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SUPREME COURT OF THE STATE OF WASHINGTON

State of Washington, Respondent,) Reply Brief of Appellant for
) Direct Review by the
 v.) Supreme Court
)
 Steven Andrew Janda, Petitioner,) Cause No. 85909-4

Review from King County Superior Court No. 10-1-05571-8KNT

Steven Andrew Janda seeks direct review of the decision of The King County Superior Court entered on March 16, 2011. The use of the name "Steven" throughout this brief means defendant Steven Andrew Janda, unless otherwise expressed.

REPLY OF STEVEN

The state repeats the nonlawyer homonym switch throughout its response to the arguments of Steven and does not address the lion's share of his arguments. The term "nonlawyer" has been used for decades in the colloquial sense to merely identify a person who is not an attorney. Such persons are not subject to disciplinary court proceedings via the court rules such as GR 24 and 25, unless such persons are authorized to practice law in part under the rules. To date, there are no limited practice persons authorized to practice law under GR 25. Hence, the entire assertion of GR

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24 and 25 against Steven is a color of law misrepresentation of the court rules.

Attorneys are members of the bar and are discipline under the Enforcement of Lawyers Conduct and the Rules of Professional Conduct. Not active members of the bar are subject to the RPC and the ELC. The are not disciplined under GR 24 and 25. If Steven was not an active member of the bar he would not be subject to the GR 24 and 25, but the RPC and the ELC. Therefore, the state greatly errs from the truth by holding out Steven is not an active member of the bar.

The state contends the argument that Steven is not a nonlawyer under RCW 2.48.180 (1) (b) since he has never been a member of the bar should be rejected because the argument is not supported by authority. However, the issue of the nonlawyer class of persons is one of first impression. The U.S. Supreme Court is the only court of competent jurisdiction that has the authority to rule in the presence of a universal conflict of interest within the State of Washington.

In the plain language, “not active members” are members. The meaning is the ordinary meaning used in all associations, unions, professional groups, clubs, and like organization with membership. It is the state that is required to cite authority for deviating from the plain language, not Steven. The state argues red means go and green means

stop and then asks Steven to cite authority for contradicting the state for arguing red means stop and green means go.

It is the state of Washington which is imagining in vain that that “not active member” means “not a member”. Under the canon of *expressio unius est exclusio alterius*, suspended and disbarred persons are incorporated into the not active member class by specific expression, thereby barring all other classes of persons.

The state never reaches the fact that the legislative intent is to identify a defamatory class of persons for the meaning of “nonlawyer” under the unlawful practice of law statute inside the state bar act under RCW 2.48.180 (1) (b). It is impossible to be born into a professional defamatory class of persons who were authorized to practice law prior, whether in part or in full. It is a violation of the Equal Protection Act to include persons who were never authorized to practice law in the same class of defamatory persons.

When the legislature provides a meaning for a term, the meaning applies throughout the statute. To determine the legislative intent the entire text of the statute must be taken into consideration that no word or provision is rendered superfluous. The definition provided for nonlawyer in RCW 2.48.180 (1) (b) was provided to define the class of defunct professionals within the practice of law who have incurred discipline for

professional misconduct defined by law. The remainder of the statute gives five scenarios which show how these not active members are prohibited from entangling themselves with active members of the bar, who are termed “legal providers” under the statute for the first time under Washington state law. The state never reaches the analysis of any of these financial restrictions because whoever is included in the “not active member” class as nonlawyers are subject to all the restrictions, thereby flushing out any grammatical ambiguities by giving express examples that constitute the unlawful practice of law, such as, not active members cannot make a loans to law firm because such constitutes an investment interest under the statute. If the interest on the loan is above a reasonable commercial rate of interest, the loan constitutes an ownership interest, which is also defined differently just for the statute under RCW 2.48.180 (1) (c), thereby rendering all the reasoning of the state for extending the statute to a class of persons who were never members of the bar legally impossible and constitutionally overbroad as applied by the state.

It is unnecessary to engage in statutory construction or examine legislative history where the language of a statute is not ambiguous. "Plain words do not require construction This court will not construe unambiguous language." *State v. McCraw*, 127 Wn.2d 281, 288, 898 P.2d 838 (1995) (quoting *Sidis v. Brodie/Dohrmann*, 117 Wn.2d 325, 329, 815 P.2d 781 (1991)). However,

the plain meaning requires the whole statute is taken into consideration. Before the statute is declared ambiguous, the canon of *expressio unius est exclusio alterius* is applied.

