No. 99157-0
Court of Appeals No. 53007-4-II

SUPREME COURT OF THE STATE OF WASHINGTON

PAUL UMINSKI, Petitioner

v.

CLARK COUNTY, Respondent

ANSWER TO PETITION FOR REVIEW

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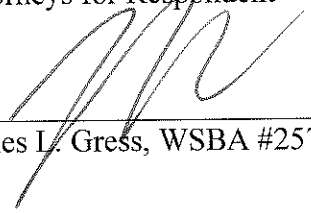

James L. Gress, WSBA #25731

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I. IDENTITY OF RESPONDENT

The Respondent is Clark County which is a self-insured employer in the state of Washington.

II. COURT OF APPEALS' DECISION

Clark County respectfully requests that this Court deny review of the Court of Appeals' unpublished opinion in *Uminski v. Clark County*, No. 53007-4-II on July 21, 2020, a copy of which is attached as it was not included with the Petition for Review.

III. COUNTERSTATEMENT OF THE ISSUES

The Court of Appeals held that Mr. Uminski failed to establish in the record that the Director of the Department of Labor and Industries (Department) had actual knowledge of his Notice of Appeal from a Board of Industrial Insurance Appeals' (Board) decision to Superior Court. The question presented is thus whether this Court should decline to accept review because none of the criteria set forth in RAP 13.4(b) are met because:

1. The Court of Appeals' decision does not conflict with any decision of this Court or any published decision of the Court of Appeals; and

2. The Petition for Review fails to present any issue of substantial public interest that should be determined by this court.

IV. STATEMENT OF THE CASE

Mr. Uminski filed an application for workers' compensation benefits when he developed carpal tunnel syndrome while working as a deputy sheriff for Clark County. *Unpublished Opinion* at 1. The Department denied the claim, and Mr. Uminski appealed to the Board which affirmed the decision of the Department. *Id.* at 2. Mr. Uminski then filed a Notice of Appeal of the Board's decision in Clark County Superior Court. He served a copy of the Notice of Appeal on the counsel for Clark County and on the Board. The Board then forwarded it to the Office of the Attorney General. *Id.* Mr. Uminski did not serve his Notice of Appeal on the Director of the Department, nor on the Attorney General's Office (AGO), nor the specific assistant attorney general (AAG) who represented the Department before the Board as there was none. CP 2, 11.

In Superior Court, Clark County moved to dismiss Mr. Uminski's appeal on the basis that he failed to properly serve his Notice of Appeal on all parties required by RCW 51.52.110. Clark County presented evidence in the form of a declaration from Roxanne Yancotti, who is correspondence liaison for the Director's office, in which she indicated a

database she maintains failed to show the Department had ever received Mr. Uminski's Notice of Appeal. CP 11.1. Mr. Uminski presented the declaration of a James Johnson who is an assistant attorney general. He indicated that he and other AAGs in the Labor and Industries section had been forwarded Mr. Uminski's Notice of Appeal. After reviewing the Notice of Appeal, they determined the Department would not participate in the Superior Court proceedings and Mr. Johnson became attorney of record by filing the Notice of Non-Participation. After oral arguments, the trial court denied the Clark County's Motion to Dismiss.

Clark County sought review and on October 22, 2020, Division II of the Court of Appeals reversed the trial court's decision and dismissed Mr. Uminski's appeal. Division II held that Mr. Uminski had failed to present evidence that the Director of the Department had actual knowledge of his appeal. *Unpublished Opinion* at 8. At most, Mr. Uminski had shown that an AAG had knowledge of his Notice of Appeal and that was not sufficient to establish substantial compliance with RCW 51.52.110.

