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Supreme Court No. 84758-4  
Cowlitz Superior Court Cause No. 10-2-00211-2  
Skamania Superior Court Cause No. 09-2-00161-0 / Clark County Superior Court Cause No. 08-2-09112-4

**SUPREME COURT  
STATE OF WASHINGTON**

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Lance W. Burton, Pro Se  
Petitioner,

Vs.

Honorable Superior Court Judge **Robert L. Harris**  
and **Mary Jo Harris**, husband and wife,  
and their marital community.

**The Board of the Clark County Commissioners**  
(Betty Sue Morris, Mark Boldt and Steve Stuart)  
for and on the behalf of Clark County.

Respondent's

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**REPLY BRIEF OF LANCE BURTON**

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Lance W. Burton, Petitioner  
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360-513-0251

Clark County Prosecuting Attorney  
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To the Washington State Supreme Court and the Court Clerk, this Reply Brief is being served pursuant to the letter dated July 6, 2010 at # 8.

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Cannon 2

5

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5

**A. RESPONDENT'S RESPONSE:**  
(October 22, 2010)

1. The Respondent's either misunderstands the Petitioner's quest for Discretionary Review or is intentionally attempting to confuse this Court.
  
2. **The Respondent's Reply Brief alleges that the Petitioner failed to... (1) provide adequate records for the Court to review, and (2) failed to include a copy of the complaint, answer and transcript of proceedings, and (3) charges that Judge Stephen Warning holds immunity.**
  
3. The facts are there could be two matters for this Court to consider... (1) The case against Judge Harris. And, (2) the legal Authority and Jurisdiction of Superior Court Judge, Mr. Stephen Warning of Cowlitz County.
  
4. Petitioner's request for Discretionary Review was and has always been based upon the latter, i.e. the unlawful actions of Clark, Skamania and in particular Cowlitz County and its Judge, Stephen Warning.
  
5. The Petitioner had filed a motion for DIRECT REVIEW, INTERVENTION, HALT and COMPEL ANSWER'S on March 4, 2010 to the State Supreme Court and Clark County. The Supreme Court Deputy Clerk, Ms. Susan L. Carlson in a letter to the Petitioner, was unable to provide the action as he had sought, yet, was instrumental in advising the Petitioner on what actions were needed to be heard in the future. Such action necessitated Petitioner's complaint (unwanted) to be filed and heard by Judge Warning for whom the Petitioner had stated in his follow-up, March 8, 2010, pg-2 at (8) letter to Ms. Carlson, that cited infamous allegations against Warning.

6. Petitioner has submitted sufficient records of (1 & 2) to substantiate Judge Warning's unwarranted and confiscation of the Harris case and now addresses (3).

**B. JUDGES AND OTHER'S WITH POWER:**

7. All Superior Court Judges can execute outside their elected county. But, in order to do so, certain stipulations must be requested by the judge of that different county (RCW 4.12.040(2)). Or, be appointed by the governor of this state (Art. IV, Sect. 5) or directed by a majority of the Supreme Court Justice's under (Art. IV, Sect. 2(a)).

**A. Court Commissioner's**

8. County's that have a Court Commissioner (Skamania does not) may request a judge from a different county to preside over a matter but not a County Clerk who under RCW 2.32.050 and 36.23 is remiss of such authority. None of the above stipulations were met within the Harris/Warning matter.

9. Certain provisions of the law are obligatory to Skamania, Clark and Cowlitz County and Judge Warning. Petitioner's written objection to Warning's involvement was understood as shown by a December 3, 2009 letter from Ms. Thelma Kammer, Legal Secretary to the Respondent's lawyer, (Exhibit 3, Petition for Discretionary Review and Statement of Grounds). Only one judge has the power under (Art. IV, Sect. 7 Wash. Const.) to hear a case *without* written approval, that was (Ret.) Judge Thomas Lodge, due to his previous discretionary ruling on a related case.

10. Petitioner's request for Lodge, was ignored by the Respondent's lawyer, the Court Clerk of Skamania County, and from the Olympia's Court Administrator's office, and Ms. Suzy Cheffler. Petitioner believes Washington State lacks lawful regulation in such matters.

The record is clear there is no evidence to support a contradiction to the above failures.

### C. THE RULES OF PROFESSIONAL CONDUCT

11. At RPC 8.3(a), ... A lawyer having knowledge that another lawyer has committed a violation of the RPC's ... should promptly inform the appropriate professional authority.

