

79966-1

NO. 255271
COURT OF APPEALS

DIVISION III

OF THE STATE OF WASHINGTON

HOWARD F. DELANEY,

APPELLANT.

v.

BOARD OF SPOKANE COUNTY COMMISSIONERS, et al,

RESPONDENT,

APPEAL FROM THE SUPERIOR COURT
OF SPOKANE COUNTY

BRIEF OF RESPONDENT

STEVEN J. TUCKER
Prosecuting Attorney

JAMES P. EMACIO
Chief Civil Deputy Prosecuting Attorney

DAN L. CATT, WSBA #11606
Deputy Prosecuting Attorney
Attorneys for Respondent

1116 West Broadway
Spokane, Washington 99260
(509) 477-5764

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I.

APPELLANT'S ASSIGNMENTS OF ERROR

1. Appellant assigns error to finding of fact (11), stating that “Defendant Board of County Commissioners did not under Resolution No. 02-0403 establish and/or fund the 10th Spokane County District Court Judge position as provided for under SB 6596 (Laws of 20002, ch. 135).” CP 102.

2. Appellant assigns error to that part of conclusion of law (4), providing that “Engrossed Substitute House Bill No. 1881 (Laws of 1991, ch. 313 § 2, 3) and House Bill No. 1467 (Laws of 1991), ch. 354 § 1) amending RCW 3.34.101, RCW 3.34.020 and adding a new section denominated as RCW 3.34.101, RCW 3.34.020 and adding a new section denominated as RCW 3.34.025 did not create a legal duty requiring Defendant Board of County Commissioners of Spokane County to establish and/or fund the 10th District Court Judicial position created by the Legislature under SB 6596 (Laws of 2002, ch. 135). Defendant Board of County Commissioners of Spokane County retains the discretionary right to establish and/or fund the 10th District Court Judicial position created by the Legislature under SB 6596 (Laws of 2002, ch. 135) which amended RCW 3.34.010.” CP 103.

3. Appellant assigns error to conclusion of law (5), which provides: “Reading RCW 3.34.020, .025 together, the Defendant Board of Spokane County Commissioners has discretion to create the 10th District Court Judicial position, and has two years from creation to phase-in funding of that position pursuant to RCW 3.4.025.” CP 103.

4. Appellant assigns error to conclusion of law (6), which provides: “*State v. Yakima County Commissioners*, 123 Wn.2d 451, 869 P.2d 56 (1994) stands for the proposition that every additional district court position created by the legislature after the base number of judges established by Engrossed Substitute House Bill No. 1881 (Laws of 1991, ch. 313 § 2, 3) and House Bill No. 1467 (Laws of 1991, ch. 354 § 1) for Spokane County Nine (9). The 10th District Court Judicial position for Spokane County created by the Legislature under SB 6596 (Laws of 2002, ch. 135) required approval by the Defendant Board of Spokane County Commissioners under RCW 3.34.025.” CP 103.

5. Appellant assigns error to conclusion of law (7), which provides: “The 1991 Amendments to RCW 3.34.010 established a baseline number of judicial positions in Spokane County at nine (9); any deviation from the number of judicial positions in 1992 are required to follow the mechanism set forth in RCW 3.34.020, .025 – which is contingent upon the Defendant

Board of Spokane County Commissioners approving to fund any increase from nine (9).” CP 103-104.

6. Appellant assigns error to conclusion of law (8), which provides: “Defendant Vicky M. Dalton, Spokane County Auditor, has no legal duty to accept Appellant’s Declaration of Candidacy for the 10th District Judicial position and place Appellant’s name on the 2006 ballot for such position because Defendant Board of Spokane County Commissioners has not established and/or funded the 10th District Court Judicial position.” CP 104.

7. Appellant assigns error to the Superior Court’s order denying Appellant’s Writ of Mandamus directed toward Defendants Vicky M. Dalton and the Spokane Board of County Commissioners. CP 104.

II.

RESPONDENT'S STATEMENT OF ISSUES PRESENTED

Whether RCW 3.34.010 creates a legal duty for the Spokane County Auditor to place a 10th full time District Court Judge position on an election ballot and accept Appellant’s Declaration of Candidacy when the Board of County Commissioners of Spokane County has not establish and agreed to fund the 10th full time District Court Judge position as required by RCW 3.34.025 and evidenced by Spokane County Resolution No. 02-0403.

III.

COUNTER-STATEMENT OF THE CASE

On July 28, 1991, the Legislature passed engrossed Substitute House Bill No. 1881 and House Bill No. 1467 (Laws of 1991, ch. 313 § 2, 3; Laws of 1991, ch. 354 § 1). These laws substantially modified the methodology of determining the number of full time district court judges to be elected in each county. In addition to establishing the **base number** of full time district court positions that each county was required to fill, the legislation created a procedure to follow when changing the number of full time district court judges **above the base**. The **base number** of District Court Judges for Spokane County was increased by the 1991 legislation, effective January 1, 1992 from 8 to 9.

