

FILED
SUPREME COURT
STATE OF WASHINGTON
6/14/2018 3:20 PM
BY SUSAN L. CARLSON
CLERK

SUPREME COURT NO. _____

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

JANELLE RIDDLE, YAKIMA COUNTY CLERK,

Petitioner,

v.

DAVID A. ELOFSON, KEVIN S. NAUGHT, MICHAEL G.
MCCARTHY, DOUGLAS L. FEDERSPIEL, BLAINE G. GIBSON.
RUTH E. REUKAUF. GAYLE M. HARTHCOCK, and RICHARD H.
BARTHFELD, Judges of the Superior Court of the State of Washington
for Yakima County.

Respondents.

PETITION AGAINST STATE OFFICERS

STEVEN M. CLEM, WSBA #7466
Special Deputy Prosecuting Attorney
for Yakima County
Attorney for Petitioner
P.O. Box 360
Waterville, Washington 98858-0360
(509) 745-8535

Petitioner Janelle Riddle alleges as follows:

I. JURISDICTION

1.1. This is an original action against the Judges of the Superior Court of the State of Washington for Yakima County, in the nature of a writ of prohibition, pursuant to the Washington Constitution, Article IV, §4, RAP 16.1(b) and RAP 16.2, and RCW 7.16.290.

II. IDENTITY OF PARTIES

2.1. Petitioner is Janelle Riddle, the elected Clerk of Yakima County.

2.2. Respondents David A. Elofson, Kevin S. Naught, Michael G. McCarthy, Douglas L. Federspiel, Blaine G. Gibson. Ruth E. Reukauf. Gayle M. Harthcock, and Richard H. Barthfield, are state officers serving as the Judges of the Superior Court of the State of Washington for Yakima County (hereafter “the Judges”).

III. CLAIMS OF PETITIONER

3.1. On May 4, 2018, the Judges, with Respondents Douglas L. Federspiel and Blaine G. Gibson not present, issued an *ex parte* Order Directing Yakima County Clerk to Provide Supplemental Bond (hereafter “the Order”). The Order directed Janelle Riddle to “secure and provide proof of a supplemental bond in the sum of \$200,000” on or before June 6, 2018, to be maintained for the remainder of her term as elected Yakima

County Clerk. A true and correct copy of the Order issued May 4, 2018, is attached hereto as Exhibit A.

3.2. On May 4, 2018, Respondent David A. Elofson, as Presiding Judge of the Superior Court, issued a letter (hereafter the Judges' first letter) transmitting the Order to Ms. Riddle on behalf of "the judges of the Yakima County Superior Court," advising Ms. Riddle of the contents of the Order, and further advising Ms. Riddle that her failure to comply with the Order "will require Yakima County Superior Court to declare your position vacant" pursuant to RCW 36.23.020. A true and correct copy of the Judges' first letter dated May 4, 2018, is attached hereto as Exhibit B.

3.3. The Order and the Judges' first letter were issued without any prior notice to Ms. Riddle nor was Ms. Riddle provided an opportunity to be heard and present evidence prior to the Judges' ex parte action. Ms. Riddle has a property right in her elected position as the Yakima County Clerk and has the right to hold such office and continued employment until the expiration of her four-year term on December 31, 2018. The Judges' action violated Ms. Riddle's right to due process under the U.S. Constitution, Amendments V and XIV. *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532 (1985); *Matter of Deming*, 108 Wn.2d 82 (1987), *Ritter v. Board of Commissioners*, 96 Wn.2d 50 (1981); *Geidra v. Mount Adams School Dist. No. 209*, 126 Wn.App. 840 (2005).

3.4. The Judges are legally precluded from requiring an additional \$200,000 public official's bond from Ms. Riddle as a condition of Ms. Riddle retaining the elected office of Clerk for the remainder of her term. The Order and the Judges' first letter exceeded the Judges' lawful authority under RCW 36.16.050.

3.5. On January 13, 2015, Ms. Riddle filed her required public official's bond, no. 62256399 issued by Western Surety Company on January 8, 2015. The amount of Ms. Riddle's bond is \$200,000. A true and correct copy of Ms. Riddle's bond is attached hereto as Exhibit C.

