

FILED

FEB 18 2018

COURT OF APPEALS
CLERK
300 N. WASHINGTON
SPokane, WA 99201

**IN THE COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON**

NO. 354245

Grant County Superior Court Case No. 12-2-01681-2

JERRY JASMAN,
Appellant,

v.

**GRANT COUNTY, WASHINGTON; THE BOARD OF COUNTY
COMMISSIONERS FOR GRANT COUNTY, WASHINGTON; AND
RICHARD STEVENS, CAROLANN SWARTZ AND CINDY
CARTER, IN THEIR OFFICIAL CAPACITIES AS COUNTY
COMMISSIONERS FOR GRANT COUNTY, WASHINGTON,**
Respondents

RESPONDENTS' BRIEF

EVANS, CRAVEN & LACKIE, P.S.
Michael E. McFarland, Jr., WSBA #23000
Samuel C. Thilo, WSBA #43221
818 W. Riverside, Suite 250
Spokane, WA 99201-0919
(509) 455-5200

Attorneys for Respondents

TABLE OF CONTENTS

I. INTRODUCTION 1

II. STATEMENT OF THE ISSUES..... 2

III. STATEMENT OF THE CASE..... 3

A. JASMAN PERFORMED DUTIES OF THE CORONER WHICH HE WAS PROHIBITED FROM CONDUCTING LEADING TO A *QUO WARRANTO* ACTION FILED BY THE GRANT COUNTY PROSECUTOR.....3

B. JASMAN FILED THIS ACTION DURING THE PENDENCY OF THE QUO WARRANTO LAWSUIT; JASMAN SOUGHT INDEMNIFICATION AND ATTORNEY’S FEES AND COSTS TO DEFEND AGAINST THE QUO WARRANTO LAWSUIT.....5

C. THE COURT OF APPEALS AND SUPREME COURT AFFIRMED THE TRIAL COURT’S RULINGS.....6

IV. ARGUMENT..... 8

A. SUMMARY JUDGMENT DISMISSAL OF JASMAN’S COMPLAINT WAS APPROPRIATE AS THE COMMISSIONERS WERE NOT AUTHORIZED OR REQUIRED TO DEFEND AND INDEMNIFY JASMAN IN THE QUO WARRANTO ACTION.....8

1. Jasman Was Not Entitled to Indemnification or a Defense Under RCW 4.96.041 Because He Did Not Meet the Statutory Criteria..... 9

2. The County Prosecutor Did Not Seek Damages Against Jasman..... 11

3. The Court of Appeals and Supreme Court Holdings Are Consistent that Jasman Was Not Entitled to a Special Prosecutor. 12

B. JASMAN’S CLAIMS AGAINST THE COUNTY ARE PRECLUDED BY THE RESOLUTION OF THE QUO WARRANTO ACTION AND APPELLATE COURT RULINGS.15

1. A Claim for Declaratory Relief Is Moot..... 17

2. Jasman’s Petition for Writ of Certiorari Is Moot and Fails as a Matter of Law 18

C. JASMAN’S CLAIM THAT A SEPARATE, NON-STATUTORY, NON-REGULATORY DUTY BASED ON THE COMMISSIONER’S POLICE POWER AUTHORITY EXISTED WAS UNPLED AND FAILS AS A MATTER OF LAW.	21
1. A Claim for Indemnity Under an Alternative Duty Based on the Commissioners’ Police Power Authority Was Never Raised in Jasman’s Complaint.	22
2. The Commissioners Had No Authority Under the “Police Power” Doctrine Because Jasman Was Not Sued for Damages.....	23
3. Jasman Was Not Acting within the Scope of His Duties; the Quo Warranto Action Was Specifically to Oust Him from Holding a Position He Was Not Entitled to Perform and from Performing Illegal Acts.	26
4. Jasman Conflates the Prosecutor’s Filing of the Quo Warranto Action with the Commissioners’ Authority to Indemnify Him.....	29
D. THE BOARD COMMISSIONERS REQUEST AN AWARD OF ATTORNEY’S FEES.....	31
V. CONCLUSION	32

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Aetna Life Ins. Co. v. Wash. Life & Disability Ins. Guar. Ass'n</i> , 83 Wn.2d 523, 520 P.2d 162 (1974).....	20
<i>State ex rel. Banks v. Drummond</i> , 187 Wn.2d 157, 385 P.3d 769 (2016), <i>as amended</i> (Feb. 8, 2017), <i>reconsideration denied</i> (Feb. 9, 2017).....	26, 27
<i>State ex rel Carroll v. Simmons</i> , 61 Wn.2d 146, 377 P.2d 421 (1962).....	9
<i>Citizens for Financially Responsible Gov't v. City of Spokane</i> , 99 Wn.2d 339, 662 P.2d 845 (1983).....	18
<i>Citizens for Mount Vernon v. City of Mount Vernon</i> , 133 Wn.2d 861, 947 P.2d 1208 (1997).....	19
<i>Colby v. Yakima County</i> , 133 Wn. App. 386, 136 P.3d 131 (2006).....	10, 20
<i>In re Cross</i> , 99 Wn.2d 373, 662 P.2d 828 (1983).....	18
<i>Grant Cty. Prosecuting Attorney v. Jasman</i> , 183 Wn.2d 633, 354 P.3d 846 (2015).....	<i>passim</i>
<i>Hoppe v. King County</i> , 95 Wn.2d 332, 622 P.2d 845 (1980).....	13
<i>Lee v. Jasman</i> , No. 31519-3-III (Feb. 5, 2014), at 37	17
<i>Lewis v. Bell</i> , 45 Wn. App. 192, 724 P.2d 425 (1986).....	22
<i>Moore v. Snohomish Cty.</i> , 112 Wn.2d 915, 774 P.2d 1218 (1989).....	32

<i>Nw. Improvement Co. v. McNeil</i> , 100 Wash. 22, 170 P. 338 (1918).....	26, 27
<i>Lee ex rel. Office of Grant Cty. Prosecuting Attorney v. Jasman</i> , 183 Wn. App. 27, 332 P.3d 1106 (2014), <i>aff'd sub nom. Grant Cty.</i> <i>Prosecuting Attorney v. Jasman</i> , 183 Wn.2d 633, 354 P.3d 846 (2015).....	<i>passim</i>
<i>Orwick v. City of Seattle</i> , 103 Wn.2d 249, 692 P.2d 793 (1984).....	17, 18
<i>Pierce County Sheriff v. Civil Serv. Comm'n of Pierce County</i> , 98 Wn.2d 690, 658 P.2d 648 (1983).....	19
<i>Rhinehart v. Seattle Times, Inc.</i> , 59 Wn. App. 332, 798 P.2d 1155 (1990).....	31
<i>Saluteen-Maschersky v. Countrywide Funding Corp.</i> , 105 Wn. App. 846, 22 P.3d 804 (2001).....	22
<i>Shoemaker v. City of Bremerton</i> , 109 Wn.2d 504, 745 P.2d 858 (1987).....	15, 16
<i>Slate v. McQuade</i> , 12 Wash. 554, 41 P. 897 (1895).....	10
<i>State v. Superior Court of King County</i> , 167 Wash. 655, 9 P.2d 1087 (1932).....	10
<i>State v. Turner</i> , 98 Wn.2d 731, 658 P.2d 658 (1983).....	18
<i>Truck Ins. Exch. v. Vanport Homes, Inc.</i> , 147 Wn.2d 751, 58 P.3d 276 (2002).....	25
<i>Unigard Ins. Co. v. Leven</i> , 97 Wn. 417, 983 P.2d 1155 (1999).....	25
<i>Washington Hosp. Liab. Ins. Fund v. Pub. Hosp. Dist. No. 1 of Clallam</i> <i>Cty.</i> , 58 Wn. App. 896, 795 P.2d 717 (1990)	24, 25
<i>Yurtis v. Phipps</i> , 143 Wn. App. 680, 181 P.3d 849 (2008).....	31