Following the 1991 legislation, any increase in the number of full time district court judges **above the base** required:

1. A recommendation from the Washington State Supreme Court to the legislature on the need for an increase in the number of full time judges based upon an "objective workload analysis," taking into account available judicial resources and caseload activity for the court. (RCW 3.34.020(1)).
2. Amendment of RCW 3.34.010 increasing the number of full time district court judges based upon the recommendation of the Washington State Supreme Court.

3. Revision of any District Court Districting Plan as provided for under chapter 3.38 RCW. (*State v. Yakima County Commissioners*, 123 Wn.2d 451, 460, 869 P.2d 56 (1994)).
4. Approval of any increase in number full time district court judges by the legislative authority of the affected county **and** an agreement that the funds necessary for the additional position shall come from county funds without reimbursement from the state. (RCW 3.34.025).

In 2002, the Legislature passed SB 6596 (Laws of 2002, ch. 138).

That Bill increased the number of full time district court judges in Spokane County from 9 to 10. The legislature's action satisfied requirement 1. (Supreme Court recommendation) and 2. (Amendment increasing the number). What remained were the completion of requirements 3 and 4 before the position could be filled.

Consistent with the provisions of the 1991 Legislation, which was codified in RCW 3.34.020, the Spokane County District Court Districting Committee met on March 7, 2002, to consider an amendment to the Spokane County Districting Plan to, among other matters, increase the number of full time District Court positions to be elected in Spokane County from 9 to 10. After their meeting, the Spokane County District Court Districting Committee, consistent with RCW 3.38.040(2) forwarded the proposed their recommendations to the Board of County Commissioners.

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One such recommendation was as follows:

(Underlined language to be added – ~~stricken~~ language to be deleted. Bolded language recommended by Prosecutor's Office subsequent to recommendation of Redistricting Committee.)

JUSTICE DISTRICT COURT DISTRICTS

.....

1.16.020 Number of ~~justices~~. Judges.

~~—The number of justices of the peace to be elected in the Spokane County District shall be nine full time justices of the peace.~~

There shall be ten elected full-time judges in the Spokane County District.

.....

(See, Declaration of Daniela Erickson, Exhibit "1"). CP 46-52.

Upon receipt of the recommendation from the Spokane County District Court Districting Committee, the Board of County Commissioners, consistent with RCW 3.38.030, set a public hearing on April 16, 2002, to consider the proposed amendment. The Notice of Public Hearing set forth in Spokane County Resolution No. 02-0301 included the above proposed change as well as the following language:

Any person may appear at the time, place and date set forth herein above and present testimony on the above changes to the Spokane County District Court District Plan. The Board reserves the right to consider additional changes in the Plan as a result of the testimony submitted at the public hearing. (Emphasis added).

Subsequent to the receipt of public testimony, the Board executed Resolution No. 02-0403. That Resolution included the following language:

NOW, THEREFORE, BE IT HEREBY RESOLVED by the Board of County Commissioners of Spokane County, that the Board does hereby adopt those amendments to the Spokane County District Court Districting Plan as set forth in the advertised NOTICE OF PUBLIC HEARING under Resolution No. 02-0301.

In making such decision, the Board does hereby adopt each and every recital herein above as a finding of fact to support the decision. Additionally, the Board notes that by amending the Spokane County District Court Districting Plan to increase the number of full-time District court judges from nine (9) to ten (10) in Spokane County, the Board is not establishing the additional tenth position. This position will be established subsequent to the effective date of SB 6596,* ~~the City of Spokane's agreement to fund ½ of the salary to include all benefits of such position as well as ½ the salary to include the benefits of the bailiff assigned to the position and the Board of County Commissioners formally passing a Resolution establishing such position.~~

*and at the sole discession [sic] of the Board of County Commissioners.

(See, Declaration of Daniela Erickson, Exhibit No. "3"). CP 57-60.

The third legislative requirement (adoption of an amended Districting Plan) is governed by RCW 3.38.030 which includes recognition The Board of County Commissioners has discretion within limits to modify, revise or amend districting plans. It is clear from the provisions of Resolution No. 02-00403, the Board of County Commissioners did **not**

establish the 10th full time district court judge position, nor did they document an agreement to **fund the position**. (See, Declaration of Daniela Erickson, Paragraph No. 4, and Marshall Farnell, Paragraph No. 3).

The total projected initial costs to fund the 10th full time district court judge position to include (i) personnel (salary and benefits), (ii) M&O, and (iii) construction and design of a multi-use courtroom is \$1,279,462. The annualized cost thereafter for (i) personnel (salary and benefits) and (ii) M&O is \$389,462. (See, Declaration of Marshall Farnell, Paragraph No. 2). These increased costs were before the Board of County Commissioners at a time when the impact of the incorporation of Spokane Valley upon the judiciary was yet unknown (See, Transcript of Judge Nielson in CP at 109).

