court to refrain from manifesting bias or prejudice, or engaging in harassment, against parties, witnesses, lawyers, or others.

(D) The restrictions of paragraphs (B) and (C) do not preclude judges or lawyers from making reference to factors that are relevant to an issue in a proceeding.

COMMENT

[1] A judge who manifests bias or prejudice in a proceeding impairs the fairness of the proceeding and brings the judiciary into disrepute.

[2] Examples of manifestations of bias or prejudice include but are not limited to epithets; slurs; demeaning nicknames; negative stereotyping; attempted humor based upon stereotypes; threatening, intimidating, or hostile acts; suggestions of connections between race, ethnicity, or nationality and crime; and irrelevant references to personal characteristics. Even facial expressions and body language can convey to parties and

lawyers in the proceeding, jurors, the media, and others an appearance of bias or prejudice. A judge must avoid conduct that may reasonably be perceived as prejudiced or biased.

[3] Harassment, as referred to in paragraphs (B) and (C), is verbal or physical conduct that denigrates or shows hostility or aversion toward a person on bases such as race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation.

[4] Sexual harassment includes but is not limited to sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature that is unwelcome.

[5] "Bias or prejudice" does not include references to or distinctions based upon race, color, sex, religion, national origin, disability, age, marital status, changes in marital status, pregnancy, parenthood, sexual orientation, or social or economic status when these factors are legitimately relevant to the advocacy or decision of the proceeding, or, with regard to administrative matters, when these factors are legitimately relevant to the issues involved.

RULE 2.4 External Influences on Judicial Conduct

(A) A judge shall not be swayed by public clamor, or fear of criticism.

(B) A judge shall not permit family, social, political, financial, or other interests or relationships to influence the judge's judicial conduct or judgment.

(C) A judge shall not convey or authorize others to convey the impression that any person or organization is in a position to influence the judge.

COMMENT

[1] Judges shall decide cases according to the law and facts, without regard to whether particular laws or litigants are popular or unpopular with the public, the media, government officials, or the judge's friends or family.

RULE 2.5 Competence, Diligence, and Cooperation

(A) A judge shall perform judicial and administrative duties, competently and diligently.

(B) A judge shall cooperate with other judges and court officials in the administration of court business.

COMMENT

[1] Competence in the performance of judicial duties requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary to perform a judge's responsibilities of judicial office.

[2] In accordance with GR 29, a judge should seek the necessary docket time, court staff, expertise, and resources to discharge all adjudicative and administrative responsibilities.

[3] Prompt disposition of the court's business requires a judge to devote adequate time to judicial duties, to be punctual in attending court and expeditious in determining matters under submission, and to take reasonable

measures to ensure that court officials, litigants, and their lawyers cooperate with the judge to that end.

[4] In disposing of matters promptly and efficiently, a judge must demonstrate due regard for the rights of parties to be heard and to have issues resolved without unnecessary cost or delay. A judge should monitor and supervise cases in ways that reduce or eliminate dilatory practices, avoidable delays, and unnecessary costs.

RULE 2.6 Ensuring the Right to Be Heard

(A) A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law.*

(B) Consistent with controlling court rules, a judge may encourage parties to a proceeding and their lawyers to
(B) Consistent with controlling court rules, a judge may encourage parties to a proceeding and their lawyers to
settle matters in dispute but should not act in a manner that coerces any party into settlement.

COMMENT

[1] The right to be heard is an essential component of a fair and impartial system of justice. Substantive rights of litigants can be protected only if procedures protecting the right to be heard are observed.

[2] The judge plays an important role in overseeing the settlement of disputes, but should be careful that efforts to further settlement do not undermine any party's right to be heard according to law. The judge should keep in mind the effect that the judge's participation in settlement discussions may have, not only on the judge's own views of the case, but also on the perceptions of the lawyers and the parties if the case remains with the judge

after settlement efforts are unsuccessful. Among the factors that a judge should consider when deciding upon an appropriate settlement practice for a case are (1) whether the parties have requested or voluntarily consented to a certain level of participation by the judge in settlement discussions, (2) whether the parties and their counsel are relatively sophisticated in legal matters, (3) whether the case will be tried by the judge or a jury, (4) whether the parties participate with their counsel in settlement discussions, (5) whether any parties are unrepresented by counsel, and (6) whether the matter is civil or criminal.