Statutes

RCW 4.91.0417
RCW 4.96.041 *passim*
RCW 4.96.041(1).....10
RCW 4.96.041(2).....20
RCW 7.16.04019, 21
RCW 7.5611
RCW 7.56.04010, 25
RCW 9.92.1203
RCW 36.16.13425
RCW 36.27.0302

Other Authorities

Court of Appeals, available at
http://www.courts.wa.gov/appellate_trial_courts/appellateDockets/index.cfm?fao=appellateDockets.showOralArgAudioList&courtId=a03&docketDate=20140205 (Last visited May 9, 2017).....17
Laws of 1993, ch. 449, §4.....25
Laws of 1993, ch. 449, §14.....25
3 McQuillin Municipal Corp. § 12.173.25 (2d ed.).....24, 25
Karl B. Tegland, WASHINGTON PRACTICE: CIVIL PROC., § 35:20 (2d. ed. 2009)15
RAP 18.9(a)31

I. INTRODUCTION

Appellant/Plaintiff Jerry Jasman (“Mr. Jasman”) was a defendant in a separate *quo warranto* action brought by the Grant County Prosecutor because of his failure to abide by his plea arrangement in a criminal case which precluded him from holding public office. The County Prosecutor advised the Coroner’s office that Mr. Jasman, employed as deputy prosecutor, was barred from signing death certificates. Mr. Jasman and the Coroner ignored the Prosecutor’s advice. The Prosecutor was, therefore, statutorily required to bring a lawsuit on behalf of Grant County to oust Mr. Jasman as deputy prosecutor and enjoin him from signing death certificates. Mr. Jasman sought appointment by Grant County of a special prosecutor to defend against the *quo warranto* action and also brought the pending action to again seek the same relief.

The trial court, Court of Appeals, and Supreme Court all concluded that Mr. Jasman’s defense failed as a matter of law and he was not entitled to the appointment of a special prosecutor to defend him in the *quo warranto* action. Nevertheless, he still proceeds with the pending action having lost at the trial level and now seeking indemnification for this appeal.

Respondents/Defendants Grant County, the Board of Commissioners for Grant County, Richard Stevens, Carolann Swartz, and Cindy Carter (collectively “Commissioners”) respectfully request that this

Court affirm the trial court's dismissal of Mr. Jasman's complaint and award Respondents' their attorney's fees for defending against Mr. Jasman's complaint and appeal. Mr. Jasman's pursuit of indemnification and attorney's fees in defending against the *quo warranto* action has evolved from a request for representation pursuant to RCW 36.27.030, into a request for representation at County expense pursuant to RCW 4.96.041, and now apparently rests on a non-statutory, non-regulatory duty of the County Commissioners through their police power authority to pay for his fees. Mr. Jasman's claims are moot, are collaterally estopped, and he has failed to establish that the Commissioners had a duty to pay for his defense in an suit where he was a) not sued for damages, b) did not act in good faith, and c) conducted job functions he was barred from performing. The trial court properly dismissed Mr. Jasman's complaint and the Commissioners now request that this Court affirm the trial court's ruling.

II. STATEMENT OF THE ISSUES

- 1) Whether the Washington Supreme Court's denial of Mr. Jasman's request for the appointment of a special prosecutor to defend him in the *quo warranto* action renders the current lawsuit moot.
- 2) Whether the Washington Supreme Court's denial of Mr. Jasman's request for the appointment of a special prosecutor to defend him in the *quo warranto* action collaterally estops Mr. Jasman from seeking attorney's fees to defend that action in this lawsuit.
- 3) If this lawsuit is not moot and not barred by collateral estoppel, whether the Grant County Board of Commissioners had the duty to indemnify Mr. Jasman and pay for his attorney's fees in an action where he was a)

not sued for damages, b) did not act in good faith, and c) conducted job functions he was legally barred from performing.

III. STATEMENT OF THE CASE

A. JASMAN PERFORMED DUTIES OF THE CORONER WHICH HE WAS PROHIBITED FROM CONDUCTING LEADING TO A *QUO WARRANTO* ACTION FILED BY THE GRANT COUNTY PROSECUTOR.

In 2009, then-Grant County Coroner Jerry Jasman was charged with false imprisonment for repeatedly refusing to permit an employee to exit a county vehicle which Mr. Jasman was operating.¹ The Attorney General's Office and Mr. Jasman ultimately entered into a plea agreement which reduced the charge to disorderly conduct. (CP 42-49). The judgment and sentence included the express provision that "Defendant acknowledges the forfeiture of his right to hold public office, as provided in RCW 9.92.120." (CP 47). Mr. Jasman promptly resigned as coroner, but then his successor, Coroner Craig Morrison, hired Mr. Jasman and purported to authorize him to sign death certificates. *Lee v. Jasman*, 183 Wn. App. at 34-35. Grant County Prosecutor D. Angus Lee advised Coroner Morrison that Mr. Jasman could not legally sign such certificates, but Coroner Morrison and Mr. Jasman persisted. *Id.* at 36; (CP 56-57).

¹ The underlying facts of the *quo warranto* action, Coroner Morrison's intervention into that action, and the procedural history are set forth in greater detail in the written opinions of *Lee ex rel. Office of Grant Cty. Prosecuting Attorney v. Jasman*, 183 Wn. App. 27, 33-41, 332 P.3d 1106 (2014), *aff'd sub nom. Grant Cty. Prosecuting Attorney v. Jasman*, 183 Wn.2d 633, 354 P.3d 846 (2015) and *Grant Cty. Prosecuting Attorney v. Jasman*, 183 Wn.2d 633, 636-640, 354 P.3d 846 (2015).

On June 27, 2012, the Grant County Prosecutor filed the *quo warranto* action against Mr. Jasman alleging he had been signing death certificates unlawfully and seeking an injunction prohibiting such conduct. (CP 50-55). In particular, the complaint alleged:

3.13 On or about June 29, 2012, JASMAN was charged with Unlawful Imprisonment in Grant County Superior Court Cause No. 09-1-00329-0, to wit: "On or about the 26th day of June, 2009, in the County of Grant, State of Washington, the above-named Defendant did knowingly restrain another person " JASMAN eventually pled guilty to Disorderly Conduct (RCW 9A.84.030(1)(a)) as set for in Grant County Superior Court Cause No. 09-1-00329-0. The Judgment and Sentence entered in Grant County Cause No. 09-1-00329-0 sets out, *inter alia*, "Defendant acknowledges the forfeiture of his right to hold public office, as provided in RCW 9.92.120." See attached Judgment and Sentence, Grant County Superior Court Cause No. 09-1-00329-0.