On July 14, 2006, some four (4) plus years after the Board of County Commissioners adopted Resolution No. 02-0403 adopting an amendment to the Districting Plan and recognizing the 10th full time District Court Judge position **but not** formally establishing or funding the position, Appellant filed an application for a Writ of Mandamus. The Proposed Writ requested the Court Order:

“ . . . the Spokane County Auditor , Vicky M. Dalton, accept Appellant’s properly filed declaration of candidacy for the tenth district court judicial position and place Appellant’s name on the 2006 ballot for said position as required by RCW 3.34.010 and Spokane County Code 1.16.020. . . ”

(Appellant's Writ of Mandamus).IV.

On July 21st, 2007, visiting Stevens County Superior Court Judge, the Honorable Allen C. Nielson, denied Mr. Delaney's writ based upon finding and conclusions that Spokane County Auditor, Vicky M. Dalton, was under no duty to accept Appellant's tendered declaration of candidacy because the Spokane County Board of County Commissioners had not established and agreed to fund the tenth district court judicial position and was under no duty to do so.

IV.

SUMMARY OF ARGUMENT

Although the Washington State Legislature amended RCW 3.34.010 in 2002, which increased the number of full time District Court Judges from 9 to 10 in Spokane County, the conditions precedent to the formal establishment, funding, and filling of the 10th position under RCW 3.34.025 have not been met. Spokane County Resolution No. 02-0403, merely amended the Districting Plan pursuant to RCW 3.38.030 and .040. The Board of County Commissioners have not formally approved or agreed to fund the 10th position - they have merely amended the Districting Plan. Approval, agreement to fund and ultimate creation of the 10th position is discretionary with the Board of County Commissioners. Until the Board of

County Commissioners formally documents their approval and agreement to fund, the two (2) year time frame to fill the position is not activated. Any interpretation the two (2) year time frame begins with the amendment of RCW 3.34.010 results at most in the expiration of the approval of the 10th position. Until the Board of County Commissioners formally approves and funds the 10th position, the Spokane County Auditor has no “duty” to place the position on an election ballot or accept Appellant’s Declaration of Candidacy. Accordingly, the Superior Court properly denied the writ.

V.

ARGUMENT

A. REQUIREMENTS IN CONJUNCTION WITH WRIT OF MANDAMUS.

In the case before this Court, the Honorable Allen C. Nielson determined that Appellant was a beneficially interested party with no other plain speedy and adequate remedy at law. Nonetheless, the Court held issuance of the Writ was inappropriate because neither the Auditor or the Board of County Commissioners were subject to a duty to place the 10th, full time District Court position on an election ballot. A Writ of Mandamus is a Constitutional and statutory cause of action provided for in chapter 7.16 RCW. Mandamus remains an extraordinary remedy to be used sparingly. *Burg v. Seattle*, 32 Wn. App. 286, 290, 647 P.2d 517 (1982).

Mandamus issues *only* against a public officer in his official capacity to compel a *duty imposed by law*. *Eugster v. City of Spokane*, 118 Wn. App. 383, 403-404, 76 P.3d 741 (2003); *Adams v. Seattle*, 31 Wn.2d 147, 151, 195 P.2d 634 (1948); *State ex rel. Bloedel-Donavan Lumber Mills v. Clausen*, 122 Wash. 531, 211 Pac. 281 (1922). RCW 7.16.160 recognizes this general rule and provides as follows:

RCW 7.16.160. Grounds for granting writ.

It may be issued by any court, except a district or municipal court, to any inferior tribunal, corporation, board or person, to compel the performance of an act which the law especially enjoins as a duty resulting from an office, trust or station, or to compel the admission of a party to the use and enjoyment of a right or office to which the party is entitled, and from which the party is unlawfully precluded by such inferior tribunal, corporation, board or person. (Emphasis added).

Mandamus will **not lie** to compel the performance of acts or duties that call for the exercise of **discretion** on the part of public officers. *Lillions v. Gibbs*, 47 Wn.2d 629, 633, 289 P.2d 203 (1955), *O'Connor v. Matzdorff*, 76 Wn.2d 589, 458 P.2d 154 (1969). While a court may issue a Writ of Mandamus ordering an official to perform a discretionary act, a court cannot direct the outcome of the act or manner in which an official exercises discretion. Id.

An applicant bears the burden of proving all elements to justify mandamus. *Eugster v. City of Spokane*, 118 Wn. App. 383, 403, 76 P.3d 741 (2003), citing, *Mallard v. U. S. Dist. Court*, 490 U.S. 296, 309, 109 S. Ct. 1814, 104 L. Ed.2d 318 (1989).

B. THE SPOKANE COUNTY AUDITOR DOES NOT HAVE A LEGAL DUTY TO ACCEPT APPELLANT'S DECLARATION OF CANDIDACY FOR THE 10th FULL TIME DISTRICT COURT JUDGE POSITION

Appellant asserts RCW 3.34.010 creates a "legal duty" for the Spokane County Auditor because, once amended to allow 10 full time District Court Judges in Spokane County, it mandates the 10th position be filled within two (2) years. In support of the assertions, Appellant essentially proffers four grounds.

