

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

STATE OF WASHINGTON,

Respondent,

v.

TERRY EUGENE GAINES,

Appellant.

NO. 53955-1

STATEMENT OF ADDITIONAL
AUTHORITIES

Pursuant to RAP 10.8, Respondent State of Washington, respectfully submits the following as additional authority on the subject of the clerk's authority:

1. *Burrowes v. Killian*, No. 96821-7, 2020 WL 1467030 (Wash. Mar. 19, 2020). The Washington Supreme Court held that the full bench of the Benton-Franklin Superior Court exceeded its authority when it enacted an emergency rule requiring the Franklin County superior court clerk to keep records in both paper and electronic format.

In the majority of counties in our state, including Franklin and Benton, the people elect the county clerk. Wash. Const. art. XI, § 5. That elected official, by virtue of being county clerk, also serves as clerk of the superior court. Wash. Const. art. IV, § 26. Thus, although the county clerk serves a

role within the judicial branch, *the clerk is also a separately elected official who serves a role outside the judicial branch.*

Burrowes v. Killian, 2020 WL 1467030 at *3 (emphasis added).

...when acting as *county* clerk, Clerk Killian is independent from the court and accountable to the people. *See* Wash. Const. art. XI, § 5 (providing for an elected county clerk to serve as part of county government).

Id. at *4 (emphasis added). When the clerks maintain the court file outside of the court, they act independently as the *county's* clerk and not as the *court's* clerk. *Id.* at *5. *See also* Corrected Brief of Appellant at 6-13, *Judges v. Killian*, No. 96821-7 (Wash. Apr. 16, 2019) (historically, the role of the clerk is to safeguard the file from all alterations, including from judges).

The superior court and county clerk need to cooperate:

See GR 29(f) cmt. (noting the autonomy of the county clerk and instructing the superior court to “communicate to the county clerk any concerns regarding the performance of statutory court duties by county clerk personnel”); *cf. Hale*, 165 Wash.2d at 507, 198 P.3d 1021 (“The art of good government requires cooperation and flexibility among the branches.”); *Zylstra v. Piva*, 85 Wash.2d 743, 750, 539 P.2d 823 (1975) (“Harmonious cooperation among the three branches is fundamental to our system of government.”).

Id.

The duties of the superior court clerk are defined by statute. *Id.* at *4 (*citing* Wash. Const. art. XI, § 5 (delegating the task of defining the county clerk’s duties to the legislature)).

2. The superior court clerk acts as the county’s clerk, not the court’s clerk, when it fulfills its statutory duty to collect LFOs outside of the courtroom. RCW 9.94A.760; RCW 36.18.190; RCW 36.23.100; RCW 36.23.110. *See* RCW 9.94A.760(1) (“the county clerk

shall set the [monthly] amount” if not otherwise set); RCW 9.94A.760(2) (“ the county clerk shall distribute the payment”); RCW 9.94A.760(4) (“If a judgment and sentence or subsequent order to pay does not include the statement that a notice of payroll deduction may be issued or other income-withholding action may be taken if a monthly legal financial obligation payment is past due, the department or the county clerk may serve a notice on the offender stating such requirements and authorizations.”); RCW 9.94A.760(5) (“The county clerk is authorized to collect unpaid legal financial obligations at any time the offender remains under the jurisdiction of the court for purposes of his or her legal financial obligations.”); RCW 9.94A.760(8)(b) (“the clerk may modify the monthly payment amount without the matter being returned to the court. During the period of repayment, the county clerk may require the offender to report to the clerk for the purpose of reviewing the appropriateness of the collection schedule for the legal financial obligation. During this reporting, the offender is required under oath to respond truthfully and honestly to all questions concerning earning capabilities and the location and nature of all property or financial assets. The offender shall bring all documents requested by the county clerk in order to prepare the collection schedule.”); RCW 9.94A.760(9) (“the county clerk is authorized to collect unpaid legal financial obligations from the offender. Any amount collected by the department shall be remitted daily to the county clerk for the purpose of disbursements.”)

3. In a related case, the Washington Supreme Court vacated an “administrative” order in which the full bench of the Benton-Franklin Superior Court, without notice to the County or Prosecutor and without a hearing, appointed itself a special deputy prosecuting attorney at county expense to file a writ against another county actor. *In re Appointment of Special*

Deputy Prosecuting Att’y, 193 Wn.2d 777, 790, 446 P.3d 160 (2019) (“the judges are free to pursue their separate mandamus action against the clerk, but not at taxpayer expense”).

Dated: April 8th, 2020.

MARY E. ROBNETT
Pierce County
Prosecuting Attorney

s/ Teresa Chen
WSB# 31762
Deputy Prosecuting Attorney
Pierce County Prosecutor’s Office
930 Tacoma Ave., Rm 946
Tacoma, WA 98402
Telephone: (253) 798-7400
Fax: (253) 798-6636
teresa.chen@piercecountywa.gov

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The undersigned certifies that on this day she delivered by E-file to the attorney of record for the appellant / petitioner and appellant / petitioner c/o his/her attorney true and correct copies of the document to which this certificate is attached. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington on the date below.

04/08/20 s/ Aeriele Johnson
Date Signature

PIERCE COUNTY PROSECUTING ATTORNEY

April 08, 2020 - 8:45 AM

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