12. Former Deputy Prosecutor Bernard F. Velljadic Bar # 28702 presumably instigated and continued the appointment of Judge Stephen Warning over Petitioner's objection's with knowledge that Judge Lodge held the right over Warning to have heard the Harris case first, but denied by avoidance of any effort to seek Judge Lodge's involvement.

13. At RPC 5.1(a)(b)(c) requires supervisory duties to ensure all lawyers conform to the Rules of Professional Conduct. Mr. Velljadic, who was bound by RPC 5.2(a) is no longer employed by Clark County.

Petitioner believes that Velljadic's push for Warning was not his idea, but perhaps directed by his superiors. Petitioner's *Affidavit of Prejudice* under RCW 4.12.050 reflects upon other cases, where other plaintiff's, were forced into the control of another judge, that being Judge Warning. Those documents were signed by someone other than Velljadic thus, a pattern is shown that reveals when Clark County wants to dispense with a case, they often direct or allow their underlings to move cases to Cowlitz County and Judge Warning.

**D. LACK OF IMMUNITY AND CANNON:**

14. Judge Warning's acceptance to his role as Superior Court Judge in the Harris case was a violation of the Code of Judicial Conduct i.e. **Cannon 2** *to respect and comply with the law...* Warning failed to comply with the mandatory<sup>1</sup> nature of law that authorized Judge Thomas Lodge the *First* right under this state's Constitution of Art. IV, Section 7 to have heard the Harris case.

15. **Cannon 2- "Appearance,"** Warning then failed Petitioner's request for a new judge under the same Constitutional provision which included the *Supreme Court Rule*, there is no right of rule for him to have done so. And then Warning did likewise under Petitioner's *submitted Affidavit of Prejudice*.

16. Petitioner, forced to indulge in the procedural acts in order to comply with the legal circuitry, requested Judge Warning to *reconsider* his earlier decision, but did not, failing **Cannon 3(A)(1)** ... *to be faithful to the law and maintain professional competence in it*.

17. Petitioner asserts that Warning's failures to the duties, obligation's and condition's of his role and judge of above, prevented his legal attachment to the Harris case. That in legal reality he was not a sitting judge under RCW 2.28.030(2) and that he lacked "power" and *capacity* under RCW 2.28.010.

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<sup>1</sup>A courts authority to exercise its subject matter jurisdiction over a case may be restricted by failure to comply with statutory requirements that are mandatory in nature and, thus, are prerequisites to courts lawful exercise of that jurisdiction. - Moors v. Com., 527 SE 2d 406, 259 Va 431 (2000). Wash. Const. Art I, Sect 29, The provisions of the Constitution are mandatory, unless by express words they are declared otherwise.  
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18. Furthermore, Petitioner also asserts that under RCW 2.28.060 his power is conditioned upon his performance of duty imposed by law, of which he disregarded even when reminded by a Motion to Reconsider.

19. Judge Warning's improper behavior is subject to RCW 2.28.150. Warning's jurisdiction is by the Constitution of this state, or by statute, conferred on a court or judicial officer by all means to carry it into effect. Warning knew or should have known that Judge Thomas Lodge, by law, held a Constitutional right to have heard the Burton/Harris case first, before he, but ignored Lodge's lawful Constitutional right.

20. Ultimately, Judge Warning's conduct as a public servant may be subject to Official/Gross misconduct because he willfully knew that Petitioner held a Constitutional/Supreme Court Rule to have another judge perform his duties by failing a duty to step down as imposed by law under RCW 9A.80.010(b).

21. Petitioner is entitled under RCW 42.17.010(2) the right to expect from elected Representative's at all levels of government the utmost of integrity, honesty, and fairness in their dealings. Yet, this expectation is meted out in dissolution and frustration of the judicial process!

22. Petitioner has now submitted adequate records to show that Cowlitz County and Judge Stephen Warning had taken control of the Harris case, (even this Court's letter of July 6, 2010 recognize "the case" end of 1<sup>st</sup> ¶) who unfairly and unlawfully rendered a decision in the Respondent's favor.

23. Moreover, the Respondent's have not provided any evidence to support their legal position or to deny the violations of law by Warning, Clark and Cowlitz County's.

**E. CONCLUSION:**

Much of the Respondent's reply makes Petitioner's case.

24. The Respondent's were requested to seek another, including Judge Lodge, but made and offer no proof of having done so.

25. The Petitioners injuries stem from the extraordinary courtroom procedures that have delayed and added additional costs to his petition, burdened with additional time for discovery of statutory and other applicable laws, removed the Petitioner from income producing time, and exposed him to the possibility of other possible procedural endeavors or failures that might have removed his request for discretionary rule, while stripping him from lawful provision's under the Washington State and Federal Constitution's that also violated Judge Thomas Lodge's right to have heard and decided the Petitioner's petition, first, that might have resulted in a different outcome..

