SUPREME COURT NO. 89536-8

SUPREME COURT
OF THE STATE OF WASHINGTON

JAMES BYRON HOLCOMB, et al.

Appellant

v.

ASSIGNED JUDGE FOR THE KITSAP COUNTY DISTRICT COURT
et al.

Respondents

RESPONDENTS' ANSWER TO HOLCOMB'S PETITION FOR REVIEW

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I. INTRODUCTION

Respondents Kitsap County District Court, Kitsap County Health District[1] and Kitsap County hereby answer the Petition for Review filed by Appellant James Byron Holcomb.[2] The Petition should be denied because none of the criteria for accepting review under RAP 13 can be met. The August 20, 2013 final decision of the Court of Appeals in *Holcomb v. Assigned Judge for the Kitsap County District Court No. 1002203333, et al*[3] and the October 14, 2013 denial of reconsideration were correct in all aspects. Further, there was no judicial misconduct as suggested by Mr. Holcomb. Denial is thus proper here.

II. COUNTERSTATEMENT OF THE ISSUES

Was the court of appeals' decision adequately supported in law and fact?

III. STATEMENT OF THE CASE

Mr. Holcomb's statement of the case should be rejected as it is merely an incorporation of his Motion for Reconsideration before the court of appeals, which then in turn incorporates his Opening and Reply

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[1] The Kitsap County Health District is now known as Kitsap Public Health District. For consistency, Respondents will continue to use the former name in effect when the case below was initiated.

[2] As noted in the Court's November 21, 2013 correspondence, Mr. Holcomb's Motion for Discretionary Review is improperly titled because such motions are brought for interlocutory decisions per RAP 13.3(c). The matter is more properly treated as a Petition for Review under RAP 13.3(d) and will be referenced as such throughout this Answer.

[3] *Holcomb v. Assigned Judge for the Kitsap County District Court No. 1002203333, et al.* No. 42917-9-II, slip op. (Division II, August 20, 2013).

briefs.[4] By doing so, Mr. Holcomb fails to satisfy the requirements of RAP 13.4(c)(6), which requires that the petition "*contain* ... a concise statement of facts and procedures relevant to the issues presented for review...."[5] Incorporation by reference to other briefs is improper.[6] Moreover, if considered, Mr. Holcomb's brief would clearly exceed the 20 page limit established by RAP 13.4(f). Mr. Holcomb's statement of the case should be rejected and instead the following facts should be considered.

A. The Failed Septic System

This case's history dates back to 2001 when the Kitsap County Superior Court upheld a citation issued to Mr. Holcomb by the Kitsap County Health District for having a failing septic system.[7] CP 140-141. The court ordered Mr. Holcomb to repair it, but did not require any particular method of repair. Id. Free to choose his own method, Mr. Holcomb installed a Glendon® Biofilter system and thereafter signed a Notice to Title acknowledging that this was an alternative system and required regular monitoring and maintenance by a certified entity. CP 56, CP 49. Mr. Holcomb initially obtained an Operation and Maintenance Agreement for the first year after installation of his alternative system, i.e.,

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[4] Petition for Review at 5.
[5] RAP 13.4(c)(6)(emphasis added).
[6] *U.S. West Communications Inc. v. Washington Utilities and Transportation Commission*, 134 Wn.2d 74, 111-12, 949 P.2d 1337 (1997).
[7] *Bremerton-Kitsap County Health District v. James Byron Holcomb and Karen R. Holcomb*, Kitsap County Superior Court Cause No. 98-2-01984-2 (Feb. 8, 2001).[7]

from October 1, 2001 to October 1, 2002. CP 56. Thereafter, however, he failed, and admittedly continues to fail, to renew this agreement or obtain a new one. CP 43, 44.

As Mr. Holcomb should have known from having entered into such an agreement initially and as was made clear to him in a letter in 2011,[8] while a certified provider is required, the choice of who to hire and how much to pay is left to the discretion of the homeowner. CP 47. Nowhere in the record, or anywhere in Health District regulations, does the Health District demand specific contractors or contract amounts.