[3] Judges must be mindful of the effect settlement discussions can have, not only on their objectivity and impartiality, but also on the appearance of their objectivity and impartiality. Despite a judge's best efforts, there may be instances when information obtained during settlement discussions could influence a judge's decision making during trial, and, in such instances, the judge should consider whether disqualification or recusal may be appropriate. See Rule 2.11(A)(1).

RULE 2.7 Responsibility to Decide

A judge shall hear and decide matters assigned to the judge, except when disqualification or recusal is required by Rule 2.11 or other law.*

COMMENT

[1] Judges must be available to decide the matters that come before the court. Although there are times when disqualification is necessary to protect the rights of litigants and preserve public confidence in the independence, integrity, and impartiality of the judiciary, judges must be available to decide matters that come before the courts. Unwarranted disqualification may bring public disfavor to the court and to the judge personally. The dignity of the court, the judge's respect for fulfillment of judicial duties, and a proper concern for the burdens that may be imposed upon the judge's colleagues require that a judge not use disqualification or recusal to avoid cases that present difficult, controversial, or unpopular issues.

RULE 2.8 Decorum, Demeanor, and Communication with Jurors

(A) A judge shall require order and decorum in proceedings before the court.

(B) A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, court staff, court officials, and others with whom the judge deals in an official capacity, and shall require similar conduct of lawyers, court staff, court officials, and others subject to the judge's direction and control.

(C) A judge shall not commend or criticize jurors for their verdict other than in a court order or opinion in a proceeding.

COMMENT

[1] The duty to hear all proceedings with patience and courtesy is not inconsistent with the duty imposed in Rule 2.5 to dispose promptly of the business of the court. Judges can be efficient and businesslike while being patient and deliberate.

[2] Commending or criticizing jurors for their verdict may imply a judicial expectation in future cases and may impair a juror's ability to be fair and impartial in a subsequent case.

[3] A judge who is not otherwise prohibited by law from doing so may meet with jurors who choose to remain after trial but should be careful not to discuss the merits of the case.

RULE 2.9 Ex Parte Communications

(A) A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties or their lawyers, concerning a pending* or impending matter,* before that judge's court except as follows:

(1) When circumstances require it, ex parte communication for scheduling, administrative, or emergency purposes, which does not address substantive matters, or ex parte communication pursuant to a written policy or rule for a mental health court, drug court, or other therapeutic court, is permitted, provided:

(a) the judge reasonably believes that no party will gain a procedural, substantive, or tactical advantage as a result of the ex parte communication; and

(b) the judge makes provision promptly to notify all other parties of the substance of the ex parte communication, and gives the parties an opportunity to respond.

(2) A judge may obtain the written advice of a disinterested expert on the law applicable to a proceeding before the judge, if the judge affords the parties a reasonable opportunity to object and respond to the advice received.

(3) A judge may consult with court staff and court officials whose functions are to aid the judge in carrying out the judge's adjudicative responsibilities, or with other judges, provided the judge makes reasonable efforts to avoid receiving factual information that is not part of the record, and does not abrogate the responsibility personally to decide the matter.

(4) A judge may, with the consent of the parties, confer separately with the parties and their lawyers in an effort to settle matters pending before the judge.

(5) A judge may initiate, permit, or consider any ex parte communication when expressly authorized by law* to do so.

(B) If a judge inadvertently receives an unauthorized ex parte communication bearing upon the substance of a matter, the judge shall make provision promptly to notify the parties of the substance of the communication and provide the parties with an opportunity to respond.

and provide the parties with an opportunity to respond.

(C) A judge shall not investigate facts in a matter pending or impending before that judge, and shall consider only the evidence presented and any facts that may properly be judicially noticed, unless expressly authorized by law.

(D) A judge shall make reasonable efforts, including providing appropriate supervision, to ensure that this Rule is

not violated by court staff, court officials, and others subject to the judge's direction and control.

COMMENT

[1] To the extent reasonably possible, all parties or their lawyers shall be included in communications with a judge.

[2] Whenever the presence of a party or notice to a party is required by this Rule, it is the party's lawyer, or if the party is unrepresented, the party, who is to be present or to whom notice is to be given.

[3] The proscription against communications concerning a proceeding includes communications with lawyers, law
teachers, and other persons who are not participants in the proceeding, except to the limited extent permitted by this Rule.