First, Appellant argues the Board of County Commissioners approved, agreed to fund, and thereby created the position by the adoption of an amendment to the Districting Plan in Spokane County Resolution No. 02-0403.

Second, Appellant asserts that even if no formal documentation of the Board of County Commissioners approve, agree to fund and thereby create the 10th position under Resolution No. 02-0403 can be located, it doesn't matter because this Court should construe such action based on testimony referenced in Senate and House bill histories. In support of this

assertion, Appellant points to the lobbying testimony before the legislature for approval of the position.

Third, Appellant asserts that even if the Board of Commissioners have discretion in the matter, once the Legislature amended RCW 3.34.010 any discretion ceased to exist and the position had to be filled.

Under all the arguments, Appellant further asserts the Superior Court's reasoning was faulty, RCW 3.345.010 mandates the position be filled and the time granted under RCW 3.34.025 to implement the position has passed and therefore a writ is proper.

Appellant's arguments are not well founded.

To fully understand the procedures necessary to create additional district court judges, one must refer back to the 1991 Session Laws. In 1991, the Legislature **modified** RCW 3.34.010, 3.34.020, and **added** a new section codified as 3.34.025.

Prior to the 1991 legislative changes, and as acknowledged in *State ex rel. Royal v. Bd. of Yakima County Comm'Rs, supra* at 456 (footnote 13, 14), the Legislature established the maximum number of district court judges to be elected in each county. The actual number of judges elected was based upon the population of a specific county.

In 1991, the Legislature radically changed the procedures necessary to create additional full time District Court Judges. In the same legislation, they also increased the **base number** of full time district court judges in Spokane County from 8 to 9.

Under the new methodology, no increase in the number of judges established by the 1991 legislation could occur unless four (4) conditions were satisfied.

First, as set forth in RCW 3.34.020, the Supreme Court, using a “weighted caseload analysis,” must make a recommendation to increase the number of judges to the Legislature. (RCW 3.34.020(1)). It is undisputed the facts before this Court establish the first condition was met

Second, upon receipt of the recommendation from the Washington State Supreme Court, the Legislature must approve any increase in the number of full time district court judges. (RCW 3.34.020(4)). Clearly, the 2002 amendment establishes this second condition was met.

Third, in instances where there is a District Court District under chapter 3.38 RCW, the District Court Districting Plan must be modified to address any increase in the number of full time District Court Judges. (*State ex rel. Royal v. Bd. of Yakima County Comm’Rs, supra* at 458). In the case before this Court, the Parties are in contention not as to whether the District

Court Districting Plan was amended but as to the interpretation of the amendment under Resolution No. 02-0403.

The Fourth condition, which requires the legislative authority of the affected county “. . .documents its approval of any additional positions and its agreement that it will pay out of county funds, without reimbursement from the state, the expenses of such additional judicial positions as provided by statute . . .” is imposed under RCW 3.34.025.

RCW 3.34.025 provides as follows:

RCW 3.34.025 District judge positions--Approval and agreement.

Any additional district judge positions created under RCW 3.34.020 shall be effective only if the legislative authority of the affected county documents its approval of any additional positions and its agreement that it will pay out of county funds, without reimbursement from the state, the expenses of such additional judicial positions as provided by statute. The additional expenses include, but are not limited to, expenses incurred for court facilities. The legislative authority of any such county may, at its discretion, phase in any judicial positions over a period of time not to exceed two years from the effective date of the additional district judge positions. (Emphasis added).

In 2002, the Legislature increased the number of full time district court judges from 9 to 10. (SB 6596, Laws of 2002, ch. 138). There is no question but that the legislature was aware of the necessity of the County having to approve the establishment and funding of the 10th full time District Court position. The House Bill Report for SB 6596 states in part:

The addition of a new district court judge position is conditional upon the agreement by the county legislative authority to pay all costs associated with the creation of the new position. A county may take up to two years to phase in the new judicial positions created by the legislature.

House Bill Report, SB 6590, as reported by Judiciary Committee (March 2002).

The legislature's action satisfied requirements (1) and (2) as set forth above.

As a result of the Legislature's action, the Spokane County District Court Districting Committee met and made a recommendation to the Board of County Commissioners that the Districting Plan be amended to increase the full time numbers of district court judges from 9 to 10. Amendments of Districting Plans are governed by RCW 3.38.040(2).

The Board of County Commissioners held a public hearing on April 16, 2002, to consider the recommendation of the Spokane County District Court Districting Committee. Adoption District Court Districting Plans, including amendments thereof, are governed by RCW 3.38.030. In the Board's Notice of Public Hearing, the Board specifically reserved the right to "consider additional changes in the plan." After the public hearing, the Board of County Commissioners adoption of an amendment to the Districting Plan under Resolution No. 02-0403, did not as argued by Appellant, create or fund the 10th full time District Court Judge position.

Appellant ignores the enacting resolution addressing the 10th full time District Court Judge position.

Resolution No. 02-0403 said in part:

NOW, THEREFORE, BE IT HEREBY RESOLVED by the Board of County Commissioners of Spokane County, that the Board does hereby adopt those amendments to the Spokane County District Court Districting Plan as set forth in the advertised NOTICE OF PUBLIC HEARING under Resolution No. 02-0301.