3.6. No judgment has been entered against Ms. Riddle's public official's bond and the bond is unimpaired.

3.7. RCW 36.16.050(3) provides that the amount of the public official's bond required of the Clerk may not exceed the amount "required for the treasurer in the same county." The Yakima County Treasurer is required to maintain a public official's bond in the amount of \$250,000, the maximum amount the county legislative authority may require under RCW 36.16.050(8). The Judges have no legal authority to require Ms. Riddle to furnish an additional \$200,000 public officials' bond as a supplement to her existing \$200,000 public official's bond.

3.8. RCW 36.23.020 provides that if the Clerk does not file the bond required by the judges within ten days after the date fixed by the

judges' order, the judges "shall declare the office vacant." The ten-day period provided by the Judges' Order and the Judges' first letter expires at the close of business on June 16, 2018, which is a Saturday, and the ten-day period is extended to the closed of business on Monday, June 18, 2018 pursuant to GR 3.

3.9. Ms. Riddle was not provided "conflict free" counsel to give her independent legal advice and provide her legal representation until June 1, 2018, when Joseph Brusic, the Yakima County Prosecuting Attorney, appointed Douglas County Prosecuting Attorney Steven M. Clem as a Special Deputy Prosecuting Attorney for Yakima County. The signed appointment was filed on June 4, 2018. Ms. Riddle and her counsel have been diligently responding to the action taken by the Judges since June 4, 2018.

3.10. On June 5, 2018, a letter from Mr. Clem, on behalf of Ms. Riddle, was emailed to Mr. Brusic as the attorney for the Judges. The letter explained the legal deficiencies in the action taken by the Judges against Ms. Riddle and that the Judges had exceeded their statutory authority. The letter requested that the Judges "voluntarily and unilaterally vacate or withdraw the Order and letter dated May 4, 2018." A true and correct copy of the June 5, 2018, letter from Mr. Clem to Mr. Brusic is attached hereto as Exhibit D.

3.11. On June 6, 2018, a second letter from Mr. Clem, on behalf of Ms. Riddle, was emailed to Mr. Brusic as the attorney for the Judges. The letter supplemented Ms. Riddle's position, explaining that any bond filed by Ms. Riddle could only be prospective. A true and correct copy of the letter from Mr. Clem to Mr. Brusic is attached hereto as Exhibit E.

3.12. Ms. Riddle did not file the \$200,000 bond required by the Order and the Judges' first letter, and has been waiting for the Judges' response to Mr. Clem's letters.

3.13. On June 13, 2018, Respondent David A. Elofson issued a letter to Mr. Brusic on behalf of the Judges responding to Mr. Clem's letters. The Judges affirmed their position taken in their Order and the Judges' first letter. The letter affirmed that Ms. Riddle was required to provide a bond by June 18, 2018. The letter was emailed by Mr. Brusic to Mr. Clem on the afternoon of June 13, 2018, and a true and correct copy is attached hereto as Exhibit F.

IV. RELIEF REQUESTED

Based upon the foregoing, Petitioner Janelle Riddle requests the following relief:

4.1. The Supreme Court exercise original jurisdiction over this matter.

4.2. The Supreme Court rule that the action taken against Petitioner Janelle Riddle by the Judges of the Superior Court of the State of Washington for Yakima County is void as a violation of due process, having been issued ex parte without notice to Petitioner and without an opportunity to be heard.

4.3. The Supreme Court rule that the action taken against Petitioner Janelle Riddle by the Judges of the Superior Court of the State of Washington for Yakima County is unlawful and exceeds the constitutional and statutory authority of the Judges.

4.4. The Supreme Court issue an Order enjoining the Judges of the Superior Court of the State of Washington for Yakima County from declaring the elected office of Petitioner Janelle Riddle, Yakima County Clerk, vacant, or otherwise taking action to remove Ms. Riddle from her elected office, based up Ms. Riddle's refusal or failure to file a \$200,000 bond as required in the Judges' Order and the letter dated May 4, 2018.

4.5. Such other relief as the Supreme Court shall deem appropriate, just and equitable.

Dated this 14th day of June, 2018.