B. The Infraction

For Mr. Holcomb's admitted failure to provide for the effective maintenance of his alternative sewage system, the Health District cited him with an infraction in June 2011. CP 106. A hearing was set before the Kitsap County District Court in accordance with RCW 7.80.010 and the Infraction Rules for Courts of Limited Jurisdiction (IRLJ). CP 25. At the hearing, Mr. Holcomb argued that his previously filed Motion to Dismiss should be granted because the Health District failed to respond.[9] The court declined to rule on the motion and instead established a briefing schedule to consider the merits. CP 52-53. In a letter opinion dated July 24, 2012, the district court denied Mr. Holcomb's motions and found the

[8] This letter is in response to Mr. Holcomb's request for a new permit in 2011. The permit application filed with the Health District indicates it was to rebuild a garage, CP 58, but the Petition filed in Kitsap County Superior Court stated that it was to tear down and replace the existing home. CP 13.

[9] No briefing is required for infractions hearings under IRLJ 3.1.

infraction committed. Exhibit A.[10] The parties thereafter agreed to stay entry of the order pending the resolution of this case.

C. Petitions for Writs of Mandamus and Prohibition

During the district court matter, and before the district court ruled on the merits, Mr. Holcomb sought intermediate relief by filing Petitions for a Writ of Mandamus and two Writs of Prohibition with the Kitsap County Superior Court. CP 1-17. The requested Writ of Mandamus was directed to the district court demanding that it grant Mr. Holcomb's motion to dismiss. CP 6. The first Writ of Prohibition was an alternative to the Writ of Mandamus and demanded that the superior court take jurisdiction away from the district court and rule on the infraction itself. CP 10-11. The second Writ of Prohibition was directed to both the Health District and the Prosecuting Attorney's office, as the Health District's attorney, to forever prohibit enforcement of the regulations requiring an Operation and Maintenance Agreement as against Mr. Holcomb. CP 12.

The superior court denied all three writs in its oral ruling on October 31, 2012, and in writing on November 10, 2012. CP 180-181. Mr. Holcomb's Motion for Reconsideration, in which Mr. Holcomb demanded that the court rule on the constitutionality of the regulations requiring the agreement, was also denied because the court found the

[10] Respondents request that the court take judicial notice of this decision as allowed by ER 201 and as was similarly allowed in *DeLong v. Parmelee*, 164 Wn. App. 781, 785 fn. 4, 267 P.3d 410 (2011). This decision was issued during the pendency of the Court of Appeals action and was requested by the Court of Appeals to supplement the record.

request for writs did not properly invoke jurisdiction to consider issues beyond the writs. CP 204-205.

Mr. Holcomb appealed only the denial of the writ of prohibition as to the enforcement of the regulations against Mr. Holcomb and asked the court of appeals to decide the constitutional issue itself. The court declined to do so for jurisdictional reasons and also affirmed denial of the writ. The court found that, at a minimum, Mr. Holcomb had an adequate remedy at law both because he "could and did respond to the infraction notice in district court by challenging the validity of the ordinance,"[11] and because he could appeal the infraction to superior court.[12] Thus the "drastic measure" of the writ was not warranted. The court also held, "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."[13]

IV. GROUNDS FOR DENYING REVIEW

Mr. Holcomb claims that the court of appeals has violated his due process rights through a variety of actions, including the shocking allegation of judicial misconduct. However, conspicuous from his allegations – either factual or legal – is any claim that the substantive decision of the court of appeals was in error based on any of the four narrow bases upon which this Court grants review.

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[11] *Holcomb v. Assigned Judge*, No. 42917-9-II, slip op. at 7.
[12] *Id.* at 8.
[13] *Id.*

RAP 13.4(b) allows review only:

> (1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or
>
> (2) If the decision of the Court of Appeals is in conflict with another decision of the Court of Appeals; or
>
> (3) If a significant question of law under the Constitution of the State of Washington or of the United States in involved; or
>
> (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.[14]

The reason for Mr. Holcomb's failure is clear: Mr. Holcomb's Petition satisfies none of these criteria and must be rejected.