...

3.14 As a result of the Judgment and Sentence entered in Grant County Superior Court Cause No. 09- 1-00329-0, JASMAN is precluded from serving as the Grant County Coroner or as a Grant County Deputy Coroner.

(CP 52).

On February 27, 2013, Superior Court Judge John Hotchkiss issued such an injunction and also refused to appoint a special deputy prosecutor to represent Jasman (or Morrison as intervenor). *Lee v. Jasman*, 183 Wn. App. at 38-39; (CP 117). Mr. Jasman (and Coroner Morrison as intervenor) appealed to the Division III Court of Appeals.

B. JASMAN FILED THIS ACTION DURING THE PENDENCY OF THE QUO WARRANTO LAWSUIT; JASMAN SOUGHT INDEMNIFICATION AND ATTORNEY'S FEES AND COSTS TO DEFEND AGAINST THE QUO WARRANTO LAWSUIT.

On December 10, 2012, while the Grant County Prosecutor's earlier action was still pending, Mr. Jasman brought the present lawsuit against the Grant County Commissioners alleging their denial of Coroner Morrison's renewed request that Grant County defend and indemnify Mr. Jasman in the earlier action was a violation of RCW 4.96.041, which provides for defense and indemnification of in-the-scope local government employees who are sued in "an action or proceeding for damages." (CP 4-8). In his complaint, Mr. Jasman asserted that because damages can be available in *quo warranto* actions, RCW 4.96.041 entitled him to defense and indemnity at public expense. (CP 47). The Commissioners asserted Mr. Jasman was barred from re-litigating the duty to defend issue after Judge Hotchkiss held he was not entitled to representation by a special deputy prosecutor, moving for summary judgment to dismiss this action on May 16, 2013. (CP 15).

In opposing the Commissioners' motion, Mr. Jasman moved for a continuance and requested a stay of proceedings pending the outcome of the appeal in the *quo warranto* action. (CP 119-120). Mr. Jasman's counsel argued "A stay of proceedings should be granted to avoid unnecessary litigation, and corresponding effort and expense, for the court and the

parties. These proceedings may be rendered moot by the pending case of *Lee v. Jasman . . .*” (CP 122). The trial court granted Mr. Jasman’s motion to continue the summary judgment hearing and stay proceedings pending the resolution of *quo warranto* action. (CP 697).

C. THE COURT OF APPEALS AND SUPREME COURT AFFIRMED THE TRIAL COURT’S RULINGS.

The Court of Appeals affirmed the trial court’s rulings in the *quo warranto* action finding that 1) Mr. Jasman was disqualified as deputy county coroner and 2) Mr. Jasman was not entitled to appointment of a special prosecutor in his defense:

The specific question we address is whether one who holds the position of deputy county coroner and performs the task of signing death certificates is a “public officer” subject to disqualification under RCW 9.92.120 because of a conviction of a crime? We answer in the affirmative and sustain the trial court’s orders. We also affirm the trial court’s denial of Jerry Jasman’s and Grant County Coroner Craig Morrison’s demand that Grant County reimburse them attorney fees incurred in the defense of this action.

Lee v. Jasman, 183 Wn. App. at 32. The Court of Appeals accounted for this lawsuit and the impact its ruling would have on this action when analyzing the procedural history: “The Grant County Superior Court stayed Jerry Jasman’s second suit and Grant County’s summary judgment motion in the suit pending the outcome of this appeal.” *Id.* at 41.

Mr. Jasman and the intervenor Coroner Morrison petitioned for review to the Washington Supreme Court. The Court granted review and affirmed the trial court and Court of Appeals in upholding the *quo warranto* action. “[W]e hold that Jasman was a public officer subject to the forfeiture statute because a deputy is authorized by law to discharge the duties of a public officer. Applying the definition to Jasman’s ‘chief investigator’ position, we hold that Jasman was a public officer subject to the forfeiture statute only to the extent that he functioned as a deputy coroner. . .” *Grant Cty. Prosecuting Attorney v. Jasman*, 183 Wn.2d at 643–44. “We thus affirm the trial court’s and Court of Appeals’ rulings enjoining Jasman from signing death certificates.” *Id.* at 646.

The Supreme Court also affirmed the trial court and Court of Appeals in denying that either Mr. Jasman or Coroner Morrison were entitled to a special prosecutor or their attorney’s fees in defending against the action. *Id.* “The Court of Appeals affirmed the trial court’s decision denying appointment of a special prosecutor. We affirm.” *Id.* (internal citation omitted). The Court reasoned that under RCW 4.91.041, the Grant County prosecutor did not have a legal duty to represent Coroner Morrison (or Mr. Jasman) because he “was not sued for money damages and the State or county was not the real party in interest.” *Id.*, 183 Wn.2d at 648. “This lawsuit was a *quo warranto* action against Jasman, challenging his authority

to exercise the office of deputy coroner and sign death certificates, not a lawsuit against Coroner Morrison for money damages.” *Id.*

On May 11, 2017, the Commissioners renewed their motion for summary judgment to dismiss Mr. Jasman’s Complaint on the basis that Mr. Jasman’s claims were moot because of the appellate courts’ rulings and nevertheless failed as a matter of law. (CP 645-646). The trial court heard argument on the Commissioner’s summary judgment and entered an order dismissing Mr. Jasman’s Complaint on June 8, 2017. (CP 1421-1423). On June 21, 2017, Mr. Jasman filed a Notice of Appeal to Court of Appeals Division III regarding the trial court’s dismissal of his Complaint. (CP 1424-1429). Mr. Jasman does not appeal the dismissal of his alternative request for a writ of mandamus.

IV. ARGUMENT

A. SUMMARY JUDGMENT DISMISSAL OF JASMAN’S COMPLAINT WAS APPROPRIATE AS THE COMMISSIONERS WERE NOT AUTHORIZED OR REQUIRED TO DEFEND AND INDEMNIFY JASMAN IN THE QUO WARRANTO ACTION.

Mr. Jasman’s sole mechanism for relief set forth in his Complaint was based on his assertion that the Commissioners had authority and was obligated to indemnify him pursuant to RCW 4.96.041:

- “Defendant [BOCC] of Grant County is the authority of Grant County with responsibility to defend and indemnify county employees **pursuant to RCW 4.96.041.**” (CP 4, ¶ 3) (emphasis added).