Steven M. Clem, WSBA #7466
Special Deputy Prosecuting Attorney
For Yakima County
Attorney for Petitioner

Exhibit A

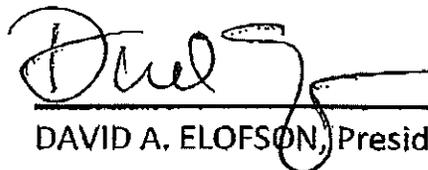
Order Directing Yakima County Clerk to
Provide Supplemental Bond issued May 4, 2018

**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR YAKIMA COUNTY**

**ORDER DIRECTING YAKIMA COUNTY CLERK
TO PROVIDE SUPPLEMENTAL BOND**

Pursuant to RCW 36.23.020, it is hereby ordered and decreed Janelle Riddle, Clerk of the Court for Yakima County Superior Court, shall secure and provide proof of a supplemental bond in the sum of \$200,000.00. Proof of such supplemental bond shall be provided to Yakima County Superior Court on or before June 6, 2018. Proof of this supplemental bond may be served on any judge for Yakima County Superior Court or Robyn Berndt, Director of Court Services. Such bond shall be maintained for the remainder of her current term.

Dated: May 4, 2018



DAVID A. ELOFSON, Presiding Judge

Kevin S. Naught
KEVIN S. NAUGHT, DEPT. 1

David A. Elofson
DAVID A. ELOFSON, DEPT. 5

Michael G. McCarthy
MICHAEL G. MCCARTHY, DEPT. 2

Ruth E. Reukauf
RUTH E. REUKAUF, DEPT. 6

Not Present
DOUGLAS L. FEDERSPIEL, DEPT. 3

Gayle M. Harthcock
GAYLE M. HARTHCOCK, DEPT. 7

Not Present
BLAINE G. GIBSON, DEPT. 4

Richard H. Bartheld
RICHARD H. BARTHELD, DEPT. 8

Exhibit B

Letter from Presiding Judge David A. Eloffson
to Clerk Janelle Riddle dated May 4, 2018



SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR THE COUNTY OF YAKIMA

Judge David A. Hofson
Department No. 5

Yakima County Courthouse
128 N. Second Street
Yakima, Washington 98901

Phone (509) 574-2710
Fax No. (509) 574 2701

May 4, 2018

Dear Ms. Riddle,

There have been a series of events during your tenure as Clerk of the Court for Yakima County which are of concern to Yakima County Superior Court specifically regarding your fiscal responsibilities.

The Washington Supreme Court reviewed a recall petition filed against you in Yakima County Superior Court. The court determined the claims against you supporting your recall were legally and factually sufficient.

The Washington State Auditor has conducted three separate investigations into your department. The first was for the calendar year 2015, the second for the year 2016, and the third for the year 2017. Each of these audits has identified failures in your business procedures to protect public funds coming into your care and control. The most recent audit for the year 2017 dated April 23, 2018 details losses to the public by your failure to establish appropriate financial controls. The Washington State Auditor advises these monies should be restored to the public, by among other methods, a claim on your bond. Again, three separate reports have advised you take steps to protect public funds. The loss from alleged misappropriations thus far is estimated at \$13,029.00 of which \$3,599.00 is attributed to one individual. The cost to Yakima County for this investigation by the Washington State Auditor is \$13,432.00.

Your failure during your tenure to submit child support orders to the Division of Child Support (DCS) as required by RCW 26.23.033(2) resulted in losses to Yakima County of approximately \$200,000.00. As you know, RCW 26.23.033(2) mandates the Clerk of the Court shall transmit child support orders to DCS. Following transmission of those orders to DCS, Yakima County receives reimbursement from state authorities. That reimbursement required only the transmittal of the orders. Failure to transmit means no reimbursement. Your failure to transmit overwhelming numbers of child

support orders followed repeated entreaties from DCS, Yakima County Superior Court, the Yakima County Prosecuting Attorney, and members of the public.

As described above your actions have resulted in losses to Yakima County. Your required statutory bond provided by RCW 36.16.050(3) is set in the amount of \$200,000.00. We believe the items stated above are potential claims that may be made against your bond. A claim against your bond is a method by which Yakima County may be made whole. These claims exceed your current bond coverage.

We have recently been informed there is an additional current failure to submit child support information to DCS which may occasion additional losses to Yakima County of approximately \$100,000.00. This concern is in addition to the amounts described above.

Consequently, the judges of Yakima County Superior Court have issued the enclosed order requiring you to provide a supplemental bond pursuant to RCW 36.23.020. Your statutory bond having been potentially absorbed by existing claims we have determined you must provide a supplemental bond in the same amount as your statutory bond, to-wit: \$200,000.00. This order is based on RCW 36.23.020. You are being notified of this Yakima County Superior Court order by personal service dated May 7, 2018. You must provide proof of your supplemental bond no later than June 6, 2018. Your failure to provide the supplemental bond as ordered will require Yakima County Superior Court to declare your position vacant.

