

FILED
SUPREME COURT
STATE OF WASHINGTON
5/8/2018 4:42 PM
BY SUSAN L. CARLSON
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WA SCt 95746-1
re: Court of Appeal Cause No.76594-9-I ("EYE")

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

JAMES NAMIKI, AN INDIVIDUAL
Respondent (Plaintiff Below),
v.

ICT LAW AND TECHNOLOGY GROUP, PLLC, AND
DALE COOK, AN INDIVIDUAL (and member of the LLC)
Petitioners (Defendants Below).

Reply to Answer to Petition for Review of Order Dismissing Appeal as a Matter of Right
(dated 20-Mar-2018)

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I. Identity Of Petitioners

Movants¹ -- Separate and Distinct Defendants held Jointly and Severally Liable in the WA Tr. Crt below -- ICT-Law-Pllc, and Dale Cook, an individual and separate legal entity for the WA St. Pllc, ICT-Law-Pllc of which he is a member, join to seek review.

II. Reply to Answer to Petition for Review

A. Facts Relevant

In its 23-Apr-2018 Answer Opposing, the Pranksters state:

Movants' 19-Apr-2018 Petition ... does not involve any question (much less a “significant” question) involving the Constitution of the United States or of Washington, and the petition involves the issue of dismissing an appeal for refusing to abide by the appellate court’s deadlines, an issue that is not of substantial public interest that should be determined by the Washington Supreme Court. RAP 13.4(c), (d).

See p. 3.

To the contrary, in its Petition Movants raised several significant WA State Const. and Federal Const. questions, but noted their Petition for Write of Certiorari to the U.S. Sup. Crt. is in draft and due 05-Jun-2018, noted the US. Sup. Crt does not like to hear unsettled issues of WA State law, so asked this WA Supr. to concentrate here on the Significant WA St. Cont. that Movants have raised.

Movants Petition demonstrated that a non-judge comm'r (a non-judge Comm'r Kanazawa, "NJK" hereafter to emphasize this person is not a judge and has no power to exercise judicial authority under the WA State Const.) exercised the judicial power of the State of WA to severely maim, distort, and deprive movants of their legal rights -- including serving as a judge in her own case wherein Movants had established prima facie evidences that the non-judge commr's own errors render the Summary Judgment and Final Judgment of the Trial Court null-and-void for lack of Subject Matter Jurisdiction, and further allowed to self-deal in her own behalf and dismiss Movants' appellate rights to hide

¹ In the current concurrent Federal Court actions, the parties are reversed; in order to avoid confusion, Petitioners thus refer to themselves as Movants herein.

NJK's own errors, which this Appeals Court did not at all discuss in its 08-Aug-2017 Order -- despite (i) not being a judge, (ii) further having never taken an Oath of Judges (i.e., since not a judge), and (iii) having no defined duties to act as a judge.

These raise several significant issues under the WA St. Const. alone, including at least the following.

B. Both CAR 16 and SAR 15 improperly purport to grant to non- judge commissioners at the Court of Appeals and Supreme Court levels the "judicial power" which Article IV, S 1 of the WA Constitution vests in the Trial, Appeals, and Supreme Courts. This grant of Judicial Power is completely outside the framework of the WA Constitution. As shown herein, the WA Constitution erects safeguards to protect citizens from the ferocious Judicial Power of this State: first, it overtly vests its Judicial Power, not in people but in institutions: in the Superior [Trial] Courts, the Courts of Appeals to the extent that RCW 2.06 defines a valid Art. IV Court, and the Supreme Court,¹; second . the WA Const. only authorizes Judges of those respective Courts to exercise the "Judicial Power" "vested in those Courts," and with such Constitutional Authorization effective only after each such Judge has taken and subscribed an "Oath of Judges,"².

C. CAR 16 and SAR 15 circumvent the Constitutional Protections of Article IV S 1 (Judicial Power Vested in Institutions, Not People) and Art. IV S 4 (only Judges, after executing the Oath of Judges, may exercise the institutional power vested in the Courts) Without Any Constitutional Authorization.