Further, it is important to note that though Mr. Holcomb *claims* that the court of appeals' decision requires him to enter into a contract, and allegedly violates his liberty thereby, both the superior court and court of appeals' decisions in this case were solely about whether or not the extraordinary writs for mandamus and prohibition were proper. While the granting of Mr. Holcomb's writs could have suggested that the district court should have dismissed the infraction, the denial of the writs does not opine on the contract issue at all. Nor could it have under the strict limits for allowing writs. Because this appeal has always been limited to the propriety of relief under the extraordinary writs and lacks the factual record of the infraction and contract issue developed before the district

[14] RAP 13.4(b).

court, this Petition should be rejected.

A. There is no conflict with any court opinion.

Mr. Holcomb claims no conflict with any Washington Supreme Court or court of appeals opinion. Indeed, he claims that this is an issue of first impression.[15] Moreover, citation to any legal opinion is clearly lacking. Throughout the entire brief, Mr. Holcomb cites to only four cases: one from the U.S. Supreme Court and three from other jurisdictions. The latter three are not binding and none support any of Mr. Holcomb's allegations in this case. The first case offered by Mr. Holcomb is *Meyer v. Nebraska*,[16] but it merely identifies a variety of liberty interests protected under the U.S. Constitution; it has no relevancy to the facts of this case nor does it show that a conflict exists or that a violation occurred.

The second case is *Florida ex rel. Attorney General v. U.S. Department of Health and Human Services*,[17] and appears to be cited by Mr. Holcomb to show that the freedom to contract is a liberty interest.[18] In reality, however, the majority opinion found that liberty interests were not part of the appeal.[19] Instead, the court considered the ability of Congress to require a contract under the Commerce Clause, and while it found that Congress exceeded its authority, it was only as to the

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[15] Petition for Review at 7.
[16] *Meyer v. Nebraska*, 262 U.S. 390, 43 S.Ct. 625, 67 L.Ed. 1042 (1923).
[17] *Florida ex rel. Attorney General v. U.S. Department of Health and Human Services (USDHHS)*, 648 F.3d 1235 (11th Cir. 2011). Mr. Holcomb calls this case "*Sibelius*." Petition for Review at 6.
[18] Petition for Review at 6.
[19] *Florida v. USDHHS*, 648 F.3d at 1291.

Commerce Clause because the federal government does not have the general police powers like those held by the states.[20] Interestingly, the court did acknowledge that some states had properly required contracts for health coverage,[21] thus finding that requirements to enter into contracts may be appropriate. Nevertheless, because this case is about whether the writs were properly denied, the case is irrelevant here.

The third case is *Kenney v. Fox*.[22] While the 4th Circuit in this case found that civil liability for judicial officers is technically possible, it upheld the doctrine of judicial immunity by finding that liability can only occur only in very limited, extreme circumstances.[23] It also held that if one believed a judicial officer to have behaved improperly impeachment was the proper recourse, not a civil lawsuit.[24]

Finally, the case of *Joy v. Daniels*[25] found that while a state action for purposes of the 14th Amendment may include judicial action, "[t]he determination must be made on a case by case basis."[26] By lack of citation and argument, Mr. Holcomb fails to show how the decision conflicts with any existing court opinion. Accordingly, granting the Petition would be inappropriate under either RAP 13.4(b)(1) and (2).

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[20] *Florida v. USDHHS*, 648 F.3d at 1284.
[21] *Id.* at 1306.
[22] *Kenney v. Fox*, 232 F.2d 288, 290-292 (6th Cir. 1956).
[23] *See generally Kenney*, 232 F.2d 288.
[24] *Id.* at 291.
[25] *Joy v. Daniels*, 479 F.2d 1236 (4th Cir. 1973).
[26] *Id.* at 1238.

B. There is no significant question of law under the Constitution.

The allegations here, while brash and outlandish, do not present "significant questions of law." This case, at best, should merely be applying settled law to the facts of the case. Mr. Holcomb claims that his liberty interest under the 14th Amendment was violated because of two instances of alleged judicial misconduct: first, failure to notify him of the decision and second, erroneous citations to the record within the decision.

