

Case Number: 46640-6

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

ARTHUR WEST,

Appellant

v.

ACLU FOUNDATION, NORML, et al.,

Appellees.

APPELLEE'S RESPONSE BRIEF

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TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION	1
II. STATEMENT OF CASE	1-3
III. ARGUMENT	3
A. Summary of Argument	3-4
B. Standard of Review	4-5
C. West Failed to Obtain Legal Counsel to Bring Claims Against Appellees in the Name of the State as Required by the Act	5-8
D. West's New, Substantive Arguments on Appeal are Not Subject to This Court's Review	8-9
IV. CONCLUSION	9

TABLE OF AUTHORITIES

STATE CASES	Page
<i>Cf. Stoner v. Santa Clara County Office of Educ.</i> , 502 F.3d 1116, 1127 (9 th Cir. 2007)	7
<i>FutureSelect Portfolio Management, Inc. v. Tremont Group Holdings, Inc.</i> , 175 Wash.App. 840, 865, 309 P.3d 555 (2013).....	4,5
<i>Singleton v. Wulff</i> , 428 U.S. 106, 120 (1976)	4,5,8
<i>State v. Hunt</i> , 75 Wn. App. 795, 803, 880 P.2d 96 (1994)	6
<i>Utter v. Bldg. Indus. Ass'n of Washington</i> , 341 P.3d 953, 959 (2015)	6
<i>Wash. State Bar Ass'n v. Great W. Union Fed. Sav. & Loan Ass'n</i> , 91 Wn.2d 48, 57, 586 P.2d 870 (1978)	4,5,6
<i>Wiley v. Rehak</i> , 143 Wn.2d 339, 343, 20 P.3d 404 (2001)	5

STATUTES

RCW 42.17A	6
RCW 42.17.460	2
RCW 42.17A.765	2,3,7
RCW 42.17A.765(4)	1,5,8,9
RCW 42.17A.765(4)(b)	8

COURT RULES

CR 12(b)	1,4
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CR 12(b)(1)	1
CR 12(b)(6)	1
Revised RAP 9.5(a)	3
RAP 9.6(a)	3
RAP 10.2(a), (h).....	3

I. INTRODUCTION

The Superior Court properly granted Defendants' CR 12(b)(1) and (b)(6) Motion to Dismiss Appellant West's Complaint ("Motion to Dismiss"), correctly concluding that West's *pro se* prosecution of claims on behalf of the state pursuant to the Fair Campaign Practices Act (the "Act") amounts to the unauthorized practice of law. Though the Superior Court granted West two weeks to retain licensed legal counsel, West failed to retain such counsel and, to date, continues to improperly proceed as a *pro se* Appellant.

West failed to present any authority to the Superior Court demonstrating that RCW 42.17A.765(4) permits individual citizens to prosecute claims *pro se* on behalf of the state. The Superior Court rightfully granted Defendants' Motion to Dismiss because West failed to obtain legal counsel to pursue a citizen's action pursuant to the Act. Consequently, this Court should affirm the decision below.

II. STATEMENT OF THE CASE

On December 12, 2012, West and the political action committee, "No on I-502," filed a citizen's action, *pro se*, in the

Thurston County Superior Court, alleging that Appellees violated campaign finance and reporting laws set forth in RCW 42.17.460 (the "Complaint"). CP 18. On a Motion to Dismiss, ACLU of Washington, ACLU Foundation, and ACLU Endowment challenged the propriety of the action, arguing that West and No on I-502 had failed to bring their claims in the name of the state and had also failed to retain licensed legal counsel, as required by RCW 42.17A.765. CP 21.

On July 12, 2013, the Superior Court signed Defendants' Proposed Order Granting Defendants' Motion to Dismiss Complaint for the foregoing reasons. CP 47. The Court modified the Proposed Order to state that, "Plaintiffs' Complaint will be dismissed if counsel is not retained in 2 weeks." CP 47. Though granted ample time to do so by the Superior Court, West failed to retain legal counsel necessary to pursue the action in the name of the state and, on August 22, 2014, the Superior Court dismissed the Complaint "in accord with its previous determination that plaintiff West cannot maintain it without counsel." CP 56.