In making such decision, the Board does hereby adopt each and every recital herein above as a finding of fact to support the decision. Additionally, the Board notes that by amending the Spokane County District Court Districting Plan to increase the number of full-time District court judges from nine (9) to ten (10) in Spokane County, the Board is not establishing the additional tenth position. This position will be established subsequent to the effective date of SB 6596,* ~~the City of Spokane's agreement to fund ½ of the salary to include all benefits of such position as well as ½ the salary to include the benefits of the bailiff assigned to the position and the Board of County Commissioners formally passing a Resolution establishing such position.~~

*and at the sole discession [sic]
of the Board of County Commissioners.

The transcript of the Board of County Commissioners' April 16, 2002, public hearing contains the following colloquy and confirms that the Board did not create or fund the 10th full time District Court Judge position:

CHIEF CIVIL DEPUTY PROSECUTOR JAMES EMACIO: Madam Chair, if I could interject, in as much as the resolution in your agenda books is a little different

than my, my suggestion to the Board at the podium, I would recommend that the Board adopt the change to the redistricting plan as advertised and additionally, that the new position would not be formally created until, one, this Board of County Commissioners by resolution establishes the position and two, that any other conditions that you want to attach to that establishment be satisfied.

COMMISSIONER KATE McCASLIN: My suggestion, Commissioners, is that we keep it as broad as possible and that, in the, if you look to the last paragraph of the resolution it says, in part, that the judges.....we would increase the number of full time positions of District Court Judges from nine to ten in Spokane County, that we would note that we are not establishing the additional tenth position and that would not be established or funded or that would established and funded at our sole discretion and that would leave it very broad as to what conditions we would place on the establishment of such position.

COMMISSIONER JOHN ROSKELLEY: Okay, seeing no other comments, Phil are you ready?

COMMISSIONER PHILLIP D. HARRIS: Move for approval of Item 6.

COMMISSIONER JOHN ROSKELLEY: Okay, second on both with Commissioner McCaslin's statements and Jim Emacio's two conditions.

COMMISSIONER KATE McCASLIN: Okay, it's been moved and seconded as noted, seeing no other discussion, there is none, the motion carries unanimously.

(See, Declaration of Daniela Erickson, Exhibit No. "2"). CP 53-56.

This satisfied requirement (3) set forth above.

Clearly under Spokane County Resolution No. 02-0403, the Board of County Commissioners did not create or agree to fund the 10th full time District Court Judge position. Thus, Resolution No. 02-0403 can not form the basis under which the Spokane County Auditor has a duty to place the 10th position on an election ballot or accept Appellant's Declaration of Candidacy.

As an alternative basis for the existence of a duty for the Spokane County Auditor to place the 10th position on an election ballot and accept his Declaration of Candidacy, Appellant argues that requirement four (4) (approval and agreement to fund) must be construed by the Legislature's passage of an increase in the number of full time District Court Judges in Spokane County from 9 to 10 in 2002. In support of this assertion, Appellant points to the testimony before the Senate and House prior to adoption of the bills. What Appellant fails to note, is that the testimony was in support of the perceived need to secure approval for a 10th position. Such testimony is analogous to lobbying and does not rise to the level of a formal

act or agreement by a board of county commissioners. The acceptance and agreement to fund a judicial position requires a formal act and at least two of the three Spokane County Commissioners.

Finally, Appellant argues that even if documentation of the Board of County Commissioners approval and agreement to fund cannot be located or construed it doesn't matter because the Board of County Commissioners had a **duty** to establish and fund the 10th position effective when the Legislature amended RCW 3.34.010. That is to say, the Legislature's action in increasing the base number of district court judges in Spokane County from 9 to 10 created a "duty" on the part of the Board of County Commissioners to create and fund the 10th position regardless of the provisions of RCW 3.34.025.

In support of his position, Appellant relies upon *State ex rel. Royal v. Bd. of Yakima County Comm'Rs*, 123 Wn.2d 451, 869 P.2d 56. This case does not stand for the proposition that the Board of County Commissioners was required to establish and fund the 10th full time district court judge position. This case stands for the proposition that the Board of County Commissioners must formally approve and fund with county money **any** additional district court positions above the **base** number of 9.

The holding in *Yakima* must be carefully read. In *Yakima*, Yakima County the **base** number of full time district court positions following the 1991 legislation was 6. In 1991 Yakima County had four (4) full time district court positions filled. In early 1992, Yakima County took action to establish or fund one (1) of the two (2) additional **base** positions mandated under RCW 3.34.010. Subsequently, when challenged to establish the 6th position, Yakima rescinded a resolution which established the 5th position and proposed establishment of the 6th position in the future. In September, 1992, the Appellant in *Yakima* filed an application for a Writ of Mandamus to require the Board of County Commissioners of Yakima County to fund and establish two (2) additional full time **base** district court judge positions. The effect of the writ in *Yakima*, was to force Yakima County to comply with the **base number** increasing the number of full time position from 4 to 6 as required by the 1991 legislation. The trial court denied the Application. On appeal, the Supreme Court specifically held that the 1991 Legislation set the **base number** of district court judges in Yakima County at 6. **It further held that it was not necessary, with regard to the base number of judges in existence on January 1, 1992, to comply with the newly enacted procedures to establish judges. These procedures would only be applicable to subsequently created District Court positions.** Thus,

Yakima County was required to establish and fund the two additional positions because they were a part of the base.