1. *Notice of Decision*

With regard to the alleged failure to notify Mr. Holcomb of the decision, Mr. Holcomb claims that there is no test for what constitutes "judicial misconduct" and then asserts this situation should qualify. It does not. The question and scope of judicial misconduct has in fact been discussed in case law and, in particular, by this Court when hearing appeals from the Commission on Judicial Conduct, which is a constitutionally created independent agency formed for the very purpose of hearing allegations of judicial misconduct.[27] According to this Court in *In re Hammermaster*,[28] legal errors are usually matters of appeal and are not judicial misconduct. Only when there is a repeated pattern of failing to protect a defendant's constitutional rights can constitute misconduct."[29] Thus, judicial misconduct requires a pattern of action. Misconduct also

[27] Washington Constitution, Article IV, Section 31.
[28] *In re Hammermaster*, 139 Wn.2d 211, 985 P.2d 924 (1999).
[29] *Id.* at 237.

"entails improper conduct ... that ... had a prejudicial effect."[30]

This "situation" complained of here, as shown in Exhibit B to the Petition for Review, is merely the standard course of notification of the court's decision through email and for which no failed "'undeliverable bounce back" occurred. There is no dispute that Mr. Holcomb's email address was accurate. Nevertheless, Mr. Holcomb claims he did not receive an email and goes even so far to say that the judges *directed* staff to withhold notice. Mr. Holcomb asserts that the lack of denial and the failure to investigate establish these acts as true. However, absolutely no evidence whatsoever, much less a pattern of improper and prejudicial conduct, exists beyond these unbelievable and speculative allegations. Furthermore, when the alleged failed delivery was brought to the court's attention, the court promptly "cured" the alleged problem by giving Mr. Holcomb the full time to file a motion for reconsideration and the full time appeal. No prejudice occurred. Thus, this alleged basis for judicial misconduct and reversal of the decision should be rejected.

2. *Citations to the Record*

The second basis for judicial misconduct is the alleged "excessive, repeated and clearly erroneous citation to the record."[31] However, nowhere in the twenty-page Petition does Mr. Holcomb identify the parts

[30] *State v. Brett*, 126 Wn.2d 136, 175, 892 P.2d 29 (1995)(discussing prosecutorial misconduct). *See also, Rice v. Janovich*, 109 Wn.2d 48, 742 P.2d 1230 (1987)("Absent a showing of prejudice to the outcome of the trial, an error does not constitute grounds for reversal.")

[31] Petition for Review at 10.

of the decision that are erroneous or identify which citations to the record are wrong. This is directly contrary to RAP 10.3(a)(6), which requires that briefs include "citations to legal authority and references to relevant parts of the record" in the argument. This Court has previously held that it will not "search the record to locate the portions relevant to a litigant's arguments."[32] Accordingly, this alleged basis for judicial misconduct and reversal of the court of appeals' decision should be rejected.

C. There is no issue of substantial public interest.

Finally, the Petition should also be rejected because there is no issue of substantial public interest. As explained in *State v. Watson*,[33] an issue of substantial public interest is generally one that would have wide-spread and sweeping affect.[34] Borrowing from the standard for hearing an otherwise moot issue, the Court also found a substantial public interest to be one that is of a "continuing and substantial interest, ... presents a question of a public nature which is likely to recur, and ... is desirable to provide an authoritative determination for the future guidance of public officials."[35]

Here, none of those factors exist. With regard to the allegations of judicial misconduct, the issue is not of a substantial public interest nor is it likely to recur. Judges are presumed to have properly discharged their

[32] *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 819, 828 P.2d 549 (1992).
[33] *State v. Watson*, 155 Wn.2d 574, 122 P.3d 903 (2005).
[34] *Id.* at 577-8.
[35] *Id.* at 578.

official duties lawfully and the party seeking to overcome that presumption must provide specific facts of misconduct or bias.[36] Here, there is only speculation and mere conclusory statements of misconduct; the specific facts that have been established (e.g., that the court of appeals gave Mr. Holcomb the full time afforded under the rules to file a motion for reconsideration or appeal[37]) do not show misconduct. Further, pointing generally to the record to as "reflective" of misconduct or bias was rejected by this Court in *In re Personal Restraint of Davis*.[38] The surviving presumption thus weighs against a finding of substantial public interest.