Very truly yours,

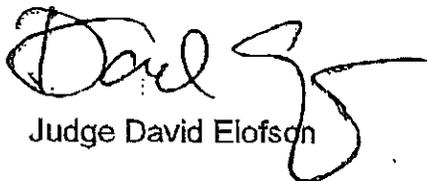

Judge David Eloffson

Exhibit C

Western Surety Bond, No. 62256399, in the
Amount of \$200,000 dated January 8, 2015



FILE# 7860761
YAKIMA COUNTY, WA
01/13/2015 10:16:08AM
MISCELLANEOUS
PAGES: 3
VALUED CUSTOMER

Return Address:

Yakima County Treasurer
128 N. 2nd St. Rm 115
Yakima WA 98901

Recording Fee: 0.00

Document 1 Title: Miscellaneous

Reference #'s: _____

Additional reference #'s on page _____

Grantors:

Junelle L. Riddle
Western Surety Company

Additional grantors on page _____

Grantees:

The Public

Additional grantees on page _____

Document 2 Title: _____

Reference #'s: _____

Additional reference #'s on page _____

Grantors:

Additional grantors on page _____

Grantees:

Additional grantees on page _____

Legal Description (abbreviated form: i.e. lot, block, plat or S,T,R quarter/quarter):

Additional legal is on page _____

Assessor's Property Tax Parcel/Account Number:

Emergency nonstandard document recording: I am requesting an emergency nonstandard recording for an additional fee as provided in RCW 36.18.010. I understand that the recording processing requirements may cover up or otherwise obscure some part of the text of the original document.

Signature: _____

The Auditor/Recorder will rely on the information provided on the form. The staff will not read the document to verify the accuracy or completeness of the indexing information provided herein.

Washington

Western Surety Company

OFFICIAL BOND AND OATH OF OFFICE

KNOW ALL PERSONS BY THESE PRESENTS:

Bond No. 62256399

That we, Janelle L. Riddle

of Naches

State of Washington, as Principal, and WESTERN SURETY COMPANY, a corporation duly licensed to do business in the State of Washington, as Surety, are held and firmly

County of Yakima

in the sum of Two Hundred Thousand and 00/100 DOLLARS 200,000.00), lawful money of the United States of America, for the payment of which, well and truly to be made, we bind ourselves and our legal representatives, jointly and severally, firmly by these presents.

Dated this 8th day of January, 2015.

WHEREAS, the above bounden Principal was on the _____ day of _____,

elected

_____, duly appointed Clerk

of County of Yakima

for the term

beginning January 1, 2015, and ending January 1, 2019.

NOW THEREFORE, the condition of this obligation is such that if the said Principal shall well and faithfully perform all the duties of his said office as required by the present law or as enacted subsequent hereto, then this obligation to be void, otherwise to be and remain in full force and effect.

IN WITNESS WHEREOF, the said Principal has hereunto set his hand and seal and the said Western Surety Company has caused these presents to be signed by its duly authorized officer and its corporate seal to hereunto affixed the day and year first above written.



Janelle L. Riddle
Principal

WESTERN SURETY COMPANY

By Paul T. Brunat
Paul T. Brunat, Vice President

ACKNOWLEDGMENT OF SURETY
(Corporate Officer)

STATE OF SOUTH DAKOTA }
County of Minnehaha }

On this 8th day of January, 2015, before me personally appeared

Paul T. Bruffat, to me known to be the aforesaid officer of the corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of the corporation, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument and that the seal affixed is the corporate seal of the corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.



M. Bent
Notary Public

My Commission Expires March 2, 2020

OATH OF OFFICE

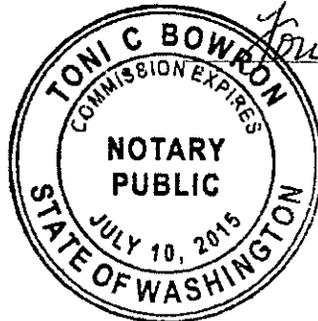
STATE OF WASHINGTON }
County of _____ }

The undersigned, being first duly sworn, does on oath depose and say that he will faithfully and impartially discharge the duties of his office as Yakima County Clerk

_____ to the best of his ability.
Janelle G. Riddle
Principal

Subscribed and sworn to before me this 13th day of January, 2015.