- “Plaintiff seeks declaratory relief that he is entitled to defense and immunity for the quo warranto action **pursuant to RCW 4.96.041.**” (CP 7, ¶ 23)(emphasis added).
- “A writ of certiorari should issue, **the Court should review whether Defendants violated RCW 4.96.041,** and order them to indemnify Jerry Jasman for the quo warranto action.” (CP 7, ¶ 28)(emphasis added).
- “Defendants have a duty to provide for the defense and indemnity of Jerry Jasman for the quo warranto action **pursuant to RCW 4.96.041,** which is a duty that the law especially enjoins upon the County, [BOCC], and the individual commissioners.” (CP 7, ¶ 31)(emphasis added).

Mr. Jasman’s Complaint made no reference to any alternative claim or non-statutory authority the Commissioners were required to invoke in funding his defense in the *quo warranto* action. As Mr. Jasman’s Complaint arose solely under his assertion that the Commissioners were obligated and had the authority to indemnify him under RCW 4.96.041, any unpled alternative theory was not appropriate for consideration by the trial court.

1. Jasman Was Not Entitled to Indemnification or a Defense Under RCW 4.96.041 Because He Did Not Meet the Statutory Criteria.

The trial court properly dismissed Mr. Jasman’s Complaint as the Commissioners were not authorized to indemnify the defense of Mr. Jasman in the *quo warranto* action pursuant to RCW 4.96.041. *Quo warranto* actions in Washington are civil, not criminal. *State ex rel Carroll v. Simmons*, 61 Wn.2d 146, 150-151, 377 P.2d 421 (1962). By statute, the prosecuting attorney is only required to represent a county employee in a

civil case when the employee is being sued for money damages which the county government is responsible for paying. *See* RCW 4.96.041(1). No damages are possible in a *quo warranto* action brought by the prosecuting attorney, and the Grant County Prosecuting Attorney's complaint contained no request for damages. *See* RCW 7.56.040.

Damages only apply to actions brought by persons elected to office who have been deprived that office, and are thereby damaged by the loss of compensation that goes therewith. Under a plain language reading of the statute, the damages language does not apply to actions by the prosecuting attorney because the damages language occurs after the semi-colon in the portion relating to actions filed "by any other person" [i.e., other than the prosecuting attorney):

Whenever an information shall be filed against a person for usurping an office, by the prosecuting attorney, he or she shall also set forth therein the name of the person rightfully entitled to the office, with an averment of his or her right thereto; and when filed by any other person he or she shall show his or her interest in the matter, and he or she may claim the damages he or she has sustained.

RCW 7.56.040; *State v. Superior Court of King County*, 167 Wash. 655, 9 P.2d 1087 (1932); *Slate v. McQuade*, 12 Wash. 554, 41 P. 897 (1895). A *quo warranto* action, therefore, falls outside the scope of RCW 4.96.041. *See Colby v. Yakima County*, 133 Wn. App. 386, 136 P.3d 131 (2006) (both

an action to defend the right to hold office and an action to defend a charge of official misconduct fall outside the scope of RCW 4.96.041).

2. The County Prosecutor Did Not Seek Damages Against Jasman.

The two causes of action against Mr. Jasman in the *quo warranto* action were for 1) unlawful exercise of a public office and for a judgment of ouster pursuant to RCW 7.56; and 2) Injunctive relief to prevent him and enjoin him from acting as deputy coroner and signing death certificates. (CP 54). As noted above, the *quo warranto* action against Mr. Jasman did not pursue any damages.

A Special Prosecutor advising the Commissioners explained that the *quo warranto* action was not for damages. (CP 612-616). “[RCW 4.96.041] obliges Grant County to provide a legal defense for employees who are sued for actions undertaken within the scope of their employment, but by its term applies only to actions for damages, *i.e.*, where the relief sought is monetary compensation.” (CP 613)(emphasis in original). “The relief sought does not appear to be removal of Mr. Jasman as a county employee, but an order preventing him from signing death certificates. In my opinion, RCW 4.96.041 does not require Grant County to provide Mr. Jasman a defense, because he is not being sued for damages.” *Id.* The Commissioners relied on the Special Prosecutor’s letter which expressly stated that RCW 4.96.041 did not require to the County defend Mr. Jasman because it was not a claim

for damages and he was, therefore, not entitled to a special prosecutor. Mr. Jasman's own Complaint acknowledges that the *quo warranto* action filed against him did not seek damages against him:

The *quo warranto* action requests declaratory and injunctive relief, an award of fees and costs and "such other and further relief as the Court deems just and equitable." The complaint (also referred to as an "information") **did not specifically request damages.**

(CP 5, ¶10)(emphasis added). It is undisputed that no damages were ever pursued by Grant County or the Grant County Prosecutor against Mr. Jasman in rightfully ousting him as deputy coroner and enjoining him from signing death certificates.

3. The Court of Appeals and Supreme Court Holdings Are Consistent that Jasman Was Not Entitled to a Special Prosecutor.

It is undisputed that the Court of Appeals, in considering the trial court's decision in the *quo warranto* action against Mr. Jasman, affirmed the ruling that neither Coroner Morrison nor Mr. Jasman were entitled to the appointment of a special prosecutor to defend the action because of Mr. Lee's conflict of interest:

Under *Hoppe*, a prosecutor must have both a duty to represent an official and a disability that prevents the prosecutor from representing the official before the appointment of a special prosecutor is justified. We recognize that Angus Lee held a disability in representing Jerry Jasman and the intervenor Craig Morrison, since Lee was the party forwarding the *quo*

warranto action. So we must decide if the prosecuting attorney held a duty to represent the two in this suit.

Lee v. Jasman, 183 Wn. App. at 65–66. Here, this Court recognized that there must be both a duty to represent the official and a disability of the prosecutor for a special prosecutor to be appointed. “Instead, county officers have no inherent right to representation by the county prosecuting attorney.” *Id.* citing *Hoppe v. King County*, 95 Wn.2d 332, 340, 622 P.2d 845 (1980). “Craig Morrison has not sought payment for legal advice provided by private counsel outside the parameters of this quo warranto suit. Also, the Grant County Prosecuting Attorney provided advice to Craig Morrison when he told Morrison that Jerry Jasman could not sign death certificates. Morrison chose to ignore the advice.” *Lee v. Jasman*, 183 Wn. App. at 67. “We deny defendant Jerry Jasman and intervenor Craig Morrison fees at the trial court and on appeal.” *Id.* at 72.

This Court also recognized the unworkable scenario that Coroner Morrison (and Mr. Jasman who was represented by the same attorney) had created in contravening the County’s advice.

Jerry Jasman was not sued in his official capacity since Grant County was not the target of the quo warranto action. Instead, the county prosecuting attorney brought **the action to benefit the county**. Craig Morrison’s intervention does not change the nature of the suit. **His appearance did not alter the suit to one against Grant County**. Morrison was not sued in his official capacity, but instead voluntarily inserted himself into the litigation.

If anything, Morrison caused harm to Grant County by the hiring of one disqualified from office and further harm would fall on the taxpayers of the county if his fees were paid by Grant County.

Lee v. Jasman, 183 Wn. App. at 66–67 (emphasis added).