As it applies to the constitutionality of the Health District's regulations requiring a contract, the law presumes that statutes and regulations are constitutional and imposes upon the appellant the heavy burden to show otherwise beyond a reasonable doubt.[39] Courts are also compelled to construe a legislative enactment so as to render it constitutional.[40] Here, Mr. Holcomb's authority, at best, can only establish a right to contract as a potential liberty interest, and a limited one at that. However, there is no authority or legal argument as to why the contract requirement is unconstitutional. Because mere conclusory statements do not establish law or fact, no substantial public interest is

[36] *In re Personal Restraint Petition of Davis*, 152 Wn.2d 647, 692, 101 P.3d 1 (2004).
[37] Petition for Review at Exhibit B.
[38] *In re Davis*, 152 Wn.2d at 692.
[39] *City of Seattle v. Montana*, 129 Wn.2d 583, 589-90, 919 P.2d 1218 (1996).
[40] *Id.*

invoked.

Finally, with regard to the denial of the writs, the issue is also not one of wide-spread interest nor is it of a public nature that is likely to recur. Although focused on public individuals and entities, the writs were only private in nature because a ruling in Mr. Holcomb's favor would only benefit Mr. Holcomb; the mandamus would have dismissed the infraction and the prohibition would have prevented enforcement of the contract requirement as to Mr. Holcomb. CP 06, CP 10 and CP 12.

Writs are also drastic measures and are heavily dependent upon the particular facts of the case.[41] According to this Court, writs of mandamus and prohibition are "extraordinary" and are only available when there is no plain, speedy and adequate remedy in the ordinary course of law.[42] In other words, if there *is* a plain, speedy, and adequate remedy at law, a court cannot and will not grant a writ. Importantly, even if there is no adequate remedy, and even in response to allegations of constitutional violations, the granting of such writ is "not mandatory."[43] They are

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[41] *State ex rel. Hodde v. Superior Court of Thurston County*, 40 Wn.2d 502, 517, 244 P.2d 668 (1952); *River Park Square, LLC v. Miggins*, 143 Wn.2d 68, 76, 17 P.3d 1178 (2001).

[42] *Staples v. Benton County ex rel. Bd. of Com'rs.*, 151 Wn.2d 460, 464, 89 P.3d 706 (2004). Writs of mandamus also require proof of a clear ministerial duty to act, *River Park Square, LLC, v. Miggins*, 143 Wn.2d 68, 76, 17 P.3d 1178 (2001), and writs of prohibition require a showing of excess authority or lack thereof. *Skagit County Public Hosp. Dist. No. 304 v. Skagit County Public Hosp. Dist. No. 1*, 177 Wn.2d 718, 722-723, 305 P.3d 1079 (2013).

[43] *Staples*, 151 Wn.2d at 464 (*citing Walker v. Munro*, 124 Wn.2d 402, 407, 879 P.2d 920 (1994)).

reviewed only for abuse of discretion.[44]

On appeal of a writ, the determination of whether an adequate remedy at law exists is "a question left to the discretion of the court in which the proceeding is instituted. Therefore, [courts] will not disturb a decision regarding a plain, speedy, and adequate remedy on review unless the superior court's discretion was manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons.[45] This Court has stated:

> 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 or proceeding that makes it apparent to [the] court that it will not be able to protect the rights of the litigants or afford them adequate redress, otherwise than through the exercise of this extraordinary jurisdiction.[46]

The writs in this case were filed as a collateral attack on a pending district court matter. Contrary to Mr. Holcomb's bare assertions, there was an adequate remedy by waiting for the conclusion of the proceeding. As explained with approval in *City of Seattle v. Holifield*,[47] the court of appeals properly reversed the granting of a writ of prohibition that stemmed from a district court action because of the "availability of appeal [under] the Rules for Appeal of Decisions of Courts of Limited Jurisdiction (RALJ)."[48] Such is the case here. Once the final order of the