The facts before this Court are distinguishable from *Yakima*. The Court's holding in *Yakima* dealt with the filling of **base number** positions. The issue before this Court deals with changes to full time district court judge positions above the **base number**. Thus, *Yakima* does not stand for the proposition that once RCW 3.34.010 is amended county legislative authorities have no discretion in approving, agreeing to fund and filling any authorized 10th full time district court judge position. Nor does *Yakima* stand for the proposition that amendment of RCW 3.34.010 creates a duty upon the Spokane County Auditor to place the added position on an election ballot and accept Appellant's Declaration of Candidacy for the 10th full time District Court Judge position. No Writ of Mandamus can issue absent the existence of a clear legal duty to act.

The court's holding in *Yakima*, and the Superior Court's holding here requiring the County Commissioners approval of any increase in the number of judges above the base established as of January 1, 1992 is consistent with the provisions of RCW 43.135.060 commonly known as Initiative Measure No. 62. This law was passed by the voters in 1979. Under this statute, the Legislature is prohibited from imposing on taxing

districts new programs or increased levels of service under existing programs unless the taxing district was fully reimbursed by the State for the costs of the new programs or increased service levels. *Tacoma v. State*, 117 Wn. 2d 348, 351, 816 P.2d 7 (1991).

The cases cited by Appellant in support of this Court construing a constructive establishment of the 10th district court judge position, *State v. Amodio*, 110 Wn. App. 359, 40 P.3d 1182 (2002) and *State v. Moore*, 73 Wn. App. 805, 871 P.2d 1086 (1994) are both distinguishable from the case before this Court in that the cases were criminal, dealt with scenarios wherein the counties believed they had followed the statutory requirements, had fully implemented the positions, and the judicial officers were held out as legitimate authorities. Whereas here, the County has done nothing to present to the public the position has been approved and funded.

Perhaps a better source for legislative intent for the facts before this Court can be located when the Legislature grappled with the issue of how Counties could reduce the 1991 **base number** of full time district court judge positions. In 2003 King County petitioned to amend RCW 3.34.010 to reduce the **base number** of positions from 26 (established by the 1991 legislation) to 20. The House Bill Report notes: “This is the first we have

grappled with the issue of reductions in judicial positions.” (See, House Bill Report, SHB 1805 copy attached as Exhibit “A”). The same 2003 legislation that reduced the number of positions in King County also increased the full time district court positions in Clark County from 5 to 6. The Bill histories suggest the procedures established in RCW 3.34.020 and .025 were applied because each county requested a change in the 1991 **base number** (See, Final Bill Report, SHB 1805, copy attached as Exhibit “B”).

In 2005 the Legislature again dealt with RCW 3.34.010 when it passed HB 1202. The Judiciary Committee Bill Analysis is pertinent to the case before this court because it notes: “The additional district court position created in Clark County in 2003 is **recreated**, giving the county two more years to phase in the additional judge position.” (See. Bill Analysis , Judiciary Committee, HB 1202 copy attached as Exhibit “C”). The Senate Bill Report notes: “Clark County’s sixth district judge position is **recreated** as of the effective date of this bill. Clark County has another two year period to agree to the funding of the position and fill the position.” (See, Senate Bill Report HB 1202, copy attached as Exhibit “D” and Final Bill Report HB 1202 copy attached as Exhibit “E”). The Legislature’s actions in **recreating** Clark County’s 6th full time District Court Judge position supports not only that Board of County Commissioners has

discretion to approve and phase in an added judgeship, the need to recreate is supportive of an argument the authorization of an added position lapses or expires if not filled.

VI.

CONCLUSION

Respondents request this Court uphold the Superior Court's denial of Appellant's Application for Writ of Mandamus for the following reasons:

1. Appellant has not established that the Spokane County Auditor has a clear "legal duty" to place the 10th full time District Court Judge position on an election ballot or accept his Declaration of Candidacy. This position has not been formally established or funded by the Board of County Commissioners as evidenced by Spokane County Resolution No. 02-0403 nor does the Court's holding in *State ex rel. Royal v. Bd. of Yakima County Comm'Rs*, 123 Wn.2d 451, 869 P.2d 56 support the establishment of that

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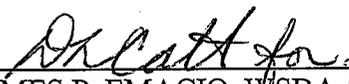
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position. Absent the existence of a clear “legal duty to act,” a Writ of Mandamus can not issue. Writs of Mandamus should not be granted in doubtful cases.