[4] A judge may initiate, permit, or consider ex parte communications expressly authorized by law, such as when serving on therapeutic or problem-solving courts, mental health courts, or drug courts. In this capacity, judges may assume a more interactive role with parties, treatment providers, probation officers, social workers, and others.

[5] A judge may consult on pending matters with other judges, or with retired judges who no longer practice law and are enrolled in a formal judicial mentoring program (such as the Washington Superior Court Judges' Association Mentor Judge Program). Such consultations must avoid ex parte discussions of a case with judges or retired judges who have previously been disqualified from hearing the matter, and with judges who have appellate jurisdiction over the matter.

[6] The prohibition against a judge investigating the facts in a matter extends to information available in all mediums, including electronic.

[7] A judge may consult ethics advisory committees, outside counsel, or legal experts concerning the judge's compliance with this Code. Such consultations are not subject to the restrictions of paragraph (A)(2).

RULE 2.10 Judicial Statements on Pending and Impending Cases

(A) A judge shall not make any public statement that would reasonably be expected to affect the outcome or impair the fairness of a matter pending* or impending* in any court, or make any nonpublic statement that would reasonably be expected to substantially interfere with a fair trial or hearing.

(B) A judge shall not, in connection with cases, controversies, or issues that are likely to come before the court, make pledges, promises, or commitments that are inconsistent with the impartial* performance of the adjudicative duties
of judicial office.

(C) A judge shall require court staff, court officials, and others subject to the judge's direction and control to refrain from making statements that the judge would be prohibited from making by paragraphs (A) and (B).

(D) Notwithstanding the restrictions in paragraph (A), a judge may make public statements in the course of official duties, may explain court procedures, and may comment on any proceeding in which the judge is a litigant
in a personal capacity.

(E) Subject to the requirements of paragraph (A), a judge may respond directly or through a third party to allegations in the media or elsewhere concerning the judge's conduct in a matter.

COMMENT

[1] This Rule's restrictions onj udicial speech are essential to the maintenance of the independence, integrity,

and impartiality of the judiciary.

[2] This Rule does not prohibit a judge from commenting on proceedings in which the judge is a litigant in a personal capacity. In cases in which the judge is a litigant in an official capacity, such as a writ of mandamus, the judge must not comment publicly.

[3] Depending upon the circumstances, the judge should consider whether it may be preferable for a third party, rather than the judge, to respond or issue statements in connection with allegations concerning the judge's conduct in a matter.

[4] A judge should use caution in discussing the rationale for a decision and limit such discussion to what is already public record or controlling law.

RULE 2.11 Disqualification

(A) A judge shall disqualify himself or herself in any proceeding in which the judge's impartiality* might reasonably be questioned, including but not limited to the following circumstances:

(1) The judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge* of facts that are in dispute in the proceeding.

(2) The judge knows* that the judge, the judge's spouse or domestic partner,* or a person within the third degree of relationship* to either of them, or the spouse or domestic partner of such a person is:

(a) a party to the proceeding, or an officer, director, general partner, managing member, or trustee of a party;

(b) acting as a lawyer in the proceeding;

(c) a person who has more than a de minimis* interest that could be substantially affected by the proceeding; or

(d) likely to be a material witness in the proceeding.

(3) The judge knows that he or she, individually or as a fiduciary,* or the judge's spouse, domestic partner, parent, or child, or any other member of the judge's family residing in the judge's household,* has an economic interest* in the subject matter in controversy or in a party to the proceeding.

(4) [Reserved]

(5) The judge, while a judge or a judicial candidate,* has made a public statement, other than in a court

(5) The judge, while a judge or a judicial candidate,* has made a public statement, other than in a court proceeding, judicial decision, or opinion, that commits the judge to reach a particular result or rule in a particular way in the proceeding or controversy.

(6) The judge:

(a) served as a lawyer in the matter in controversy, or was associated with a lawyer who participated substantially as a lawyer or a material witness in the matter during such association;

(b) served in governmental employment, and in such capacity participated personally and substantially as a public official concerning the proceeding, or has publicly expressed in such capacity an opinion concerning the merits of the particular matter in controversy;

(c) was a material witness concerning the matter; or

(d) previously presided as a judge over the matter in another court.

(B) A judge shall keep informed about the judge's personal and fiduciary economic interests, and make a reasonable effort to keep informed about the personal economic interests of the judge's spouse or domestic

partner and minor children residing in the judge's household.