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[44] *Leskovar v. Nickels*, 140 Wn. App. 770, 775, 166 P.3d 1251 (2007).
[45] *River Park Square*, 143 Wn.2d at 76.
[46] *State ex rel. O'Brien v. Police Court of Seattle*, 14 Wn.2d 340, 347–48, 128 P.2d 332 (1942).
[47] *City of Seattle v. Holifield*, 170 Wn.2d 230, 240 P.3d 1162 (2010).
[48] *Id.* (*citing State v. Epler*, 93 Wn. App. 520, 501, 969 P.2d 498 (1999)). *See also City of*

district court is entered, RALJ 2.2 would allow an appeal. Even the validity of the regulation could be raised before the district court as well as in any appeal.[49] Accordingly, because an adequate remedy exists, the superior court's decision was reasonable and no issue of substantial public interest exists. Even the court of appeals found that denial was likely the *only* reasonable answer. This petition should be denied.

V. ATTORNEY FEES & COSTS

A court may award attorney fees only when authorized by a contract, a statute, or a recognized ground in equity.[50] Under RAP 18.9 and RCW 4.84.185, an award of attorney fees and costs is available to prevailing parties when forced to defend a frivolous appeal. An appeal is frivolous if it raises no debatable issues on which reasonable minds might differ and it is so totally devoid of merit that no reasonable possibility of reversal exists.[51] Such is the case here. There can be but one conclusion that the court of appeals and superior court did not err in dismissing the writs. Accordingly, Respondents should be awarded its attorneys fees and costs.

Seattle v. Williams, 101 Wn.2d 445, 455, 680 P.2d 1051 (1984)("Since the RALJ provides a 'speedy and adequate remedy at law' in most instances, we conclude that statutory writs should be granted sparingly when used as a method of review of interlocutory decisions of courts of limited jurisdiction.)

[49] RAP 2.3(d)(2). *See generally, State v. Wittenbarger*, 124 Wn.2d 467, 880 P.2d 517 (1994)(appellant appealed the constitutionality of the district court's suppression order). *See also, City of Bellevue v. Lee*, 166 Wn.2d 581, 584, 210 P.3d 1011 (2009).

[50] *Bowles v. Washington Dep't of Ret. Sys.*, 121 Wn.2d 52, 70, 847 P.2d 440 (1993).

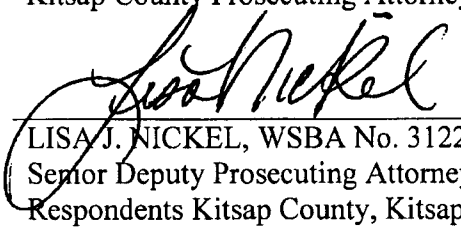
[51] *Ahmad v. Town of Springdale*, -- Wn. App. --, 314 P.3d 729, 2013 WL 6504412 (Wash. App. Div. 3)(December 12, 2013)(*citing Carrillo v. City of Ocean Shores*, 122 Wn. App. 592, 619, 94 P.3d 961 (2004)).

VI. CONCLUSION

For the foregoing reasons, Respondents respectfully requests that the Court deny Mr. Holcomb's Petition for Review this case. In the alternative, if the Court accepts review, Respondents respectfully request that the Court uphold the decisions of the court of appeals and superior court.

RESPECTFULLY SUBMITTED this 9th day of January, 2014.

RUSSELL D. HAUGE
Kitsap County Prosecuting Attorney



LISA J. NICKEL, WSBA No. 31221
Senior Deputy Prosecuting Attorney for
Respondents Kitsap County, Kitsap County
Health District and Kitsap County District
Court

CERTIFICATE OF SERVICE

I, Laurie Hughes, certify under penalty of perjury under the laws of the State of Washington that I am now and at all times herein mentioned, a resident of the State of Washington, over the age of eighteen years, not a party to or interested in the above-entitled action, and competent to be a witness herein.

On January 9, 2014, I caused to be served in the manner noted a copy of the foregoing document upon the following:

James Byron Holcomb
9596 Green Spot Place NE
Bainbridge Island, WA 98110

[X] Via U.S. Mail
[X] Via email: bylaw@aol.com
[ ] Via Fax: 206-842-8429
[ ] Via Messenger Service

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED Jan 1, 204, at Port Orchard, Washington.