² The WA Constitution, "Art. IV, S 1, Judicial Power, Where Vested:" provides "Judicial Power of the state [WA] shall be vested in a supreme court, superior [trial] courts, and such inferior courts as the legislature may provide [e.g., Court of Appeals]." The supreme court and the trial courts are overtly specified in Article IV, while the task of writing the other parts of Article IV defining the Courts of Appeals has been delegated to the legislature. The legislature has provided RCW 2.06, Court Of Appeals and RCW 2.06.010, Court of appeals established—Definitions ("There is hereby established a court of appeals as a court of record."). Thus this language a part of Article IV to the extent that it defines a valid Article IV Court (analogizing the Federal Agency Law, where delegation to "fill in the details" is limited by the separation of powers doctrine). See WA Const., Art. IV, S 4, "Oath of Judges" for Superior [Trial] and Supreme Court Judges, and and see WA Constitution, Article IV, S 1, "Judicial Power, Where Vested" which incorporates RCW 2.06.085, "Oath of judges" via the delegation of the power to define the Court of Appeals to the legislature

So far as has been discerned, the WA State Constitution provides NO authority for non-judge commissioners at the Court of Appeals or Supreme Court levels, and RCW Chapter 2.06 Court of Appeals, does not mention authorize non-judge commissioners at the Court of Appeals (so far we could tell from a string search as well as reading the Chapter). Rather, as far as can be discerned, non-judge commissioners at the Court of Appeals Level are solely the constitutionally unauthorized creation of CAR 16, *See endnotes* to RCW Chapter 2.06 Court of Appeals, "*Commissioners of the Court of Appeals, CAR 16.*"

D. CAR 16 and SAR 15 circumvent the Constitutional Protections of Article IV S 1 (Judicial Power Vested in Institutions, Not People) and Art. IV S 4 (only Judges, after executing the Oath of Judges, may exercise the institutional power vested in the Courts) , allowing non- judge commissioners to exercise the Judicial Power -- i.e., decide the outcome of substantive legal motions³ (e.g., the 28-Feb-2017 non-judge commissioner's denial of Petitioners' Motion to Stay Pending Decision on Two Separate then-pending and fully-briefed Motions seeking Interlocutory Appeal) -- and critically without having executed an Oath of Judges.

.E. CAR 16 and SAR 15 Directly Vest Judicial Power in non-judge commissioners having no clear duty to uphold the law, or act as a judge.

Furthermore, from their actions it was suspected that non-judge Comm'r duties might include hiding or "sweeping under the rug" systemic errors on the part of, e.g., King County, and, e.g., the Courts of Appeals respectively, and irrespective to the damage of the substantive legal rights of Appellants, which would be in accord with a Commissioner's Oath of Office, but not an Oath of Judges as this side-by-side Comparison Table Shows:

<p>Constitutionally Required "Oath of Judges"</p> <p>Constitutional Authority: Art. IV, S 4 "Oath of Judges" and Art. I, S 1 which incorporates RCW 2.06 Court of Appeals and thus RCW</p>	<p>"Oath of Commissioners:</p> <p>Constitutional Authority: None.</p>
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³ Court of Appeals Administrative Rule (CAR) 16 "Court Personnel," ... CAR 16(c)(1) states (1) Deciding Motions. The commissioners will hear and decide those motions authorized by the Rules of Appellate Procedure and any additional motions that may be assigned to the commissioners by the court. NOTE: So here, and via administrative rule, the courts have effected what otherwise would require a constitutional amendment by allowing a non-judge to decide Appellate Matters.

2.06.06.085

"Oath of Judges:"

I will support the Constitution of the United States and the Constitution of the State of Washington, and

will faithfully and impartially discharge

the duties of

[the office of] judge to the best

"Oath of Office"

I, Masako Kanazawa, do solemnly swear that I will support the Constitution of the United States and the Constitution of the State of Washington, and that I

will faithfully and impartially discharge

the duties of

<p><u>of his [my] ability."</u></p> <p><i>Note:</i> Art. IV, S 4, "Oath of judges is quoted, with the slightly different language of Art. I, S 1's incorporation of RCW's 2.06.085, "Oath of judges" shown in square brackets</p>	<p><u>the position of court commissioner of the Court of Appeals of the State of Washington to the best of my ability ...</u></p> <p><i>Note:</i> Obtained from the Secretary of State website in support of then-in-draft Commission on Judicial Conduct Complaint</p>
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F. Perhaps most significant here for lawyer-Defendants, CAR 16 and SAR 15 arguably circumvent the protections of S 31 of Article, IV, which provides for a **non-elected Commission,⁴ and critically with independent investigatory authority and investigative officers,⁵** which can insure that the inherent conflict between impartial justice and elected judges with limited terms, can be investigated when parties before judges and justices believe such elected judges and justices might have been "offered an incentive" to make things "come out right."

And this substantive constitutional protection was particularly important here, and to the lawyer-Defendants. Lawyer-Defendants have suspected -- but of course cannot prove, lacking the investigators and legal authority of the Commission on Judicial Conduct -- that non-judge Kanazawa had been offered the possibility of employment after her term expires in less than two years. This is due to suspected powerful influences in background.