(C) A judge disqualified by the terms of Rule 2.11(A)(2) or Rule 2.11(A)(3) may, instead of withdrawing from the

proceeding, disclose on the record the basis of the disqualification. If, based on such disclosure, the parties and lawyers, independently of the judge's participation, all agree in writing or on the record that the judge's relationship is immaterial or that the judge's economic interest is de minimis, the judge is no longer disqualified, and may participate in the proceeding. When a party is not immediately available, the judge may proceed on the assurance of the lawyer that the party's consent will be subsequently given.

(D) A judge may disqualify himself or herself if the judge learns by means of a timely motion by a party that an adverse party has provided financial support for any of the judge's judicial election campaigns within the last six years in an amount that causes the judge to conclude that his or her impartiality might reasonably be questioned. In making this determination the judge should consider:

(1) the total amount of financial support provided by the party relative to the total amount of the financial support for the judge's election,

(2) the timing between the financial support and the pendency of the matter, and

(3) any additional circumstances pertaining to disqualification.

COMMENT

[1] Under this Rule, a judge is disqualified whenever the judge's impartiality might reasonably be questioned, regardless of whether any of the specific provisions of paragraphs (A)(1) through (5) apply. In many jurisdictions in Washington, the term "recusal" is used interchangeably with the term "disqualification."

[2] A judge's obligation not to hear or decide matters in which disqualification is required applies regardless of whether a motion to disqualify is filed.

[3] The rule of necessity may override the rule of disqualification. For example, a judge might be required to participate in judicial review of a judicial salary statute, or might be the only judge available in a matter requiring immediate judicial action, such as a hearing on probable cause or a temporary restraining order. In matters that require immediate action, the judge must disclose on the record the basis for possible disqualification and make reasonable efforts to transfer the matter to another judge as soon as practicable.

[4] The fact that a lawyer in a proceeding is affiliated with a law firm with which a relative of the judge is affiliated does not itself disqualify the judge. If, however, the judge's impartiality might reasonably be questioned under paragraph (A), or the relative is known by the judge to have an interest in the law firm that could be substantially affected by the proceeding under paragraph (A)(2)(c), the judge's disqualification is required.

[5] A judge should disclose on the record information that the judge believes the parties or their lawyers might reasonably consider relevant to a possible motion for disqualification, even if the judge believes there is no basis for disqualification.

[6] "Economic interest," as set forth in the Terminology section, means ownership of more than a de minimis legal

or equitable interest. Except for situations in which a judge participates in the management of such a legal or equitable interest, or the interest could be substantially affected by the outcome of a proceeding before a judge, it does not include:

(1) an interest in the individual holdings within a mutual or common investment fund;
(2) an interest in securities held by an educational, religious, charitable, fraternal, or civic organization in which the judge or the judge's spouse, domestic partner, parent, or child serves as a director, officer, advisor, or other participant;
(3) a deposit in a financial institution or deposits or proprietary interests the judge may maintain as a member of a mutual savings association or credit union, or similar proprietary interests; or
(4) an interest in the issuer of government securities held by the judge.
[7] [Reserved]
[8] [Reserved]
RULE 2.12 Supervisory Duties
(A) A judge shall require court staff, court officials, and others subject to the judge's direction and control to act with fidelity and in a diligent manner consistent with the judge's obligations under this Code.
(B) A judge with supervisory authority for the performance of other judges shall take reasonable measures to ensure that those judges properly discharge their judicial responsibilities, including the prompt disposition of matters before them.
COMMENT
[1] A judge is responsible for his or her own conduct and for the conduct of others, such as staff, when those persons are acting at the judge's dircetion or control. A judge may not direct court personnel to engage in conduct on the judge's behalf or as the judge's representative when such conduct would violate the Code if undertaken by the judge.
[2] Public confidence in the judicial system depends upon timely justice. To promote the efficient administration of justice, a judge with supervisory authority must take the steps needed to ensure that judges under his or her supervision administer their workloads promptly.
RULE 2.13 Administrative Appointments
(A) In making administrative appointments, a judge:
(1) shall exercise the power of appointment impartially* and on the basis of merit; and
(2) shall avoid nepotism and unnecessary appointments.
(B) A judge shall not appoint a lawyer to a position under circumstances where it would be reasonably to be interpreted to be quid pro quo for campaign contributions or other favors, unless:
(1) the position is substantially uncompensated;
(2) the lawyer has been selected in rotation from a list of qualified and available lawyers compiled without regard to their having made political contributions; or
(3) the judge or another presiding or administrative judge affirmatively finds that no other lawyer is willing, competent, and able to accept the position.
(C) A judge shall not approve compensation of appointees beyond the fair value of services rendered.
COMMENT
[1] Appointees of a judge include assigned counsel, officials such as referees, commissioners, special masters, receivers, and guardians, and personnel such as clerks, secretaries, and bailiffs. Consent by the parties to an appointment or an award of compensation does not relieve the judge of the obligation prescribed by paragraph (A).