Laurie Hughes

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KITSAP COUNTY DISTRICT COURT

JAMES M. RIEHL, JUDGE
DEPARTMENT NO. 1

JEFFREY J. JAHNS, JUDGE
DEPARTMENT NO. 2

614 Division Street, MS-25
Port Orchard, WA 98366
Phone (360) 337-7109
Fax 337-4865

MARILYN G. PAJA, JUDGE
DEPARTMENT NO. 3

STEPHEN J. HOLMAN, JUDGE
DEPARTMENT NO. 4

MAURICE H. BAKER
COURT ADMINISTRATOR

July 24, 2012

Neil Wachter
Kitsap County Prosecuting Attorney's Office
614 Division Street, MS-25
Port Orchard, WA 98366

J. Bryon Holcomb
P.O. Box 10069
Bainbridge Island, WA 98110

Re: *Kitsap County Health District v. J. Bryon Holcomb*, Cause No 100203333

Gentlemen:

This letter will serve as the written decision in the above-entitled case.

On June 5, 2011, the defendant was cited for not having a valid monitoring and maintenance contract for his alternative septic system. The defendant made a motion to dismiss on numerous grounds, including, lack of subject matter jurisdiction, failure to comply with court rules, failure to name proper parties, statutes of limitations, laches, criminal conduct on the part of the health district officials, government misconduct, and waiver of claim. However, defendant provided no legal authority for any of these motions. Therefore, these motions to dismiss are denied.

The Kitsap County Board of Health Ordinance 2008-01 regulates septic systems. Section 13C.17.a of this ordinance requires property owners to obtain and maintain a valid monitoring and maintenance service contract with a monitoring and maintenance service provider certified by the Health Officer if the onsite sewage system is an alternative system.

It is undisputed that the defendant's Glendon Biofilter septic system is an alternative system. It is also undisputed that the defendant does not currently have a maintenance and monitoring contract for his alternative septic system. The only time he had such a contract was for the year 2001.

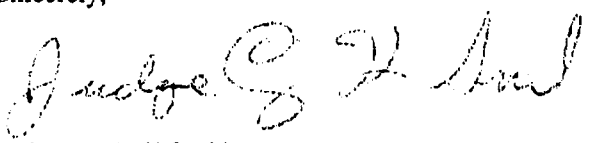
Defendant contends that he is not required to have a maintenance and monitoring contract. He argues that this fact was decided in prior litigation when he was ordered to install the Glendon Biofilter system. However, defendant has not provided any proof to the Court that he is exempt

from the requirement of obtaining a maintenance and monitoring contract for his septic system.

Based upon the evidence presented, the Court finds that the Health District has proven by a preponderance of the evidence that the defendant did not have a maintenance and monitoring agreement for his alternative septic system on May 18, 2011. Therefore, the Court finds that the infraction was committed and imposes a fine of $524.00.

Should the prosecuting attorney wish to present findings of fact, conclusions of law, and a proposed order, he may prepare them and note a court date, before me, for entry of this document.

Sincerely,



Judge Cindy K Smith
Judge Pro Tem, Kitsap County District Court

OFFICE RECEPTIONIST, CLERK

To: Laurie Hughes
Subject: RE: James Byron Holcomb v. Assigned Judge for the Kitsap County District Court - Supreme Court No. 89536-8

Rec'd 1/9/14

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

From: Laurie Hughes [mailto:lhughes@co.kitsap.wa.us]
Sent: Thursday, January 09, 2014 10:43 AM
To: OFFICE RECEPTIONIST, CLERK
Cc: bylaw@aol.com
Subject: James Byron Holcomb v. Assigned Judge for the Kitsap County District Court - Supreme Court No. 89536-8

Attached please find for filing, Respondent's Answer to Holcomb's Petition for Review.

Case Name:
James Byron Holcomb, et al

v.

Assigned Judge for the Kitsap County District Court

Case No.:
Supreme Court No. 89536-8

Filed by:
Lisa J. Nickel, WSBA No. 31221
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