As of the filing of this Response, West still appears *pro se* in this matter on behalf of the state. West has again failed to retain

the legal counsel necessary to lawfully prosecute an appeal of the decision below pursuant RCW 42.17A.765.

After filing his Notice of Appeal with this Court, West continued to violate court rules and procedure. West failed to timely file the necessary preliminary appellate pleadings with the Superior Court and with this Court. West also failed to timely file the Designation of Clerks Papers and Report of Proceedings with the Superior Court. RAP 9.6(a); Revised RAP 9.5(a). Lastly, West failed to timely file his opening brief with this Court, exhibiting a clear pattern of disregard for and an inability to comply with the Rules of Appellate Procedure. RAP 10.2(a), (h).

III. ARGUMENT

A. Summary of Argument.

Though entirely unsubstantiated, the crux of West's lawsuit is that Appellees allegedly engaged in unlawful partisan campaign activities to promote the passage of Initiative 502, the state's recreational cannabis law. CP 5-6. West failed to properly plead a citizen's action under the Act because he failed, and continues to fail, to retain legal counsel necessary to pursue the action in the name of the state. West's

failure to obtain legal counsel not only nullifies the Complaint in its entirety as properly determined by the Superior Court, but it also amounts to the unauthorized practice of law in contravention of sound public policy. *See, e.g., Wash. State Bar Ass'n v. Great W. Union Fed. Sav. & Loan Ass'n*, 91 Wn.2d 48, 57, 586 P.2d 870 (1978) (“The ‘pro se’ exceptions are quite limited and apply only if the layperson is acting solely on his own behalf.”).

Finally, the Superior Court failed to reach the substantive claims presented in the Complaint. CP 56. Nonetheless, West now raises these substantive claims on appeal. Appellant’s Br. 29. Since the Superior Court never reached or considered these claims, they are irrelevant to this appeal and this Court should ignore them. *See, e.g., Singleton v. Wulff*, 428 U.S. 106, 120 (1976) (“It is the general rule, of course, that a federal appellate court does not consider an issue not passed upon below.”).

B. Standard of Review.

An order granting a motion to dismiss pursuant to CR 12(b) is subject to *de novo* review. *See FutureSelect Portfolio*

Management, Inc. v. Tremont Group Holdings, Inc., 175 Wash.App. 840, 865, 309 P.3d 555 (2013). Similarly, the application of a court rule to a particular set of facts is a question of law reviewed *de novo*. See *Wiley v. Rehak*, 143 Wn.2d 339, 343, 20 P.3d 404 (2001). Applying this standard, the Superior Court’s Order of Dismissal should be upheld.

C. West Failed to Obtain Legal Counsel to Bring Claims Against Appellees in the Name of the State as Required by the Act.

Individuals seeking to prosecute a claim on behalf of the state must be represented by legal counsel and may not proceed *pro se*. See, e.g., *Wash. State Bar Ass’n*, 91 Wn.2d at 48, 57, 586 P.2d at 870. In his Appellant brief, West cites RCW 42.17A.765(4),¹ highlighting phrases such as “person” and “himself or herself,” as evidencing that citizens may prosecute claims under the Act without legal counsel. Appellant’s Br. 23. Yet West fails to cite any specific language within the Act or elsewhere that directly permits citizens to pursue claims in the name of the state *pro se. Id.*

¹ West also cites to former RCW 42.17.400, which was re-codified as RCW 42.17A.765 in 2010. See Laws 2010, ch. 204, § 1102.

West contends on appeal that the Superior Court's decision is tantamount to ruling that a citizen cannot bring a citizen's action under the Act, RCW 42.17A. West grossly misconstrues and overstates the Superior Court's ruling. A citizen is entitled to bring a citizen's action on behalf of the state *if he or she is represented by counsel*. See *Wash. State Bar Ass'n v. Great W. Union Fed. Sav. & Loan Ass'n*, 91 Wn.2d 48, 57. Ultimately, rules prohibiting *pro se* actions on behalf of the state serve to protect the public from the unauthorized practice of law. See *State v. Hunt*, 75 Wn. App. 795, 803, 880 P.2d 96 (1994) ("The unauthorized practice of law is prohibited to protect the public.").