[2] Unless otherwise defined by law, nepotism is the appointment or hiring of any relative within the third degree of relationship of either the judge or the judge's spouse or domestic partner, or the spouse or domestic partner of such relative.

RULE 2.14 Disability and Impairment

A judge having a reasonable belief that the performance of a lawyer or another judge is impaired by drugs or alcohol,

or by a mental, emotional, or physical condition, shall take appropriate action, which may include a confidential referral to a lawyer or judicial assistance program.

COMMENT

[1] "Appropriate action" means action intended and reasonably likely to help the judge or lawyer in question address the problem and prevent harm to the justice system. Depending upon the circumstances, appropriate action may include but is not limited to speaking directly to the impaired person, notifying an individual with supervisory responsibility over the impaired person, or making a referral to an assistance program.

[2] Taking or initiating corrective action by way of referral to an assistance program may satisfy a judge's responsibility under this Rule. Assistance programs have many approaches for offering help to impaired judges and lawyers, such as intervention, counseling, or referral to appropriate health care professionals. Depending upon the gravity of the conduct that has come to the judge's attention, however, the judge may be required to take other action, such as reporting the impaired judge or lawyer to the appropriate authority, agency, or body. See Rule 2.15.

RULE 2.15 Responding to Judicial and Lawyer Misconduct

(A) A judge having knowledge* that another judge has committed a violation of this Code that raises a substantial

question regarding the judge's honesty, trustworthiness, or fitness as a judge in other respects should inform the appropriate authority.*

(B) A judge having knowledge that a lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question regarding the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects should inform the appropriate authority.

(C) A judge who receives credible information indicating a substantial likelihood that another judge has committed a violation of this Code should take appropriate action.

(D) A judge who receives credible information indicating a substantial likelihood that a lawyer has committed a violation of the Rules of Professional Conduct should take appropriate action.

COMMENT

[1] Judges are not required to report the misconduct of other judges or lawyers. Self regulation of the legal and judicial professions, however, creates an aspiration that judicial officers report misconduct to the appropriate disciplinary authority when they know of a serious violation of the Code of Judicial Conduct or the Rules of Professional Conduct. An apparently isolated violation may indicate a pattern of misconduct that only a disciplinary violation can uncover. Reporting a violation is especially important where the victim is unlikely to discover the offense.

[2] While judges are not obliged to report every violation of the Code of Judicial Conduct or the Rules of Professional Conduct, the failure to report may undermine the public confidence in legal profession and the

judiciary. A measure of judgment is, therefore, required in deciding whether to report a violation. The term "substantial" refers to the seriousness of the possible offense and not the quantum of evidence of which the judge is aware. A report should be made when a judge or lawyer's conduct raises a serious question as to the honesty, trustworthiness or fitness as a judge or lawyer.

[3] Appropriate action under sections (C) and (D) may include communicating directly with the judge or lawyer who may have violated the Code of Judicial Conduct or the Rules of Professional Conduct, communicating with a supervising judge or reporting the suspected violation to the appropriate authority or other authority or other agency or body.

[4] Information about a judge's or lawyer's conduct may be received by a judge in the course of that judge's participation in an approved lawyers or judges assistance program. In that circumstance there is no requirement or aspiration of reporting (APR 19(b) and DRJ 14(e)).

RULE 2.16 Cooperation with Disciplinary Authorities

(A) A judge shall cooperate and be candid and honest with judicial and lawyer disciplinary agencies.

(B) A judge shall not retaliate, directly or indirectly, against a person known* or suspected to have assisted or cooperated with an investigation of a judge or a lawyer.