My commission expires
July 10, 2015



Toni C Bowron
Notary Public - Washington

Exhibit D

Letter dated June 5, 2018, from
Steven M. Clem to Joseph Brusich

Steven M. Clem
Douglas County Prosecuting Attorney



W. Gordon Edgar
Chief Deputy

Julia Hartnell
Deputy

C. Kurt Parrish
Deputy

Jenny A. Schlaman
Office Administrator

Gabriela Sanchez
Victim-Witness Coordinator

TRANSMITTED VIA EMAIL

June 5, 2018

The Honorable Joseph Brusic
Yakima County Prosecuting Attorney
128 North Second Street
Yakima, WA 98901

Re: Order Directing Yakima County Clerk to Provide Supplemental Bond

Dear Mr. Brusic:

On Monday, June 4, 2018, your Appointment and Employment of Special Deputy Prosecuting Attorney was filed with the Yakima County Auditor, whereby you appointed me to represent Janelle Riddle, Yakima County Clerk. My representation of the Clerk is limited to representation with respect to the May 4, 2018, action taken by the Judges of the Superior Court in their Order Directing Yakima County Clerk to Provide Supplemental Bond (the Order) and their accompanying cover letter by Presiding Judge David Elofson of the same date (the letter).

The Order and letter notified the Clerk that she is required to file a supplemental public officials bond in the amount of \$200,000 on or before June 6, 2018. The date of service noted in the letter is May 7, 2018. The letter further provides that if the Clerk does not provide proof of filing a supplemental public officials bond as required by the Order, then the Yakima County Superior Court will declare the Clerk's elected position vacant, essentially removing Ms. Riddle from her elected position.

I am sending you this preliminary response to the Order and the letter on behalf of Ms. Riddle.

The Judges' Action Exceeds the Judges' Statutory Authority

The Judges' action is expressly based upon RCW 36.23.020, which provides as follows:

When the judge or judges of any court, or a majority of them, believe that the clerk of the court does not have a good and sufficient bond on file, or that the bond is not large enough in amount, such judge or judges shall enter an order requiring him or her, **within such time as may be specified in the order**, to execute and present to them a good and sufficient bond, in such sum as may be fixed by the order. **In case of his or her failure to file the bond within ten days**

from the expiration of the date fixed the judge or judges shall declare the office vacant.

(Emphasis added.)

The date fixed by the Order is June 6, 2018. The ten-day period following the date fixed by the Order, as provided in RCW 36.23.020, expires at the close of business on June 16, 2018, which is a Saturday. Therefore, the date is extended to the close of business on June 18, 2018, pursuant to GR 3.

RCW 36.23.020 was codified with adoption of the Revised Code of Washington in 1963, having originally been enacted in 1895. The statute has not been amended since 1963, other than as part of a major "technical corrections" bill enacted in 2009 to incorporate gender neutral language. There are no Washington cases applying, interpreting or otherwise citing RCW 36.23.020.

The filing of public official bonds of county officials is governed by RCW 36.16.050, which provides, in part, as follows:

Every county official before he or she enters upon the duties of his or her office shall furnish a bond conditioned that he or she will faithfully perform the duties of his or her office and account for and pay over all money which may come into his or her hands by virtue of his or her office Bonds of elective county officers shall be as follows:

* * *

(3) Clerk: Amount to be fixed in a penal sum not less than double the amount of money liable to come into his or her hands and sureties to be approved by the judge or a majority of the judges presiding over the court of which he or she is clerk: **PROVIDED, That the maximum bond fixed for the clerk shall not exceed in amount that required for the treasurer in the same county;**

* * *

(8) Treasurer: Sureties to be approved by the proper county legislative authority and the amounts to be fixed by the proper county legislative authority at double the amount liable to come into the treasurer's hands during his or her term, **the maximum amount of the bond, however, not to exceed:**

(a) In each county with a population of two hundred ten thousand or more, two hundred fifty thousand dollars

(Emphasis added.)

RCW 36.16.050 was codified as part of the Revised Code of Washington in 1963. The original language at RCW 36.16.050(3) applicable to the Clerk provided:

Mr. Joseph Brusic
Re: Order Directing Yakima County Clerk to Provide Supplemental Bond
June 5, 2018
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(3) Clerk. Amount to be fixed in a penal sum not less than double the amount of money liable to come into his hands and sureties **to be approved by the judge or a majority of the judges presiding over the court of which he is clerk;**

(Emphasis added.)