The Supreme Court affirmed this Court and further expounded upon the appointment of a special prosecutor:

As a separate issue, we must decide whether Coroner Morrison was entitled to a special prosecutor’s representation when he intervened as a defendant in this lawsuit. By statute and our case law, prosecutors are required to represent county officers only when an officer is sued for money damages or when the county or State is the real party in interest. RCW 4.96.041(1), (2); *Osborn v. Grant County*, 130 Wn.2d 615, 625, 926 P.2d 911 (1996). In this case, Coroner Morrison was not sued for money damages and the State or county was not the real party in interest, so he was not entitled to a special prosecutor’s representation.

Grant Cty. Prosecuting Attorney v. Jasman, 183 Wn.2d at 637. “This lawsuit was a quo warranto action against Jasman, challenging his authority to exercise the office of deputy coroner and sign death certificates, not a lawsuit against Coroner Morrison for money damages.” *Id.* at 648. “The Court of Appeals affirmed the trial court’s decision denying appointment of a special prosecutor. We affirm.” *Id.* at 646.

B. JASMAN'S CLAIMS AGAINST THE COUNTY ARE PRECLUDED BY THE RESOLUTION OF THE QUO WARRANTO ACTION AND APPELLATE COURT RULINGS.

Mr. Jasman's claims are all predicated upon the assertion that he was entitled to have the County provide a defense to the *quo warranto* action at the County's expense. (CP 7, ¶¶ 23, 28, 31). The Washington Supreme Court affirmed both the trial court and appellate court in the *quo warranto* action, definitively concluding that Mr. Jasman was not entitled to the appointment of a special prosecutor or indemnification of his defense in the *quo warranto* action under RCW 4.96.041. Accordingly, issues raised by Mr. Jasman's present claims are precluded as a matter of law.

Once a judgment is entered, it has a preclusive effect; i.e., it operates as a resolution of the issues in the case so that the parties are precluded from re-litigating the issues resolved by the judgment. 14A Karl B. Tegland, WASHINGTON PRACTICE: CIVIL PROC., § 35:20 (2d. ed. 2009). Issue preclusion or collateral estoppel prevents the relitigation of an issue that has already been litigated and determined even where the plaintiff asserts a new and distinct claim. *Shoemaker v. City of Bremerton*, 109 Wn.2d 504, 507, 745 P.2d 858 (1987).

The elements of issue preclusion are: (1) identical issues; (2) a final judgment on the merits; (3) the party against whom the plea is asserted must have been a party to or in privity with a party to the prior adjudication; and

(4) application of the doctrine must not work an injustice on the party against whom the doctrine is to be applied. *Id.* These elements are all present here: (1) **Identical issues**: whether or not Grant County has a duty to indemnify Mr. Jasman in defense of the *quo warranto* action. (2) **Final judgment on the merits**: The Supreme Court affirmed the appellate court and trial court in concluding that Mr. Jasman was not entitled to a special prosecutor or indemnification under RCW 4.96.041.² (3) **The party against whom the plea is asserted must have been a party to or in privity with a party to the prior adjudication**: Mr. Jasman was a party to the previous action. (4) **No injustice**: Mr. Jasman had a full and fair opportunity to litigate the issues in the prior case in front of the trial court, the Court of Appeals, and the Washington Supreme Court. The application of the doctrine would not work an injustice here where Mr. Jasman does not satisfy the requirements of RCW 4.96.041 as a matter of law and he is not entitled to have a defense provided at Grant County's expense.

Mr. Jasman's counsel conceded that Mr. Jasman was not entitled to indemnification in his own statements and affirmations to the Division III appellate court:

² The trial court's order granting Plaintiff's Motion for Summary Judgment stated as follows: "Defendant Jerry Jasman and Intervenor Craig Morrison's Motion for Appointment of Special Prosecutor to defend Mr. Morrison and Mr. Jasman in this lawsuit is DENIED." (CP 117).

Judge Fearing: Is both Mr. Jasman and Mr. Morrison seeking attorney fees to be paid by the county in this case?

Mr. George Ahrend: To the extent they are inseparable, we believe that the right to the appointment of special counsel would be probably limited to Mr. Morrison.

Judge Fearing: You are not claiming that a special prosecutor needed to be hired to represent Mr. Jasman. Is that correct?

Mr. George Ahrend: Correct with a caveat. And the caveat is this is a weird quo warranto action. Normally a quo warranto action is brought against an elected official because there is no other way to remove him. With an employee, they can be fired or their duties can be curtailed. And so, because this is a strange quo warranto action the issue of Mr. Jasman's ability to serve and Mr. Morrison's ability to run his office are very much intertwined. So that is the caveat. **But in the abstract, theoretical, hypothetical answer to the question is Mr. Jasman would not be entitled to his attorney fees to defend a quo warranto action.**

Court of Appeals, Div. III oral argument, *Lee v. Jasman*, No. 31519-3-III (Feb. 5, 2014), at 37 min, 38 sec., audio recording by Court of Appeals, available at http://www.courts.wa.gov/appellate_trial_courts/appellateDockets/index.cfm?fao=appellateDockets.showOralArgAudioList&courtId=a03&docketDate=20140205 (Last visited May 9, 2017).

1. A Claim for Declaratory Relief Is Moot.

Mr. Jasman's claim for declaratory relief is moot and was properly dismissed by the trial court. "A case is moot if a court can no longer provide effective relief." *Orwick v. City of Seattle*, 103 Wn.2d 249, 253, 692 P.2d 793 (1984). The issue of mootness "is directed at the jurisdiction of the

court.” *Citizens for Financially Responsible Gov’t v. City of Spokane*, 99 Wn.2d 339, 350, 662 P.2d 845 (1983). In *Orwick*, the Supreme Court held that, “[a]lthough the superior court had jurisdiction to hear petitioners’ claim for injunctive and declaratory relief, the claim was properly dismissed because it was moot as to these petitioners. A case is moot if a court can no longer provide effective relief.” 103 Wn.2d at 252–53 citing *State v. Turner*, 98 Wn.2d 731, 733, 658 P.2d 658 (1983); *In re Cross*, 99 Wn.2d 373, 377, 662 P.2d 828 (1983).

Mr. Jasman’s claim for declaratory relief is moot as a) the County properly concluded that it had no duty and was not authorized to indemnify Plaintiff Jasman; b) the Supreme Court affirmed the trial and appellate courts; and c) the *quo warranto* action is now final. Mr. Jasman’s counsel agreed that the final decision in *Lee v. Jasman* may render this action moot. (CP 122, ¶ 2). There is no recourse for recovery pled in Mr. Jasman’s Complaint that he had not already requested in the *quo warranto* action and which would be precluded and mooted by the Supreme Court’s opinion.

2. Jasman’s Petition for Writ of Certiorari Is Moot and Fails as a Matter of Law

In alternatively pleading for a writ of certiorari, Mr. Jasman requested that “[a] writ of certiorari should issue, **the Court should review whether Defendants violated RCW 4.96.041**, and order them to defend

and indemnify Jerry Jasman for the quo warranto action.” (CP 7, ¶ 28) (emphasis added). “A writ of review shall be granted by any court, except a municipal or district court, when an inferior tribunal, board or officer, exercising judicial functions, has exceeded the jurisdiction of such tribunal, board or officer, or one acting illegally, or to correct any erroneous or void proceeding, or a proceeding not according to the course of the common law, and there is no appeal, nor in the judgment of the court, any plain, speedy and adequate remedy at law.” RCW 7.16.040.