COMMENT

[1] Cooperation with investigations and proceedings of judicial and lawyer disciplinary agencies, as required in paragraph (A), instills confidence in judges' commitment to the integrity of the judicial system and the protection of the public.

[Adopted September 9, 2010; amended effective January 1, 2011; September 1, 2013.]

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

JAMES BYRON HOLCOMB, individually and as the Personal Representative of the Estate of Karen R. Holcomb,

Appellants,

v.

ASSIGNED JUDGE FOR THE KITSAP COUNTY DISTRICT COURT IN NO. 1 00203333; DIRECTOR, KITSAP COUNTY HEALTH DISTRICT; and PROSECUTING ATTORNEY KITSAP COUNTY,

Respondents.

No. 42917-9-II

UNPUBLISHED OPINION

FEARING, J. — James Byron Holcomb appeals the superior court's denial of his writ of prohibition. Holcomb sought the writ of prohibition to prevent the Kitsap County Health District (Health District) and the Kitsap County prosecuting attorney from enforcing an ordinance that required him to have a valid operation and maintenance (O&M) agreement for his alternative sewage system. He primarily argues that the ordinance is unconstitutional. Because Holcomb had an adequate remedy at law, he is not entitled to the extraordinary remedy of a writ of prohibition. We hold that the trial court properly denied his writ. Accordingly, we affirm.

FACTS

Holcomb owns property on Bainbridge Island in Kitsap County. In the late 1990's, the Health District demanded that Holcomb repair his septic tank system—a simple septic tank with

an associated drain field. In 2001, the superior court issued an injunction requiring Holcomb to repair the system. As a result, Holcomb installed a new Glendon Biofilter septic system. He also signed a notice to title acknowledging that his new system was an alternative method of sewage disposal, which required regularly scheduled maintenance and monitoring. As required by a Kitsap County Board of Health (KCBH) ordinance, Holcomb also signed a one-year O&M agreement for the septic system. Holcomb did not renew his O&M contract or obtain another after the first contract lapsed on October 1, 2002.[1]

Thereafter, the Health District sent Holcomb annual notice that KCBH regulations required landowners with alternative septic systems to have an O&M agreement. Holcomb contends that he objected to each notice and concedes that he did not obtain the required O&M agreement.

On June 17, 2011, the Health District filed a notice of civil infraction in Kitsap County District Court against Holcomb for failure to hold an O&M agreement for his alternative sewer system in violation of KCBH Ordinance No. 2008-1, section 13(C)(17)(a).[2] The penalty was $524.00. Holcomb filed a motion to dismiss the infraction on multiple grounds.[3]

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[1] Holcomb maintains that he never had an O&M agreement. Regardless, it is undisputed that he did not have an O&M agreement after 2002.

[2] KCBH Ordinance No. 2008-1, section 13(C)(17)(a) requires landowners to obtain a valid monitoring and maintenance contract with a certified service provider if their onsite sewage system is an alternative system.

[3] Holcomb moved to dismiss the infraction on the following grounds: lack of subject matter jurisdiction, failure to comply with court rules and name proper parties, expiration of the statute of limitations, laches, criminal conduct by Health District officials, government misconduct, and waiver.

On August 2, 2011, Holcomb applied for a building permit to rebuild his existing detached garage. In response to Holcomb's application, the Health District sent him a letter notifying him that he was required to obtain an O&M agreement for his alternative sewage system pursuant to the KCBH ordinance.

On September 20, 2011, Holcomb filed a petition for a writ of mandamus and two writs of prohibition in superior court. The writ of mandamus (count 1) was directed to the district court, demanding that it grant Holcomb's motion to dismiss the civil infraction. The first writ of prohibition (count 2) was an alternative to the writ of mandamus and demanded that the superior court prohibit the district court from hearing the civil infraction case. The second writ of prohibition (count 3) was directed to the director of the Health District and the Kitsap County prosecuting attorney to forever prohibit enforcement of the O&M agreement requirement in KCBH Ordinance 2008-1.

The superior court denied all three writs. Holcomb unsuccessfully sought reconsideration of the superior court's order denying the writs. Holcomb timely appeals the superior court's order denying the motion for reconsideration of its order and judgment denying his petition for the writs.