When Commissioner Goff on September 21, 2011, ruled the meaning of “nonlawyer” requires a “sensible construction” to include persons who have never been members, the court admitted that Steven is not included in the statute under the plain meaning, for otherwise, no construction would be required or even allowed. However, the sensible construction ruling by Commissioner Goff results in an oxymoron by including a class of persons excluded by the legislature since not active membership requires active membership under the plain meaning, thereby creating a non-sensible meaning. Since the court will not enter into construction without finding the statute is ambiguous, the ruling is an admission that the statute requires nothing less than the invocation of the rule of lenity in favor of the defendant, not a conviction. Likewise, the Honorable Judge Hill found it necessary to add language to the statute to apply it to Steven on November 9, 2010. But the state failed to address the financial entanglement provisions of the statute which render the meaning of nonlawyer under RCW 2.48.180 (1) (b) applicable to Steven impossible.

Between the nonlawyer homonym switch and the GR 24 practice of law trailer hitch to RCW 2.48.180, the state has replaced the legislative class of persons and added a substantive element of the practice of law, which was considered and intentionally excluded from the elements that constitute the offense of the unlawful practice of law under RCW 2.48.180, in deprivation of the civil rights of Steven.

The state now contends that the state had the burden to prove all the elements of the offense beyond a reasonable doubt before the jury. The record tells a different story. The state prosecutors, Charles Sherer and John Carver, in response to a motion to dismiss presented by Steven on March 1, 2011, (to which they failed to respond) motioned in limine to slew all argument from Steven during the trial before the jury that RCW 2.48.180 (1) (b) excludes persons who were never members of the bar. The state expressly asked to be relieved from having to prove the essential nonlawyer element of the offense charged. VRP Volume dated March 1, 2011, at page 18, line 18 to page 19, line 1. The court granted the motion and included it as an exhibit for the jury. Moreover, the prosecutors sat with eagle eyes during the trial and objected to any question they perceived might lead to the truth that the nonlawyers in the statute are distinct from the ordinary meaning used in the court rules forty-nine times. The court ordered Steven not to ask questions to witnesses which might

reveal the true meaning of the statute. Steven cited fifteen such instances in his brief, where he was ordered to stop the question. Attorney Peter Perron, testifying for the state said on the stand “there’s no such thing” as having not active status with a bar association prior to active status, rendering the entire case of the state legally impossible and unfounded in the law, thereby evidencing malicious prosecution in the original indictment and four times as amended alleging “while Steven was not an active member of the bar...”

The state contends aggregation was proper, but the legislature says otherwise, and RCW 9A.56.030 expressly limits aggregation to third degree offenses, thereby barring the former application of cases holding otherwise such as Vining. The court amputated the jury instruction as required by law to the deprivation of Steven.

Whether there is a continuing course of conduct and a continuing criminal impulse is a jury decision based upon common sense. Ms. Frelin testified that there were several years between meetings with Steven. All documents were completed upon each meeting. Hence, the element of the completion of each act, rendered the issue of a continuing course of conduct impossible, without respect to the nature of the conduct. The actual conduct here was not defined in the law as a crime, but artificial limb law asserted by the state’s attorneys under GR 24, which was

considered by the legislature and intentionally eliminated under the canon of expressio.

A no contact order is not justified or necessary under the facts of this case. Steven was told a temporary no contact order was only necessary until the end of the proceedings. Steven has never contact the persons who seek protection and didn't even exercise his right to question them in court, much less outside of court. Steven has never had even a verbal conflict with any of the persons named in the order and has no such criminal history with any person to warrant such an order.

CONCLUSION

1) The verdict in its entirety should be reversed in the matter of The State of Washington v. Steven Andrew Janda together with all resulting convictions, restrictions, no contact orders, penalties, fees, costs, etc.

I prayerfully request the Supreme Court to grant my petition for Direct Review together with the relief sought.

March 12, 2012.

Respectfully submitted,
Signature


Steven Andrew Janda

Affidavit of Service to Parties is filed together with this Brief.

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State of Washington, respondent) No. 86889-1
v.)
Steven Andrew Janda, petitioner) Declaration of Service

To: King County Pros Attorney's Office Randi J. Austell, WSBA #28166
W554 King County Courthouse Senior Deputy Prosecuting Attorney
516 Third Avenue Attorney for Respondent
Seattle, WA 98104

Steven Andrew Janda, Petitioner, personally sent via first class U.S. Mail on March 12, 2012, his reply brief to the response brief of the state to the above persons at the King County Prosecuting Attorney's Office.

I declare all facts within are true and correct under the penalty of perjury under the laws of Washington State.

March 12, 2012.



Signature, Steven Andrew Janda, Petitioner
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