As originally codified, the Judges had broad discretion setting the amount of the Clerk's official bond. However, in 1971, RCW 36.16.050(3) was amended by Laws of 1971, Ch. 71, to provide:

(3) Clerk: Amount to be fixed in a penal sum not less than double the amount of money liable to come into his hands and sureties to be approved by the judge or a majority of the judges presiding over the court of which he is clerk: **PROVIDED, That the maximum bond fixed for the clerk shall not exceed in amount that required for the treasurer in a county of that class;**

(Emphasis added.)

The 1971 amendment to RCW 36.16.050(3) limited the discretion of the Judges in setting the official bond of the Clerk to not exceed the amount required for a Treasurer *in a county of the same class*. The statute was then amended in 1991 to incorporate gender neutral language. The most recent amendment to RCW 36.16.050(3) was at Laws of 2010, ch. 26, sec. 5, whereby the language "shall not exceed that required for the treasurer in a county of that class" was changed to "**the treasurer in the same county.**"

The legislative history of RCW 36.16.050 demonstrates the narrowing discretion of the Judges to set the amount of the Clerk's official bond. The Yakima County Treasurer's bond is set at \$250,000. Pursuant to RCW 36.16.050(3), the Yakima County Clerk's official bond "**may not exceed the amount required for the treasurer.**"

It is absolutely clear that the Judges' Order and letter served on the Clerk exceeds the statutory authority of the Superior Court Judges.

The Clerk's Official Bond is Unimpaired

Ms. Riddle's Clerk's bond was filed on January 13, 2015. Bond no. 62256399 was issued by Western Surety Company on January 8, 2015, and covers the period of January 1, 2015, through January 1, 2019. The amount of the bond is \$200,000. The bond was purchased and paid for by Yakima County, as required by RCW 48.28.040. [Similarly, Yakima County would be required to purchase and pay for any initial, supplemental or additional officials bond filed by any county elected officer.]

Mr. Joseph Brusic

Re: Order Directing Yakima County Clerk to Provide Supplemental Bond

June 5, 2018

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The bond is unimpaired. No judgment has been entered against the Clerk's official bond. Ms. Riddle will vigorously defend any claim made against her official bond.

In the letter to Ms. Riddle, the Judges cite to reviews conducted by the Washington State Auditor (SAO) as the basis for requiring an increase in the Clerk's official bond. These claims asserted by the Judges are unproven. These are, at best, opinions of the SAO. They are characterized by the Judges as "potential claims."

In a related action, the Yakima County Board of County Commissioners sent a Notice of Claim dated May 29, 2018, to Western Surety Company advising that Yakima County had a claim of \$26,461 against the Clerk's official bond for misappropriated funds and investigative costs based on the SAO review. The Board further informs Western Surety Company that Yakima County is considering additional claims, citing *Matter of Recall of Riddle*, 189 Wn.2d 565 (2017). The Supreme Court's decision in *Riddle* found that certain allegations were sufficient bases for a recall petition. That decision and the underlying litigation did not determine whether the allegations were, in fact, true. This Notice of Claim submitted by the Board does not impair the Clerk's official bond. Ms. Riddle will vigorously defend any claim made against her official bond.

What is interesting about the Board's Notice of Claim is that it is based on a possible misappropriation of funds *reported by Ms. Riddle to the Washington State Auditor*. The funds were *not* misappropriated by Ms. Riddle. The Washington State Auditor recommended Yakima County seek recovery *against the Financial Supervisor* identified by the Auditor as responsible. Based upon these circumstances, to now seek reimbursement of Washington State Auditor costs and the amount of the claimed misappropriation from Ms. Riddle is inappropriate, inconsistent with Yakima County's prior practices, and contrary to public policy supporting these reports to the Auditor. It is just plain wrong.

I believe it is noteworthy to review Yakima County's financial irregularities found by the Washington State Auditor over the last ten years.

- On December 15, 2008, the SAO issued an audit finding that the Yakima Auditor needed to improve internal financial control over accounting and financial reporting, finding that the County's Statement of Net Assets was out of balance by \$2.9M and understated revenues by \$10.8M.
- On October 10, 2009, the SAO issued an audit finding that the County continued weaknesses in its accounting and financial reporting, finding that capital assets were understated by \$13.4M, net assets of \$5.9M were improperly reported, the business-type activities statement was out of balance by \$486,023 and could not be reconciled, long-term debt was incorrectly reported by \$254,939, and numerous other accounting and reporting errors.