Holcomb unsuccessfully sought an emergency stay of the district court's adjudication of the infraction pending this appeal. The district court heard the infraction matter on June 27, 2012, and Holcomb presented eight defenses to the infraction. He raised, but did not argue, that the ordinance requiring an O&M contract was unconstitutional. In a letter opinion dated July 24, 2012, the district court denied Holcomb's motion to dismiss and found that Holcomb committed the infraction (failing to have a valid O&M agreement for his alternative septic system) and

imposed the $524.00 penalty. The district court did not expressly address the constitutionality of the KCBH ordinance.

ANALYSIS

ISSUES ON APPEAL

In his notice of appeal, Holcomb asks this court to review the superior court's rejection of all of the counts pleaded in his petition. In his appeal brief, however, Holcomb restricts the subject of the appeal. In his brief, Holcomb iterates the following assignments of error:

> 1. The Court below erred in remanding the case to the Infraction Court without deciding the Constitutionality of administrative regulations of the Kitsap County Health District properly raised *in Count* [*3*] of the Petition for a Writ of Prohibition and Mandamus directed to the Director when named as a party separately from the Infraction Court.
> 2. This Court possess[es] jurisdiction independent of the Court below to entertain said Writs and decide the Constitutionality of said administrative regulations.

Br. of Appellant at 2 (emphasis added).

RAP 10.3(a)(4) directs an appellant to include in his opening brief "[a] separate concise statement of each error a party contends was made by the trial court, together with the issues pertaining to the assignments of error." A party's failure to assign error, as required under RAP 10.3, precludes appellate consideration of an alleged error. *Emmerson v. Weilep*, 126 Wn. App. 930, 939-40, 110 P.3d 214 (2005). Since Holcomb assigns error only to the superior court's ruling with regard to count 3 of his complaint, we address whether the superior court committed error when denying Holcomb's request for relief under this count. We note, however, that the superior court never remanded the case to the district court.

In his second assignment of error, Holcomb invites us to entertain independent jurisdiction to issue a writ and to address the constitutionality of the KCBH ordinance. We

decline his invitation for several reasons. First, our analysis and conclusion would be the same even if we asserted original or independent jurisdiction. Second, Holcomb has not filed a petition for a writ with this court, but only filed a notice of appeal from the superior court. Third, this court may not have independent jurisdiction to entertain writs of prohibition. *See* RCW 2.06.030; RAP 16.1(b), .2. *But see* RCW 7.16.300.

WRIT OF PROHIBITION

Holcomb appeals the superior court's denial of his petition for a writ of prohibition directed to the director of the Health District and the prosecuting attorney to forever prohibit enforcement of the O&M agreement requirement. We hold that the superior court did not abuse its discretion in denying his writ of prohibition because Holcomb had an adequate remedy at law for challenging the Health District's enforcement of the ordinance requiring an O&M agreement. Accordingly, we affirm.

Washington rejects most ancient writs invented under the English writ system, but one writ surviving modernity is the writ of prohibition encapsulated in RCW 7.16.290 et seq. A writ of prohibition is a legal order typically issued by a court to an inferior tribunal mandating that the lower tribunal cease any action over a case or controversy because it lacks jurisdiction. *See* BLACK'S LAW DICTIONARY 1331 (9th ed. 2009) (defining "writ of prohibition"). "Although the common law writ of prohibition restrains the unauthorized exercise of only judicial or quasi-judicial power, the statutory writ of prohibition applies to executive, administrative, and legislative acts as well." *Skagit County Pub. Hosp. Dist. No. 304 v. Skagit County Pub. Hosp. Dist. No. 1*, No. 86796-8, 2013 WL 3483764, at *2 (Wash. July 11, 2013). Under a Washington statute, adopted in 1895, the writ of prohibition "arrests the proceedings of any tribunal, corporation, board or person, when such proceedings are without or in excess of the jurisdiction

of such tribunal, corporation, board or person." RCW 7.16.290. The writ "may be issued by any court, except district or municipal courts, to an inferior tribunal, or to a corporation, board or person." RCW 7.16.300.

"A writ of prohibition is a drastic measure, which is to be issued only when two conditions are met: '(1) [a]bsence or excess of jurisdiction, and (2) absence of a plain, speedy, and adequate remedy in the course of legal procedure. The absence of either one precludes the issuance of the writ.' " *Skagit County Pub. Hosp. Dist. No. 304*, 2013 WL 3483764, at *2 (alteration in original) (internal quotation marks omitted) (quoting *Kreidler v. Eikenberry*, 111 Wn.2d 828, 838, 766 P.2d 438 (1989)).