So, this right was/is important to lawyer-Defendants, in that in the Course of preparing their complaint for the Commission on Judicial Conduct, see e.g., 3rd Amended Motion to Disqualify non-judge Kanazawa, which is written directly against the provisions of the CJC, but in the process of which lawyer-Defendants became aware of the following facts.

Critically, and as can be seen from the side-by-side comparison table above, **neither**

⁴ S 31(1) "there shall be a **commission on judicial conduct**, existing as **an independent agency of the judicial branch**, and consisting of ... [non-elected persons]"

⁵ S 31(9): "the legislature shall provide for commissioners' terms of office and compensation. **The commission shall employ one or more investigative officers with appropriate professional training and experience. The investigative officers of the commission shall report directly to the commission,** ...)

non-judge Comm'r has a sworn duty to uphold the laws; rather from their actions it is suspected their primary duties include masking or "sweeping under the rug" systemic errors on the part of, e.g., King County, and, e.g., the Courts of Appeals, respectively.

Thus, when lawyer-Defendants attempted to draft their Commission on Judicial Conduct Compliant against non-judge Kanazawa, they learned that it is not clear that either non-judge commissioners has violated their duties ... because they don't have any defined duties with respect to wielding the Judicial Power (being, as it is, completely outside of the Constitutional Framework -- e.g., why would there be any rules/duties for something that should never happened). And **since they have no authorization to wield that judicial power, neither is there any requirement that they execute the "Oath of Judge"** ... as indeed there could not be.

And when, after learning this, lawyer-Defendants attempted to revise their Complaint to be against the Court of Appeals 3-Judge Panel who refused to intercede to correct non-judge Kanazawa's failure to "act as a court of appeals judge," only to learn non-judge commissioners have no such duties despite their exercise of judicial power **they ran right into the fact that CAR 16 appears promulgated by this Supreme Court Itself.**

So, again, under CJC there needs to be a violation by the Appeals Court judges of their duties. But surely those duties involve following the administrative rules of this Supreme Court?

Again, no violation of the CJC by the Star Chamber Appeal-Within- the-Appeals-Court-Itself "appellate authority" (i.e., the 3-Judge Panels), despite their respective "Oath of Judges."

They "were only following **this Court's** Orders": CAR 16. So, the fact that CAR 16 appears with the authority of this Court is very damaging, the practical effect being that Defendants have been deprived of their Substantive Constitutional Protections of the Commission on Judicial Conduct.

CAR 16 and SAR 15, when Coupled with the Motion-Modify Procedures, Impose a 5 Level "Appeal-Within-the-Appellate-Court- Itself" System When the Const. Only Authorizes 3-Levels; The Constitutional Violations Engendered By The Front End Of

That System Where The Non-Judge Commissioners Unconstitutionally Wield Judicial Power, Free To Act Completely Outside The Law Were Identified Above, But Even Worse, when Defendants "appealed," to the 3-Judge panel expecting some version of American justice, they learned this unconstitutional "Appeal-Within-the-Appellate-Court-Itself" **"was not a normal appeal."**

Rather, it came to be understood by Defendants that the **unconstitutional "Appeal-Within-The-Appeals-Court-Itself"** had **express Star-Chamber-like Rules** whereby, if litigants "appealed" the actions of the non-judge commissioner, **like in the Star Chamber, they were given no Notice or Opportunity for Hearing by the 3-Judge Star- Chamber panel** -- defined as the **unconstitutional "appellate authority" in this unconstitutional "Appeal-Within-An-Appeal" system.** But even better, and as the icpick on the cake, learned that these Star-Chamber-like rules further provided that the 3-Judge Panel **need give no reasons for their decisions in denying motions to reverse the decision of the non-judge Comm'r in the Appeal-Within-An-Appellate Court itself.**

Tellingly, under actual WA Appellate law, a Judicial Appellate Ruling, with no discussion of the law or evidence presented, would be argued as "an abuse of discretion for failure to exercise discretion," but under the Motion to Modify system such argument/demonstration is an impossibility by rule. WSBA Appellate Deskbook, §10.7 Review Of Ruling Of Commissioner Or Clerk ("A motion to modify ... de novo standard of review... **judges are not required to issue a ruling explaining the decision, and can issue a summary ruling granting or denying the motion to modify.").** This alone demonstrates **the unconstitutional nature of the "Appeal-Within-An-Appeal" of the Motion to Modify system, even notwithstanding the complete lack of Constitutional or even color of statute for such a system.**

The Star Chamber was a bad idea in the past, and it continues to be a bad idea today. This Supreme Court should eliminate it immediately.