The “one who seeks to demonstrate that action is arbitrary and capricious must carry a heavy burden.” *Pierce County Sheriff v. Civil Serv. Comm’n of Pierce County*, 98 Wn.2d 690, 695, 658 P.2d 648 (1983). Mr. Jasman cites *Citizens for Mount Vernon v. City of Mount Vernon*, 133 Wn.2d 861, 875–76, 947 P.2d 1208 (1997) to show that government action is arbitrary and capricious if there are insufficient reasons for treating similar situations differently. This presumes that Mr. Jasman had some sort of right to indemnification. Undisputedly, he did not. *Citizens for Mt. Vernon* is concerned with the dichotomy between public and private interest in zoning. *Id.* The public interest in this case was with the County in removing Mr. Jasman from performing job functions he was doing illegally, hence the *quo warranto* action. In responding to a request for the appointment of special prosecutor, the Commissioners properly

relied on the opinion letter of the Special Prosecutor Douglas Vanscoy in concluding that Grant County has no standing ordinance or code provision concerning the defense of litigation. (CP 612). Through its prosecuting attorney, a county has direct legislative authority to make the determination about whether or not to appoint a special prosecutor under RCW 4.96.041(2).” *Colby v. Yakima Cty.*, 133 Wn. App. 386, 391, 136 P.3d 131, (2006) “It is not this court’s function to second guess the prosecuting attorney’s determination following such delegation of legislative authority.” *Id.* citing *Aetna Life Ins. Co. v. Wash. Life & Disability Ins. Guar. Ass’n*, 83 Wn.2d 523, 529, 520 P.2d 162 (1974).

Appointment of a special prosecutor to defend Mr. Jasman needed to occur by the County Prosecutor or the Court. (CP 616). Lacking the authority under RCW 4.96.041, the Commissioners declined to compensate Mr. Jasman for his attorney fees. The Supreme Court affirmed the trial court’s ruling that neither Mr. Jasman nor the Coroner should be appointed a special prosecutor. *See Grant Cty. Prosecuting Attorney v. Jasman*, 183 Wn.2d at 648. With the *quo warranto* action having been decided and affirmed by both the Court of Appeals and Washington Supreme Court, Mr. Jasman alternative claim for a writ of certiorari is moot as he cannot demonstrate that the “board or officer, or one acting illegally, or to correct any erroneous or void proceeding, or a proceeding not according to the

course of the common law.” RCW 7.16.040. In finding that the Commissioners did not violate RCW 4.96.041 and that Mr. Jasman was not entitled to a special prosecutor, Grant County cannot be ordered to pay for Mr. Jasman’s attorney fees. A writ of review of an issue that the Court has already reviewed and decided is improper and Mr. Jasman’s cause of action was appropriately dismissed.

C. JASMAN’S CLAIM THAT A SEPARATE, NON-STATUTORY, NON-REGULATORY DUTY BASED ON THE COMMISSIONER’S POLICE POWER AUTHORITY EXISTED WAS UNPLED AND FAILS AS A MATTER OF LAW.

Mr. Jasman’s claim for indemnification fares no better under his vague proclamation that Grant County must pay his attorney’s fees based on a non-statutory, non-regulatory duty through Grant County’s police power authority. First, Mr. Jasman never requested that Grant County indemnify him under an alternative duty within the scope of Grant County’s police power authority. This alternative, non-statutory, non-regulatory duty was never pled in Mr. Jasman’s complaint. Mr. Jasman’s claim for *writ of certiorari* is limited to the application of RCW 4.96.041. Second, Mr. Jasman cites no authority to support a non-statutory, non-regulatory duty that arises in the context of a *quo warranto* action where he was sued individually, not in his capacity as deputy coroner or chief investigator. *Lee v. Jasman*, 183 Wn. App. at 66. Even if that were the case, Mr. Jasman was

not sued for damages. The authority that Mr. Jasman cites, which is inapplicable in this action, specifically relates to the utilization of the police power authority where the employee incurs a loss in the discharge of an official duty in which the County has an interest. None of those factors applied in the *quo warranto* action.

1. A Claim for Indemnity Under an Alternative Duty Based on the Commissioners' Police Power Authority Was Never Raised in Jasman's Complaint.

In responding to the County's motion for summary judgment to dismiss his claim, Mr. Jasman asserted for the first time that he was entitled to declaratory judgment and/or a writ of certiorari as he contended the Commissioners had authority to defend him under a non-statutory, non-regulatory duty because of their police power authority. The Court should not consider Mr. Jasman's claim as it is not pled in his Complaint. "A pleading is insufficient when it does not give the opposing party fair notice of what the claim is and the ground upon which it rests." *Saluteen-Maschersky v. Countrywide Funding Corp.*, 105 Wn. App. 846, 857, 22 P.3d 804 (2001) citing *Lewis v. Bell*, 45 Wn. App. 192, 197, 724 P.2d 425 (1986). "Because the complaint failed to provide fair notice of the claims, the trial court's decision to strike the claims was not an abuse of discretion." *Id.*; see also *Lewis v. Bell*, 45 Wn. App. 192, 197, 724 P.2d 425 (1986) ("Because the Lewises based their claim for relief solely on the tort of

outrage, it cannot be said that the court or the Bells were put on notice that relief was being sought for an alleged tortious assault.”).

2. The Commissioners Had No Authority Under the “Police Power” Doctrine Because Jasman Was Not Sued for Damages.

Although the Commissioners contend that the alternative duty asserted by Mr. Jasman is not properly pled within his Complaint and should not be considered, the Commissioners nevertheless lacked authority to indemnify Mr. Jasman. With limited and generalized authority, Mr. Jasman states that under its “police power”, a municipality such as the County “has authority to indemnify employees for legal fees incurred in defending against actions based upon acts within the scope of employment.” *Appellant’s Opening Brief*, pp. 14-15. While the Commissioners submit that Mr. Jasman was not acting within the scope of his employment as he could not legally serve as deputy coroner or sign death certificates, Mr. Jasman ignores that his own cited authorities require that the employee must incur a loss as a result of discharging those duties. “Where a municipal officers incurs a loss in the discharge of an official duty in a matter in which the corporation has an interest, and in the discharge of a duty imposed or authorized by law, and in good faith, the municipal corporation has the power to appropriate funds to reimburse that officer, unless expressly

forbidden.” See 3 *McQuillin Municipal Corp.* § 12.173.25 (2d ed.) as cited by Mr. Jasman in Appellant’s Opening Brief, p. 15(emphasis added).

Moreover, the related Washington case law used by Mr. Jasman relying on *McQuillin* holds that the employee must be sued for damages as a result of performing a good faith discharge of his or her duties:

Hospital Districts do not have statutory authority to indemnify their officers. However, the parties agree, as we think they must, that public hospital districts have the common law authority to indemnify their officers for loss incurred in the good faith discharge of their duties.