Respectfully submitted,

STEVEN J. TUCKER
Spokane County Prosecuting Attorney



JAMES P. EMACIO, WSBA #4862
Chief Civil Deputy Prosecuting Attorney
Attorney for Respondents - Board of
County Commissioners: P. Harris, T.
Mielke, M. Richard



DAN L. CATT, WSBA #11606
Civil Deputy Prosecuting Attorney
Attorney for Respondent – Vicky Dalton

HOUSE BILL REPORT

HB 1805

As Reported by House Committee On:
Judiciary

Title: An act relating to changing the number of district court judges.

Brief Description: Changing the number of district court judges.

Sponsors: Representatives O'Brien, Nixon, Kagi, Tom, Sommers and Clibborn.

Brief History:

Committee Activity:

Judiciary: 2/20/03, 2/25/03 [DPS].

Brief Summary of Substitute Bill

Reduces the number of district court judge positions in King County from 26 to 21.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Lantz, Chair; Moeller, Vice Chair; Carrell, Ranking Minority Member; McMahan, Assistant Ranking Minority Member; Campbell, Flannigan, Kirby, Lovick and Newhouse.

Staff: Edie Adams (786-7180).

Background:

The number of district court judges in each county is set by statute. Any change in the number of judges in a county must be made by the Legislature after receiving a recommendation from the Supreme Court. The recommendation must be based on an objective workload analysis conducted by the Administrative Office of the Courts (AOC). The objective workload analysis takes into account available judicial resources and the caseload activity of the court.

King County has 26 statutorily authorized district court judge positions. The AOC conducted an objective workload analysis for King County District Court. In 2001 King

County had 25.1 available judicial officers and the county has a projected need for 20.2 judicial officers in 2003.

The county must pay all costs associated with a district court judge position. The county may phase in a newly authorized judge position over a two-year period.

Summary of Substitute Bill:

The number of statutorily authorized district court judges in King County is reduced from 26 to 21.

Substitute Bill Compared to Original Bill:

The original bill reduced the number of judges in King County to 23.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: This is the first time that we have grappled with the issue of reductions in judicial positions. The bill reduces the number of judges to 23 to allow for an intermediate, stepped approach to reductions. When judicial positions are increased, there is a stepped approach. King County has major budget shortfalls and has had to make major budget cuts. The objective workload analysis of the need for judges in King County shows a need of 20.2 judges. The number should actually be lowered to 21, especially in light of the potential future termination of contracts with municipalities, which will further reduce the need for judges in King County.

Testimony Against: None.

Testified: Representative O'Brien, prime sponsor; J. Wesley Saint Clair and Tricia Crozier, King County District Court; and Suzanne Dale Estey, King County Executive's Office.

FINAL BILL REPORT

SHB 1805

C 97 L 03

Synopsis as Enacted

Brief Description: Changing the number of district court judges.

Sponsors: By House Committee on Judiciary (originally sponsored by Representatives O'Brien, Nixon, Kagi, Tom, Sommers and Clibborn).

House Committee on Judiciary
Senate Committee on Judiciary

Background:

The number of district court judges in each county is set by statute. Any change in the number of judges in a county must be made by the Legislature after receiving a recommendation from the Supreme Court. The recommendation must be based on an objective workload analysis conducted by the Administrative Office of the Courts (AOC). The objective workload analysis takes into account available judicial resources and the caseload activity of the court.

King County has 26 statutorily authorized district court judge positions. An objective workload analysis conducted by the AOC indicates a projected need for 20.2 judicial officers in 2003. Clark County has five statutorily authorized district court judges. The objective workload analysis for Clark County indicates a need for 0.5 additional judicial officers in the county.

The county must pay all costs associated with a district court judge position. The county may phase in a newly authorized judge position over a two-year period.

District court judges are elected and hold office for a term of four years. A vacancy in a judge position is filled by appointment by the county legislative authority until the next general election.

Each county has a district court districting committee responsible for developing the district court districting plan. The districting plan establishes district court districts within the county according to standards set out in statute. The districting plan must be approved by the county legislative authority and must include provisions on: the boundaries of each district; the number of judges to be elected from each district; the location of courtrooms and records of each court and any other locations where the court will sit; the number and location of district court commissioners; and the departments into which each court will be organized.

Amendments to the district court districting plan must be submitted to the county legislative authority for approval. An amendment that would result in shortening the term or reducing the salary of any district court judge may not be effective until the next regular election for district judge.

Summary:

The number of statutorily authorized district court judges in King County is reduced from 26 to 21 and the number of authorized district court judges in Clark County is increased from five to six.

A process for changing the number of district court judges is established. The Legislature may change the number of district court judges only in a year in which the quadrennial election for district court judges is not held.

A vacancy in a district court judge position must remain vacant if the number of remaining judges in the county is equal to or greater than the number of judge positions authorized in statute for that county.

A district court districting committee must consider the results of an objective workload analysis conducted by the AOC when determining the number of judges to be elected in each district court district. The districting committee must meet within 45 days of a change in the number of judges to be elected in each district. Amendments to the plan concerning the number of judges elected in a district must be submitted to the county legislative authority within 90 days, and adopted within 180 days, of the date of the statutory change in the number of judges.

