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No. 96821-7

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

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THE JUDGES OF THE BENTON AND FRANKLIN COUNTIES OF  
THE SUPERIOR COURT: Judge Joe Burrows, Judge Alex Ekstrom, Judge  
Cameron Mitchell, Judge Carrie Runge, Judge Jacqueline Shea-Brown,  
Judge Bruce Spanner and Judge Sam Swanberg,

Respondents,

vs.

MICHAEL J. KILLIAN, FRANKLIN COUNTY CLERK AND CLERK  
OF THE SUPERIOR COURT,

Appellant.

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RESPONDENTS' ANSWER TO BRIEF OF *AMICUS CURIAE*  
ALLIED DAILY NEWSPAPERS OF WASHINGTON

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## **I. Introduction**

The Judges of the Benton and Franklin Counties Superior Court, plaintiffs below and respondents herein, answer the Brief of *Amicus Curiae* Allied Daily Newspapers of Washington (Allied), as follows.

## **II. Argument**

Allied states that its interest is to “safeguard the role of court clerks as an independent, impartial source of information about what happens in superior courts.” *See* Motion for Leave to File Amicus Curiae Memorandum of Allied Daily Newspapers of Washington, at 1. County Superior Court Clerks are file keepers and file providers. They are not separately sources of information about the contents of those files. The files contain materials that speak for themselves, subject to analysis by parties and interpretation by courts.

The action of the Franklin County Clerk that led to this lawsuit was his unilateral decision to cease maintaining and providing traditional paper case files for use by the judicial officers of the Benton and Franklin Counties Superior Court for their performance of judicial duties in Franklin County. Prior to the Clerk’s action, the Superior Court notified him that its judges were not yet ready to have a full transition to paperless electronic court case files take place due to deficiencies in the electronic record

system as of December 2017. *See* CP 27-28, Judge Spanner declaration at ¶¶ 6 and 7; CP 29-31, Judicial Resolution adopting Local General Rule (LGR) 3; and CP 169, Response to Amicus Curiae Memorandum of Washington State Association of Counties (to the Superior Court), lines 4-11, relating, in part, Judge Spanner's letter to the President of the Washington State Association of County Clerks, concerning the Franklin County Clerk's failure to adopt work flows and work queues, and failure to timely transmit felony judgment and sentences to the jail.

If the Franklin County Clerk's action stands, Allied's concerns are more likely to be realized than if the Superior Court's LGR 3 is enforced, because that rule directs continued maintaining of traditional paper case files until full and satisfactory development of the electronic file system is achieved. The Clerk would limit all access to electronic files, while the Superior Court's LGR 3-based paper file requirement retains a second, back-up method of access to those records pending full development of the electronic system. This alone shows that Allied's concerns lack merit.

Moreover, the Clerk's performance of his record-keeping function for the Superior Court is physical and ministerial. *Swanson v. Olympic Peninsula Motor Coach Co.*, 190 Wash. 35, 38 & 39, 66 P.2d 842 (1937); *Matter of Recall of Riddle*, 189

Wn.2d 565, 583 & 584, 403 P.3d 849, *as amended* (2017). Clerks do not engage in “reporting on judicial proceedings.” Allied brief at 1. They do not “document what the judge did.” Allied brief at 7. In the paper file system, the Clerk places papers into file folders in sequential order and delivers those file folders to judicial officers, or provides them to attorneys and the public upon request. In the electronic system, the Clerk scans papers and moves them into sequential electronic storage by case identification.<sup>1</sup> The Clerk does not use or analyze those records in any interpretive sense. The Clerk does not exist to safeguard the integrity of the information contained in the case files of the Court, but exists to properly handle and securely store those records.

By referring to the Clerk as “a disinterested independent official”, Allied implies that judges have an “interest” that jeopardizes the accuracy and reliability of court case records. *See* Allied brief at 2-3. Similarly, Allied argues that the Clerk is “responsible for providing unfiltered, truthful information about court cases.” Allied brief at 6. These allusions challenge the core principles of judicial integrity: impartiality, neutrality and fairness.

Canon 1 of the Code of Judicial Conduct (CJC) provides that a judge must comply with the law and must act in a manner that “promotes public confidence in the independence, integrity,

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<sup>1</sup> Physical errors are likely possible in either system.

and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.” Due process, the appearance of fairness doctrine, and the CJC require that a judge self-disqualify if he or she is biased against a party or the necessary impartiality may reasonably be questioned. *State v. Dominguez*, 81 Wn. App. 325, 328, 914 P.2d 141 (1996). These obligations protect the integrity of court case files, not the Clerk’s possession of them.

Allied supplies no authorities suggesting that the integrity of court case files is jeopardized by judicial control over the form in which those files are provided to judicial officers.

On the record of the actual words of LGR 3, and its purpose, as explained in the judicial resolution that adopted it and in the explanations given in the Superior Court’s evidentiary documents in this action, Allied’s implication that the local rule impairs the integrity of court case files is seriously mistaken. CP 27-28, Judge Spanner declaration at ¶¶ 6 and 7; and CP 29-31, Judicial Resolution adopting LGR 3.

The text of LGR 3 shows that there is nothing in the rule that threatens the content of the case files kept by the Clerk. LGR 3 provides:

**(a)** The clerks of Benton and Franklin Counties shall keep and maintain paper files for all cases and file types, by forthwith filing all pleadings and papers in paper files, except as may be otherwise authorized in writing by the Court.

(b) The clerks of Benton and Franklin Counties shall make up-to-date paper files for all cases and case types available to the Court, as directed by its judicial officers.

(c) While paperless courts are preferable, they should only be implemented after careful consideration of the impacts upon the Court, the legal community and the public, and only after case management systems have been configured so all of their capabilities are realized. Accordingly, neither clerk shall attempt or purport to operate with “paperless” processes unless and until the same has been approved in writing by the court. Permission will not be granted unless the Court is satisfied that appropriate workflows and work queues have been implemented, that equipment and processes have been acquired and developed to facilitate electronic signatures, and that the paperless processes do not adversely affect the Court’s ability to conduct court proceedings and other court functions. As directed by the Court, the Clerks shall work diligently, collaboratively and harmoniously with the Court to satisfy all of the conditions precedent to “paperless” court, as set forth above. In so doing, the clerks shall conform to the direction of the Court.

(d) Pursuant to GR7(e) this rule shall become effective immediately upon filing the same with the Washington Administrative Office of the Courts.

Adopted effective January 16, 2018. (Emphasis added.)

The rule is strictly about the unaltered form in which the Clerk provides court case files to judicial officers and the need to fully develop the electronic system before it becomes the exclusive source of court case files.

### **III. Conclusion**

Allied’s arguments ignore the text of LGR 3 and its purpose. Its implications of endangerment to the integrity of court case files from judicial control over the form in which such files are to be provided to judicial officers is seriously misguided and

unsupported. Allied's support for the Clerk's positions in this action should be rejected.

Respectfully submitted this 27<sup>th</sup> day of September, 2019.

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By           /s/ W. Dale Kamerrer            
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**CERTIFICATE OF SERVICE**

I hereby certify that on September 27, 2019, I served the foregoing with the Clerk of the Court for the Washington State Supreme Court using the appellate CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

*/s/ Lisa Gates*  
Legal Assistant to W. Dale Kamerrer

**LAW LYMAN DANIEL KAMERRER & BOGDANOVICH**

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