In an attempt to support his arguments, West also cites to a recent decision from *Utter v. Bldg. Indus. Ass'n of Washington*, 341 P.3d 953, 959 (2015), stating that, "[a] statute gives Washington citizens the right to sue for unfair campaign practices . . ." Appellant's Br. 19. However, unlike West, both parties in *Utter* were represented by legal counsel. Appellees do *not* argue that citizens cannot bring actions on behalf of the state under the Act. Instead, Appellees argue that citizens

undertaking such legal actions pursuant to the Act must be represented by legal counsel. State law supports this conclusion.

West also fails to identify any authority, statutory or otherwise, that recognizes a citizen's action under the Act as one of the limited "*pro se* exceptions" to the unauthorized practice of law. *Cf. Stoner v. Santa Clara County Office of Educ.*, 502 F.3d 1116, 1127 (9th Cir. 2007) (recognizing that because Congress did not expressly authorize relators to proceed *pro se* under the False Claims Act, it "must have had in mind that such a suit would be carried on in accordance with the established procedure which requires that only one licensed to practice law may conduct proceedings in court for anyone other than himself."). Similarly, because Washington's Fair Campaign Practices Act makes no express exception for *pro se* representation on behalf of the state, the Act therefore requires that a licensed attorney represent the citizen prosecuting claims.

Not only does RCW 42.17A.765 not create any "*pro se* exception," it expressly entertains that a citizen plaintiff would

retain licensed counsel. The Act specifically addresses the potential financial burden of obtaining counsel for a citizen's action by providing for an award of attorney's fees should the citizen prevail. *See* RCW 42.17A.765(4)(b).

RCW 42.17A.765(4) might authorize West to pursue an action under the Act in the name of the state, but it does not also authorize him to proceed *pro se*. Under applicable state law and as dictated by established public policy, an attorney must represent any citizen plaintiff filing for relief under the Act on behalf of the state. West was given the opportunity to obtain legal counsel to prosecute his claims pursuant to the Act but ultimately and clearly failed to do so. The Superior Court correctly granted the Motion to Dismiss.

D. West's New, Substantive Arguments on Appeal are Not Subject to This Court's Review.

The Superior Court never reached the merits of the Complaint. As a result, the substantive claims of that Complaint now raised by West on appeal are outside the purview of this Court's *de novo* review. *See, e.g., Singleton v. Wulff*, 428 U.S. 106, 120. Appellees have no obligation to address those claims and

the Court should ignore them altogether. The only issue on appeal is whether the Superior Court correctly dismissed the Complaint for West's failure to obtain legal counsel in order to prosecute his claims under the Act on behalf of the state, as required by RCW 42.17A.765(4).

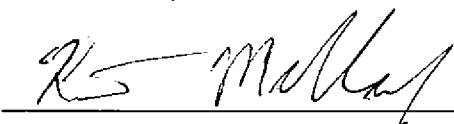
IV. CONCLUSION

West fails to identify any legal authority that recognizes or maintains a "*pro se* exception" under the Act for a citizen's action. As properly recognized by the Superior Court, West was obligated to retain legal counsel to prosecute his claims and to this day he has failed to do so. Should this Court allow West to proceed *pro se* under the Act, such a decision would contravene the state's prohibition of the unauthorized practice of law and thereby harm the public interest.

For the foregoing reasons, this Court should uphold the Superior Court's decision to dismiss West's Complaint in its entirety.

DATED this April 8, 2015.

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DECLARATION OF SERVICE

I declare that on the 8th of April, 2015, I caused to be served the foregoing document on Appellant, via messenger, at the following address:

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Jason Banks

Dated: April 8, 2015

Place: Seattle, Washington

HARRIS & MOURE PLLC

April 08, 2015 - 3:03 PM

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