Washington Hosp. Liab. Ins. Fund v. Pub. Hosp. Dist. No. 1 of Clallam Cty., 58 Wn. App. 896, 899, 795 P.2d 717 (1990)(emphasis). “Reading *Washington Pub. Utils. Sys.* as we do to permit indemnification in a direct action, and given the Hospital District’s common law authority to indemnify its officers, we conclude that the Hospital District is permitted by law to indemnify its treasurer for a loss caused by its own claim.” *Id.* at 896.

Washington Hosp. Liab. Ins. Fund affirms the Commissioners’ position that : a) Mr. Jasman did not get sued for damages or incur a loss; b) the County did not have an interest in what he was doing, it was seeking to stop him from performing illegal activity, and c) Mr. Jasman did not act in good faith as he was specifically advised *not* to continue to perform duties

which he was not legally allowed to perform, but chose to do so anyway.³ *Washington Hosp. Liab. Ins. Fund* is a unique case in that the hospital district sued its own treasurer for losses on investments in order to invoke its insurance policy to receive indemnification. 58 Wn. App. at 899. Mr. Jasman has not shown how the common law authority cited by *Washington Hosp. Liab. Ins. Fund* applies to the suit brought against him.⁴ Here, Grant County did not seek to oust Mr. Jasman to recoup funds or trigger insurance, but rather simply to oust him from a job title he was not permitted to hold and enjoin him from illegal conduct.

³ Mr. Jasman's insurance analogy contained on page 18, footnote 3 of Appellant's Opening Brief is inapposite. Mr. Jasman argues that a "potential for liability" is sufficient to trigger indemnification in the insurance realm should be applied to this action. Under RCW 7.56.040, the prosecuting attorney bringing a *quo warranto* action does not have authority to bring a claim for damages, only a third party who was deprived of a position does. Further, in the insurance context, "The duty to defend 'arises when a complaint against the insured, construed liberally, alleges facts which could, if proven, impose liability upon the insured within the policy's coverage.'" *Unigard Ins. Co. v. Leven*, 97 Wn. 417, 425, 983 P.2d 1155 (1999). *Truck Ins. Exch. v. Vanport Homes, Inc.*, 147 Wn.2d 751, 760, 58 P.3d 276 (2002). There were no facts alleged in the *quo warranto* action which would have imposed liability on Mr. Jasman and entitled the County to monetary damages.

⁴ At the risk of a lengthy discussion of Washington law concerning the statutory authority of public hospitals having authorization to indemnify their employees, at the time of the Court of Appeals, Division II's opinion in *Washington Hosp. Liab. Ins. Fund*, the public hospital did not have such statutory authorization. However, in 1993, RCW 36.16.134, the predecessor to RCW 4.96.041, was amended to change the statute from county employees to "local government entities" which encompassed public hospitals. Laws of 1993 ch. 449, § 4. RCW 36.16.134 was then recodified as RCW 4.96.041 pursuant to Laws of 1993 ch. 449, § 14. Accordingly, Jasman's outdated basis for Grant County to indemnify him pursuant to *McQuillin* and *Washington Hosp. Liability* is simply the same argument as seeking indemnification under RCW 4.96.041.

3. Jasman Was Not Acting within the Scope of His Duties; the Quo Warranto Action Was Specifically to Oust Him from Holding a Position He Was Not Entitled to Perform and from Performing Illegal Acts.

The trial court properly found that a continuance of the summary judgment motion and additional discovery into other appointments of special prosecutors to assist the County Prosecutor was immaterial and unnecessary as the gateway issue is whether or not the Commissioners were authorized to indemnify Mr. Jasman to begin with. If the Commissioners were not authorized to indemnify him, they could not exercise their discretion in utilizing their administrative authority. “Boards of county commissioners are creatures of the statute. They must pursue and exercise the powers conferred upon them in strict compliance with the statute.” *State ex rel. Banks v. Drummond*, 187 Wn.2d 157, 175, 385 P.3d 769 (2016), *as amended* (Feb. 8, 2017), *reconsideration denied* (Feb. 9, 2017) citing *Nw. Improvement Co. v. McNeil*, 100 Wash. 22, 28, 170 P. 338 (1918). As noted above, Mr. Jasman does not qualify under either RCW 4.96.041 or under an alternative, non-statutory basis constructed on the Commissioners’ police power authority.

Mr. Jasman’s comparison of his request for attorney’s fees to the appointment of a special prosecutor to assist the county prosecutor in

defending disciplinary actions is an improper comparison. The authority to appoint a special prosecutor in that context is not the same as Mr. Jasman's.

In *Gage*, we held that the general power to “ ‘sue and be sued’ “ allows a local government entity to employ outside counsel “when ... the prosecuting attorney cannot act and the necessity for legal aid is urgent.” *Id.* at 285, 181 P. 855 (quoting Laws of 1909, ch. 97, § 2, at 265). Taken together with *Reed* and *Martin*, *Gage* refines our previous holdings concerning the power to hire outside counsel: To perform their own duties, commissioners understandably require the assistance of counsel, and when the prosecuting attorney is unable to perform his duties, the board's general powers statutes fill the gap.

State ex rel. Banks v. Drummond, 187 Wn.2d at 176–77. “We can harmonize *Reed* and *Gage* with our holdings in *McNeil* and *Hunt* by understanding that, in order for a board to hire an outside party to perform duties delegated to a public official, that official must be, not simply undesirable, but truly unavailable or unable to perform.” *Id.* at 77.

Although not material to the issues before the Court, under *State ex rel. Banks*, for example, the Commissioners are authorized to appoint a special prosecutor to defend the county prosecutor in a disciplinary proceeding because the county prosecutor's time spent defending a disciplinary action would make him unable to perform his traditional duties as county prosecutor. Applying the analysis of *State ex rel. Banks* to Mr. Jasman (or Coroner Morrison) does not improve Mr. Jasman's claim. If Coroner Morrison showed that he was unavailable or unable to perform the

duties of coroner, Grant County has the authority to hire an outside party to perform the duties of coroner. The authority for appointing Mr. Jasman an attorney is totally unrelated and controlled by RCW 4.96.041.

The Court of Appeals in the *quo warranto* action determined that neither Mr. Jasman nor Coroner Morrison were entitled to a special prosecutor. Logically, if Prosecutor Lee was not disabled and conflicted out from the *quo warranto* action, Prosecutor Lee would not have been obligated to defend Mr. Jasman or Coroner Morrison. *See Lee v. Jasman*, 183 Wn. App. at 65-66 (“We recognize that Angus Lee held a disability in representing Jerry Jasman and the intervenor Craig Morrison, since Lee was the party forwarding the *quo warranto* action. So we must decide if the prosecuting attorney held a duty to represent the two in this suit.”). “Appointing a special prosecutor would serve no purpose now. So the question on appeal is whether Grant County should reimburse the two for attorney fees incurred before the superior court and the court of appeals?” *Id.* at 65 (emphasis added). “We deny defendant Jerry Jasman and intervenor Craig Morrison fees at the trial court and on appeal.” *Id.* at 72.