26. The Respondent's failure to inquire to Judge Lodge, and a lack of support for Judge Warning to have stepped aside when requested, were reasonable lawful consideration that the Respondent's and Warning chose to avoid. In doing so, they created additional burden upon this Court needlessly, and upon the Petitioner. They, knowing the law and the duty to be fair, should be held accountable for this outrageous conduct.

27. The Respondent's provide no rebuttal to Petitioner's assertion that a constitutional provision under the "*Supreme Court Rule*," was a mandatory obligation, but ignored. Such obligation would have required judge Warning to step down in favor of another.

28. The Respondent's argue that Petitioner's "*Affidavit of Prejudice*" was not perfected, but fail to cite a law to support such argument, and fail to determine what is *adequate* in relation to records submitted to this Court.

29. Judge Warning's refusal to step down has become a charge of negligence per se, because he violated not only the Washington Constitution of Art. IV, Section 7, a condition precedent, but breached his duty as imposed by statute under RCW 5.40.050.

30. Petitioner alleges that Judge Warning abused his discretion, obstructed justice and violated numerous law and Cannons that have adversely affected this Petitioner and unwarily Judge Lodge.

31. Respondent's do not refute the demonstrated patternization of conduct between the counties, respondent's, their lawyers and Judge Warning with other cases.

32. Petitioner respectfully requests this Court to consider the "fairness doctrine" and not be swayed by the prejudicial statements made as to the Burton/Erikson or the Burton/Harris case. Rather, Petitioner seeks the Supreme Court's involvement into the Harris case only to vacate and remove the unlawfully obtained judgment<sup>1</sup> by Judge Warning and to the appointment of another. Petitioner also seeks the remuneration as sought in his Statement of Grounds and Brief.

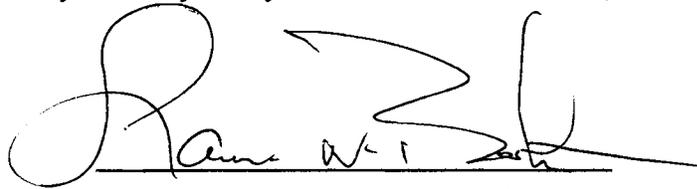
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<sup>1</sup> "Judgement made when the Court lacks subject matter jurisdiction is void." Clark v. State, 727, N.E. 2d 18 transfer denied 741, N.E. 2d 1247 (2000). - Page -8

33. Lastly, in the Borkowski v. Abood, 117 Ohio St. 3d 347, 2008-Ohio-857 case, the Court stated that *civil liability attaches if a judge acts in absence of jurisdiction.*

34. The Syllabus of the Court at II, [¶ 7] said... *An absence of all jurisdiction exists when a judge lacks either personal or subject-matter jurisdiction over the controversy, but nevertheless takes action in a judicial capacity that violates the rights of a party to the law suit. Id.*

Respectfully and Prayerfully submitted on October 22, 2010.

A handwritten signature in black ink, appearing to read "Lance W. Burton", written over a horizontal line.

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**CERTIFICATE OF MAILING**

THE UNDERSIGN CERTIFIES:

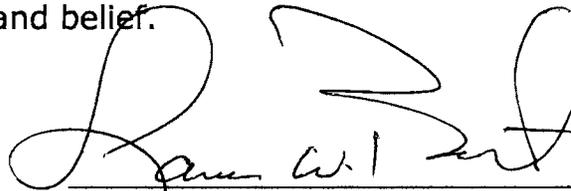
1. I Lance Burton, a citizen of Clark County, State of Washington, am over eighteen years of age.

2. On Friday, October 22, 2010, I Lance Burton in person, hand delivered numerous document to the office of Chris Horne the defense counsel for Judge (Ret.) Robert L. and wife Mary Jo Harris, and County Commissioners Mark Boldt, Steve Stuart and Betty Sue Morris for the government of Clark County Washington, the following documents...

*Reply Brief of Lance Burton*, Petitioner of the case under Supreme Court No. **84758-4**.

3. The Original with a stamped copy of receipt from the Respondent's is now provided to the Washington State Supreme Court c/o the Clerk of that Court by **U.S. Certified Mail No.: 7007-0710-0001-1625-5587**.

I SWEAR UNDER PENALTY OF PERJURY of the Laws of the State of Washington that the foregoing is true and correct to the best of my knowledge, information, and belief.



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10-22-2010  
Date