Mr. Joseph Brusic

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- On September 27, 2010, the SAO issued an audit finding that the County did not have adequate internal controls in place for its Mental Health Services, finding the County was unable to substantiate accuracy of payrolls costs charged to grants, and further found significant errors in the County's financial statements, including a difference of over \$100M in net assets, overstating total expenses by \$2.4M, and erroneously reporting several ending balance funds.
- On September 26, 2011, the SAO issued an audit finding that the County did not have adequate internal controls for its Mental Health services and expended \$23,119 without having proper contracts in place.
- On March 19, 2012, the SAO issued an audit finding that the County's District Court Probation lacked adequate controls for cash receipts and accounts receivable, finding that \$161,000 in adjustments were unsupported and an inability to determine whether any loss of public funds occurred.
- On November 27, 2013, the SAO issued an audit finding that the County continued to have deficiencies in its internal controls, there was inadequate oversight over District Court Probation receivables, and that a significant amount of receivables had not been properly recorded, and finding county-wide expenses understated by \$16.3M, and that revenues were overstated by \$13.5M.
- On September 17, 2015, the SAO issued a fraud report regarding the County's Mental Health services, finding that \$72,289 had been misappropriated by a Recovery Support Specialist.

I do not believe that Yakima County made claims against the official bonds of the elected officials responsible for the offices and programs involved in these findings, nor did Yakima County make claims against these officials for losses for the SAO audit costs incurred. Yakima County is treating Ms. Riddle very differently from other elected officials in this regard.

The Judges' Action Violates Due Process

The Judges issued the Order and letter to Ms. Riddle without any notice and opportunity to be heard and to answer the Judges' allegations. Ms. Riddle has a property right in her position as the Yakima County Clerk and has the right to hold such office and continued employment until the expiration of her four-year term. The Judges' action violated Ms. Riddle's right to due process pursuant to the U.S. Constitution, Amendments V and XIV. *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532 (1985); *Ritter v. Board of Commissioners*, 96 Wn.2d 50. (1981); *Matter of Deming*, 108 Wn.2d 82 (1987); *Geidra v. Mount Adams School Dist. No. 209*, 126 Wn.App. 840 (2005). The Judges' Order and the action explained in the letter to Ms. Riddle cannot be used as a basis to declare the Clerk's elected office vacated. A decree by the Judges that

Mr. Joseph Brusic
Re: Order Directing Yakima County Clerk to Provide Supplemental Bond
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Ms. Riddle has vacated her elected office as Clerk would be a violation of §1983 of the Civil Rights Act.

Conclusion

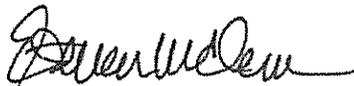
Ms. Riddle's elected office as Clerk cannot legally be threatened or otherwise placed in jeopardy by the Order and letter issued by the Judges. It is without question that the Judges have exceeded their statutory authority and violated Ms. Riddle's due process rights.

I ask that you speak with your clients - the Judges and the Board of County Commissioners - to determine if the Judges will voluntarily and unilaterally vacate or withdraw the Order and letter dated May 4, 2018, directed to Ms. Riddle. If they refuse to do so, Ms. Riddle will need to consider her responsive legal options, which include a Notice of Appeal to Division III of the Court of Appeals, a Declaratory Judgment action against the Judges and Yakima County in an adjoining county, and a federal §1983 action.

I know that relationships among the principals involved have been contentious and strained, to say the least. However, I believe it is the best interests of all principals, and for Yakima County, to take a step back and reconsider the current course of action.

Please let me know whether the Judges intend to pursue the action outlined in their Order and letter in sufficient time before June 18, 2018, so that Ms. Riddle may pursue a legal response.

Sincerely,



Steven M. Clem
Special Deputy Prosecuting Attorney
for Yakima County

cc: Ms. Janelle Riddle, Yakima County Clerk
Western Surety Company

Exhibit E

Letter dated June 6, 2018, from
Steven M. Clem to Joseph Brusio

Steven M. Clem
Douglas County Prosecuting Attorney



W. Gordon Edgar
Chief Deputy

Julia Hartnell
Deputy

C. Kurt Parrish
Deputy

Jenny A. Schlaman
Office Administrator

Gabriela Sanchez
Victim-Witness Coordinator

TRANSMITTED VIA EMAIL

June 6, 2018

The Honorable Joseph Brusic
Yakima County Prosecuting Attorney
128 North Second Street
Yakima, WA 98901

Re: Supplemental Response to Actions of the Superior Court Judges

Dear Mr. Brusic.