III. Conclusion/Prayer For Relief -- Eliminate Non-Judge-Commissioners And Motion-To-Modify Procedures At The Court Of Appeals And Supreme Court Levels, And Hold Null And Void Their Past Actions

Movants seek relief including that this Court enforce the WA State constitution, and **are asking the Panel to Issue an Order:**

(a) Reinstating the 20-Mar-2017 Notice of Appeal-No-76594-9-1 as a Matter of Right, and Wrongfully Converted by this Commissioner to a Notice of Discretionary Review;

(B) Declaring Null and Void :


the Trial Court's 21 April 2017 Summary Judgement Order; and

the Trial Court's 17 May 2017 Monetary Judgment against Defendants in that Jurisdiction over all matters transferred to this Appeals Court Div. 1 on 20 Mar 2017 when Defendants Notice of Appeal-No-76594-9-1 and as a Matter of Right was filed with the Trial Court.

(c) Granting the 31-Mar-2017 WSBA-Recommended Backup For at least the reasons shown herein, the Panel is asked to (a) reverse the Commissioner and GRANT the Stay with Effective Date of the Notice of Appeal, 20 March 2017, and with Said Stay on all matters such as were effected by the wrongfully-converted Notice of Appeal.

(D) Granting The 09-Oct-2017 Amended Motion for Discretionary Review Arguing All Non-Judge Comr.'s Judicial Actions Void in View of WA State and Federal Const. Violations.

Respectfully submitted and Dated: 8 May 2018.



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⁶ Rather than making the WA State Pllc law wholly self-contained, subchapter "25.15.046 Professional limited liability companies" **instead** incorporates by reference and in its entirety the WA State law governing Professional Service Corporations **into the LLC law, e.g. :**

(2) A professional limited liability company [rendering professional services] is **subject to all the provisions of chapter 18.100 RCW [Professional Service Corporations]** that apply to a professional corporation.

See RCW 25.15.046 Professional limited liability companies.

Thereafter, the WA State Pllc law **gives an algorithm** as to **how to apply the WA State Professional Services Corporation Law** (Chapter RCW 18.100) **to the WA State LLC Law** (Chapter RCW 25.15):

(4) ... [In] applying chapter 18.100 RCW [Professional Service Corporations] to a professional

limited liability company, the terms "director" or "officer" means **manager**, "shareholder" means **member**, "corporation" means **professional limited liability company**, "articles of incorporation" means **certificate of formation**, "shares" or "capital stock" means a **limited liability company interest**, "incorporator" means the person who executes the certificate of formation, and "bylaws" means the limited liability company agreement.

See RCW 25.15.046 Professional limited liability companies. ...

⁷ See "RCW 25.15.071 Formation—Certificate of formation ... (3) A limited liability company formed under this chapter [25.15 RCW LIMITED LIABILITY COMPANIES] is a separate legal entity [e.g., from its members, managers, and employees] and has a perpetual existence."

⁸ Applying the algorithm of RCW 25.15.046(4) -- see p. 8 *infra* -- to "RCW 18.100.010 Legislative intent," and "RCW 18.100.030 Definitions" yields, for a **Pllc** "It is the legislative intent to provide for the incorporation of an individual or group of individuals to render the same professional service to the public for which such individuals are required by law to be licensed....; and "... (1) The term "professional service" means any type of personal service to the public which requires as a condition precedent to the rendering of such service the obtaining of a license ... and which prior to the passage of this chapter and by reason of law could not be performed by a ... [Pllc]."

⁹ Applying the algorithm of RCW 25.15.046(4) -- see p. 8 *infra* -- to RCW "18.100.030 Definitions" yields, for a Pllc "(1) No ... [Pllc] organized under this chapter may render professional services **except through individuals who are duly licensed ... to render such professional services within this state ...**" or through "a **person duly licensed ... to render professional services in any jurisdiction other than this state ...** [said person] a member of a professional corporation in this state organized for the purpose of rendering the same professional services"; and See 25.15.048 Professional limited liability company—Licensing ("(1) ... limited liability company formed under this chapter may render professional services ... through a person or persons ... duly licensed ... to render such professional services within this state.... [or] a person duly licensed or otherwise legally authorized to render professional services in any jurisdiction other than this state ... [such person] a member of a professional limited liability company formed in this state for the purpose of rendering the same professional services....");

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury of the laws of the State of Washington that a copy of the foregoing document(s) was electronically forwarded for service upon counsel of record:

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DATED this 8 May 2018.

s/Dale Cook

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Lawyer

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May 08, 2018 - 4:42 PM

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: 95746-1
Appellate Court Case Title: James Namiki v. ICT Law and Technology Group, PLLC, et al.
Superior Court Case Number: 16-2-01372-4

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