> A remedy is not inadequate merely because it is attended with delay, expense, annoyance, or even some hardship. There must be something in the nature of the action that makes it apparent that the rights of the litigants will not be protected or full redress will not be afforded without the writ.

City of Kirkland v. Ellis, 82 Wn. App. 819, 827, 920 P.2d 206 (1996).

An aging, but illustrative decision is *State ex rel. Martin v. Hinkle*, 47 Wash. 156, 157, 91 P. 640 (1907). The city of Spokane prosecuted Fred Martin for opening his business on Sunday in violation of a city ordinance. *Hinkle*, 47 Wash. at 157. Martin petitioned the superior court for a writ of prohibition to restrain the city from proceeding with trial, while arguing that the city lacked power to pass the ordinance in the absence of a statute granting authority because the same act denounced by the city ordinance also offended a state statute. *Hinkle*, 47 Wash. at 157. Our Supreme Court held that the writ of prohibition was properly denied because Martin had an adequate remedy in the ordinary course of law, either by appealing from an adverse judgment or by application for a writ of habeas corpus. *Hinkle*, 47 Wash. at 157.

Whether there is a plain, speedy, and adequate remedy in the ordinary course of the law depends on the facts of each particular case and is a question left to the discretion of the court in which the writ of prohibition is sought. *Skagit County Pub. Hosp. Dist. No. 304*, 2013 WL 3483764, at *6. Thus, this court will not disturb the superior court's decision unless its exercise of discretion was manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons. *Skagit County Pub. Hosp. Dist. No. 304*, 2013 WL 3483764, at *6.

Here, the Health District issued a civil infraction against Holcomb for violation of KCBH Ordinance No. 2008-1, § 13(C)(17)(a), which requires that he have a valid O&M agreement for his alternative septic system. While the infraction matter was pending before the district court, Holcomb filed a petition for a writ of prohibition in the superior court, seeking to prevent the Health District and prosecuting attorney from enforcing the ordinance against Holcomb, which he alleges is unconstitutional. But Holcomb fails to demonstrate that he lacks an adequate remedy at law to challenge the enforcement of the allegedly unconstitutional ordinance, which is a requirement for issuance of the writ. Holcomb could and did respond to the infraction notice in district court by challenging the validity of the ordinance.

Holcomb states that the district court lacked jurisdiction to consider his constitutional challenge. To the extent Holcomb argues that he lacked an adequate remedy at law to challenge the KCBH ordinance *because* the district court did not have jurisdiction to decide a constitutional challenge to the ordinance, we disagree.

As an initial matter, we believe the district court possessed jurisdiction to adjudicate the constitutionality of the KCBH ordinance, which the Health District and the prosecuting attorney sought to enforce. *See* RCW 3.66.020; *see, e.g.*, *City of Bellevue v. Lee*, 166 Wn.2d 581, 584, 589, 210 P.3d 1011 (2009); *City of Redmond v. Moore*, 151 Wn.2d 664, 666-67, 678, 91 P.3d

875 (2004); *City of Bremerton v. Spears*, 134 Wn.2d 141, 146-47, 949 P.2d 347 (1998). Regardless, Holcomb had the right to challenge the constitutionality of the ordinance and the validity of the infraction upon appeal to the superior court, if the district court refused to address the constitutionality of the ordinance. RALJ 1.1; RALJ 2.2(a)(1); IRLJ 5.1, 5.2. Any alleged lack of jurisdiction in the district court concerning its power to address the constitutionality of the ordinance could have been resolved on appeal.

Holcomb also sought the writ of prohibition to prevent the Health District's enforcement of the ordinance in the context of his building permit application. The record does not show that Holcomb was aggrieved by enforcement of the ordinance in the context of his building permit. But even if he was, Holcomb did not demonstrate that he lacks an adequate legal remedy to challenge the Health District's enforcement of the ordinance in the building permit context.

Because Holcomb failed to show that he met the requirements for issuance of a writ of prohibition, we hold that the superior court did not abuse its discretion in denying his petition. Not only was the superior court's denial of the writ a reasonable decision in this instance, it may have been the only reasonable decision. We affirm.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

Fearing, J.
FEARING, J.

We concur:

Quinn-Brintnall, J.
QUINN-BRINTNALL, J.

Johanson, A.C.J.
JOHANSON, A.C.J.