The Supreme Court affirmed the Court of Appeal’s holding, “The Court of Appeals affirmed the trial court’s decision denying appointment of a special prosecutor. *Lee*, 183 Wn. App. at 66–67, 332 P.3d 1106. We affirm.” *Grant Cty. Prosecuting Attorney v. Jasman*, 183 Wn.2d at 646.

Accordingly, no matter the legal theory pursued by Mr. Jasman for indemnification, the Supreme Court's decision in the *quo warranto* action that no special prosecutor would be allowed to defend Mr. Jasman necessarily means that the Commissioners were not obligated to appoint a special prosecutor or pay Jasman's attorney's fees. Additional discovery into other County decisions will not disrupt the ruling of the Supreme Court. There is no basis or justification to overrule the law of that case to now find that Mr. Jasman is, in fact, entitled to a special prosecutor. Further discovery was not required or warranted.

4. Jasman Conflates the Prosecutor's Filing of the Quo Warranto Action with the Commissioners' Authority to Indemnify Him.

In arguing that he was entitled to indemnification by the County to defend against the *quo warranto action*, Mr. Jasman argues that "From the perspective of Coroner Morrison, the *quo warranto* action 'is politically motivated and shows evidence of the longstanding harassment' his office has received from Prosecutor Lee's office since his election.'" (CP 1295). As matter of law this is not a sufficient basis to support Mr. Jasman's "arbitrary and capricious" claim and certainly insufficient to warrant additional discovery. Coroner Morrison's personal feelings and opinions about Prosecutor Lee aside, there can be no dispute that a) Prosecutor Lee advised Mr. Jasman and Coroner Morrison that Jasman was prohibited from

acting deputy coroner or signing death certificates; b) Mr. Jasman and Coroner Morrison ignored Prosecutor Lee's advice; c) Prosecutor Lee brought the *quo warranto* action against Mr. Jasman in the County's best interest; d) an outside special prosecutor confirmed Prosecutor Lee's analysis; and e) the action originally brought by Prosecutor Lee has been affirmed at *every* level of the judiciary. Mr. Jasman's suspicions or beliefs about unfairness have been resoundingly debunked:

Removal from office is simply a consequence of a reasonable and sound public policy, and a condition imposed upon a public official in furtherance of the public interest in good government.

Lee v. Jasman, 183 Wn. App. at 44.

“Jerry Jasman was not sued in his official capacity since Grant County was not the target of the *quo warranto* action. Instead, the county prosecuting attorney brought the action to **benefit the county.**” *Id.* at 66 (emphasis added). “If anything, Morrison **caused harm to Grant County** by the hiring of one disqualified from office and **further harm would fall on the taxpayers of the county if his fees were paid by Grant County.**” *Id.* at 67 (emphasis added). Additional discovery premised on a baseless theory that Prosecutor Lee had an ulterior motive in bringing the *quo warranto* action or advising the Commissioners that Mr. Jasman was not entitled to indemnification by Grant County is unwarranted.

D. THE BOARD COMMISSIONERS REQUEST AN AWARD OF ATTORNEY'S FEES.

RAP 18.9(a) authorizes the appellate court, on its own initiative or on motion of a party, to order a party or counsel who files a frivolous appeal “to pay terms or compensatory damages to any other party who has been harmed by the delay or the failure to comply or to pay sanctions to the court.” Appropriate sanctions may include, as compensatory damages, an award of attorney fees and costs to the opposing party. *Rhinehart v. Seattle Times, Inc.*, 59 Wn. App. 332, 342, 798 P.2d 1155 (1990); *see also Yurtis v. Phipps*, 143 Wn. App. 680, 697, 181 P.3d 849 (2008)(finding that issues in the case had been raised on three prior occasions and the case was so devoid of merit that there was no reasonable possibility of appellant’s success warranting RAP 18.9(a) sanctions).

Here, Mr. Jasman was a defendant in the *quo warranto* action brought by the Grant County Prosecutor because of his failure to abide by his plea arrangement in a criminal case. He continued to perform duties of an elected official, was appropriately advised to cease signing death certificates, and refused to do so. Only after a lawsuit was brought against him to enjoin him from acting as deputy coroner did he abstain from such conduct. The trial court, Court of Appeals, and Supreme Court all concluded that Mr. Jasman’s defense was without merit. Mr. Jasman forced Grant County

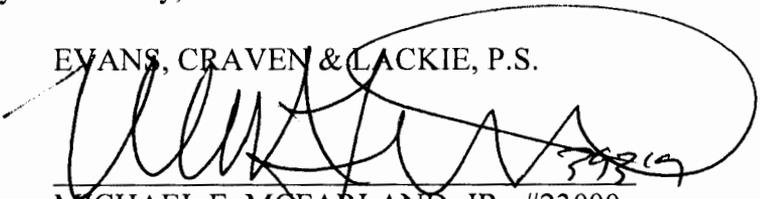
to bring a *quo warranto* action against him because of his refusal to stop signing death certificates. Now Mr. Jasman, for a fifth time, asks the Court to ignore the law and force Grant County to indemnify him in an action Grant County had to bring against him. Grant County and the Board Commissioners are entitled to their attorney's fees for defending against Mr. Jasman's frivolous, meritless, and moot lawsuit and appeal.

V. CONCLUSION

Mr. Jasman's current lawsuit was nothing more than a re-hash of prior arguments to the Court of Appeals, Supreme Court, and the trial court before the matter was stayed. Mr. Jasman continues to ignore the prerequisites that must exist in order for the Commissioners to indemnify a county employee such as him in a legal action. "Where a statute does not specifically authorize or obligate the county to pay, payment is prohibited." *Moore v. Snohomish Cty.*, 112 Wn.2d 915, 921 , 774 P.2d 1218 (1989). There is no mechanism or authority that Mr. Jasman was entitled to indemnification and a defense in the *quo warranto* action brought against him. Accordingly, Respondents Grant County, the Board of Commissioners for Grant County, Richard Stevens, Carolann Swartz, and Cindy Carter respectfully request that the Court affirm the trial court's dismissal of Mr. Jasman's Complaint and award Respondents' reasonable attorney's fees and costs.

Dated this 12th day of February, 2018.

EVANS, CRAVEN & LACKIE, P.S.

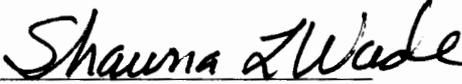


MICHAEL E. MCFARLAND, JR., #23000
SAMUEL C. THILO, #43221
Attorneys for Respondents

CERTIFICATE OF SERVICE

The undersigned certifies under penalty of perjury under the laws of the State of Washington, that on February 12, 2018, I caused to be delivered to the address below a true and correct copy of RESPONDENTS' BRIEF.

George M. Ahrend
Ahrend Law Firm, PLLC
100 E. Broadway Avenue
Moses Lake, WA 98837
Counsel for Appellant


SHAUNA WADE