Votes on Final Passage:

House 91 1
Senate 48 0 (Senate amended)
House 95 2 (House concurred)

Effective: May 7, 2003

Judiciary Committee

HB 1202

Title: An act relating to district court judges.

Brief Description: Creating additional district court judge positions.

Sponsors: Representatives Williams, Woods, Lantz, Hunt, Campbell, Appleton, McCune, Eickmeyer, Ormsby and Kilmer; by request of Board For Judicial Administration.

Brief Summary of Bill

- Increases the number of district court judges in Thurston County from two to three and in Kitsap County from three to four.

Hearing Date: 1/25/05

Staff: Trudes Tango Hutcheson (786-7384).

Background:

The number of district court judges in each county is set by statute. Any change in the number of judges in a county must be made by the Legislature after receiving a recommendation from the Supreme Court. The recommendation must be based on an objective workload analysis conducted by the Administrative Office of the Courts (AOC). The objective workload analysis takes into account available judicial resources and the caseload activity of the court.

Kitsap County has three statutorily authorized district court positions, and Thurston County has two. In 2003, the Legislature added one additional district court position in Clark County.

The county must pay all costs associated with a district court judge position. The county may phase in a newly authorized judge position over a two-year period.

Summary of Bill:

The number of statutorily authorized district court judges is increased in Kitsap County from three to four and in Thurston County from two to three. The additional district court position created in Clark County in 2003 is recreated, giving the county two more years to phase in the additional judge position.

Appropriation: None.

Fiscal Note: Requested on January 18, 2005.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.

SENATE BILL REPORT

HB 1202

As Reported By Senate Committee On:
Judiciary, March 29, 2005

Title: An act relating to district court judges.

Brief Description: Creating additional district court judge positions.

Sponsors: Representatives Williams, Woods, Lantz, Hunt, Campbell, Appleton, McCune, Eickmeyer, Ormsby and Kilmer; by request of Board For Judicial Administration.

Brief History: Passed House: 2/04/05, 96-0.

Committee Activity: Judiciary: 3/17/05, 3/29/05 [DP].

SENATE COMMITTEE ON JUDICIARY

Majority Report: Do pass.

Signed by Senators Kline, Chair; Weinstein, Vice Chair; Johnson, Ranking Minority Member; Carrell, Esser, McCaslin, Rasmussen and Thibaudeau.

Staff: Cindy Fazio (786-7405)

Background: The number of district court judges in each county is set by statute. Any change in the number of judges in a county must be made by the Legislature after receiving a recommendation from the Supreme Court. The recommendation must be based on an objective workload analysis conducted by the Administrative Office of the Courts. The analysis takes into account available judicial resources and the caseload activity of the court. The workload analysis for Kitsap County District Court recommends 4.27 judicial officers; the county has three district judges. The workload analysis for Thurston County District Court recommends 3.9 judicial officers; the county has two district judges.

Clark County has six district judge positions. The last position was authorized in 2003 but was not phased in by the county within two years of authorization as allowed by statute.

Counties pay all costs associated with a district court judge position. The county may phase in a newly authorized judge position over a two year period.

Summary of Bill: Clark County's sixth district judge position is recreated as of the effective date of this bill. Clark County has another two year period to agree to the funding of the position and fill the position. Kitsap County's number of judges is increased from three to four. Thurston County's number of judges is increased from two to three.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: Both Kitsap and Thurston counties are prepared to implement the positions. The existing judges support creating the positions.

Testimony Against: None.

Who Testified: PRO: Representative Brendan Williams, prime sponsor; Judge Marilyn Paja, Kitsap County District Court; Jeff Hall, Board for Judicial Administration.

FINAL BILL REPORT

HB 1202

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Synopsis as Enacted

Brief Description: Creating additional district court judge positions.

Sponsors: By Representatives Williams, Woods, Lantz, Hunt, Campbell, Appleton, McCune, Eickmeyer, Ormsby and Kilmer; by request of Board For Judicial Administration.

House Committee on Judiciary
Senate Committee on Judiciary

Background:

The number of district court judges in each county is set by statute. Any change in the number of judges in a county must be made by the Legislature after receiving a recommendation from the Washington Supreme Court. The recommendation must be based on an objective workload analysis conducted by the Administrative Office of the Courts (AOC). The objective workload analysis takes into account available judicial resources and the caseload activity of the court.

The county must pay all costs associated with a district court judge position. The county may phase in a newly authorized judge position over a two-year period.

Kitsap County has three statutorily authorized district court positions and Thurston County has two. In 2003, the Legislature added one additional district court position in Clark County.

Summary:

The number of statutorily authorized district court judges is increased in Kitsap County from three to four and in Thurston County from two to three. The additional district court position created in Clark County in 2003 is recreated, giving the county two more years to phase in the additional judge position.

Votes on Final Passage:

House	96	0
Senate	45	0

Effective: July 24, 2005