This letter supplements my letter emailed to you yesterday, June 5, 2018, responding on behalf of the Clerk, Ms. Janelle Riddle, to the May 4, 2018, Order and letter issued by the Yakima County Superior Court Judges.

The bases for the Judges' action, as outlined in yesterday's letter, relate to allegations of past conduct. The additional or supplemental Clerk's public official's bond the Judges' require would be prospective only, covering the Clerk's last months of her elected term. The public official's bond would not be retroactive and cover any past conduct. The Clerk's current public official's bond in the amount of \$200,000 remains unimpaired. An additional or supplemental bond would offer none of the surety anticipated by the Judges.

As requested in yesterday's letter, please let me know whether the Judges intend to pursue the action outlined in their Order and letter in sufficient time before June 18, 2018, so that Ms. Riddle may pursue a legal response.

Sincerely,

A handwritten signature in black ink, appearing to read "Steven M. Clem", is written over a horizontal line.

Steven M. Clem
Special Deputy Prosecuting Attorney
for Yakima County

cc: Ms. Janelle Riddle, Yakima County Clerk

Exhibit E

Letter dated June 18, 2018 [sic], from
Presiding Judge David A. Eloffson
to Joseph Brusich



SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR THE COUNTY OF YAKIMA

Judge David A. Elofson
Department No. 5

Yakima County Courthouse
128 N. Second Street
Yakima, Washington 98901

Phone: (509) 574-2710
Fax No. (509) 574-2701

Joseph Brusic
Yakima County Prosecutor

June 18, 2018

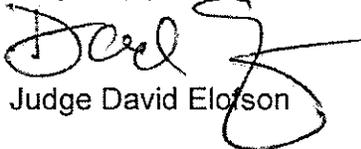
Dear Mr. Brusic,

You provided the Superior Court bench with two letters from Steven Clem, attorney for Janelle Riddle dated June 5 and June 6.

On June 13, 2018, a meeting was convened of the judges for Yakima County Superior Court. We have reviewed the correspondence and discussed Mr. Clem's proposals regarding our order requiring Ms. Riddle to provide a supplemental bond pursuant to RCW 36.23.020.

The judges' position has not changed. Ms. Riddle is expected to provide the supplemental bond as ordered by June 18, 2018. I have provided for you a copy of the original pleadings served on Ms. Riddle, together with a copy of the case State ex rel. Austin v Superior Court for Whatcom County, 6 Wash.2d 61 (1941), which may provide further understanding.

Very truly yours,


Judge David Elofson

DOUGLAS COUNTY PROSECUTING ATTORNEY

June 14, 2018 - 3:20 PM

Filing Original Action Against State Officer

Transmittal Information

Filed with Court: Supreme Court

Appellate Court Case Number: Case Initiation

The following documents have been uploaded:

- OAS_Motion_20180614151146SC473656_4255.pdf
This File Contains:
Motion 2 - Accelerate Review
The Original File Name was SC Motion to Stay Order and for Accelerated Consideration.pdf
- OAS_Motion_20180614151146SC473656_8261.pdf
This File Contains:
Motion 1 - Stay
The Original File Name was SC Declaration of Janelle Riddle.pdf
- OAS_Orig_Act_Against_State_Officer_20180614151146SC473656_5457.pdf
This File Contains:
Original Action Against State Officer
The Original File Name was SC Petition Against State Officers.pdf
- OAS_Other_20180614151146SC473656_5704.pdf
This File Contains:
Other - Cover letter
The Original File Name was Cover Letter to Supreme Court Clerk.pdf

A copy of the uploaded files will be sent to:

- josephb@co.yakima.wa.us

Comments:

The attorney for Respondents, Mr. Joseph Brusic, is accepting service of this original action and is in the process of returning a signed Acceptance of Service. The filing fee is waived pursuant to RCW 2.32.070.

Sender Name: Steven Clem - Email: sclem@co.douglas.wa.us

Address:

PO BOX 360

213 RAINIER

WATERVILLE, WA, 98858-0360

Phone: 509-745-8535

Note: The Filing Id is 20180614151146SC473656