V. ARGUMENT

1. This Court should deny review as the opinion of Division II does not conflict with *Black v. Dep't of Labor & Industries.*

In his Petition for Review, Mr. Uminski asserts that Division II's opinion in this case conflicts with *Black v. Dep't of Labor & Indus.*, 131

Wn.2d 547, 933 P.2d 1025 (1997). However, this interpretation of the Division II's opinion is incorrect and fails to recognize the essential distinction that in *Black* there was at least an attempt at service on the Director. In *Black,* this Court followed *In re Saltis,* 94 Wn.2d 889, 621 P.2d 716 (1980) and held that service sufficient to comply with RCW 51.52.110 occurs if: (1) the Director received actual Notice of Appeal to the Superior Court or (2) the Notice of Appeal was served in a manner reasonably calculated to give notice to the Director.[1] CP 11.1. But the *Black* court went further in its holding that service on the AAG assigned to represent the Department before the Board is sufficient to substantially comply with RCW 51.32.110. *Black*, 131 Wn.2d at 555.

But while this case, as acknowledged by the Court of Appeals, is similar to *Black*, it is distinguishable in one very meaningful way. Mr. Uminski did not serve his Notice of Appeal on the AAG representing the Department before the Board. In fact, the Department chose not to participate in the proceedings before the Board. As such, Mr. Johnson could not, like the AAG in *Black*, be the one who represented the Department before the Board as there was no specific AAG representing the Department in those proceedings. Also, Mr. Johnson specifically

[1] The Court of Appeals did not address whether Mr. Uminski served his Notice of Appeal in the manner reasonably calculated to give notice to the Director as Mr. Uminski admits he did not attempt service on the Director at all.

addressed this point in his declaration that he became the attorney of record for the Department *after* the decision not to participate was made and he filed the Notice of Non-Participation. CP 23. Furthermore, the Division II specifically addressed and dismissed Mr. Uminski's main argument regarding *Black* stating:

> Here, although, under *Black*, service on the AAG might have been sufficient to establish that Uminski served the Notice of Appeal in a manner reasonably calculated to give notice to the Director, there was no service on the AGO or Johnson, and Uminski does not argue that he served the Notice of Appeal in a manner reasonably calculated to give notice to the Director.
>
> ***
>
> And although *Black* is similar to this case in many ways, it is not helpful because it addressed whether the Notice of Appeal was served in a manner reasonably calculated to give notice to the Director and it does not address whether an AAG's actual notice would alone be sufficient to show that the Director had actual notice.

Unpublished opinion at 6, 7.

Mr. Uminski's argument is based on the false premise that since Mr. Johnson became the attorney of record after it was decided by he and other attorneys in the AGO not to participate in the Superior Court case, that substantial compliance was achieved. This assertion is inconsistent with *Black*, and Mr. Uminski continually fails to acknowledge that in *Black*, and the other cases regarding substantial compliance there was at least some attempt made at service on the necessary interested party. *See*

e.g. Saltis, 94 Wn.2d at 895 (attempted service by mail); *Vasquez v. Dep't of Labor & Indus.*, 44 Wn.App. 379, 722 P.2d 854 (1996) (attempted service of Notice of Appeal on attorney for self-insured employer). But by contrast, this case is more similar to *Fay v. Northwest Airlines*, 115 Wn.2d 194, 796 P.2d 412 (1990), in which Ms. Fay did not serve the Director her Notice of Appeal from the Board decision and this Court affirmed the Superior Court's dismissal of her appeal.

As such, the opinion of Division II is consistent with this Court's opinions on similar facts and since there was no AAG representing the Department before the Board in this matter, Division II was correct in determining that the Notice of Appearance filed by Mr. Johnson was insufficient to conclude that Mr. Uminski substantially complied with RCW 51.52.110.

2. Whether the Superior Court had jurisdiction is a question of law, and substantial compliance with RCW 51.52.110 is a mixed question of law and fact which is reviewed de novo by appellate courts and therefore it can make its own factual determinations.

Mr. Uminski asserts that the Court of Appeals impermissibly substituted its own factual findings for those of the Superior Court. In support, Mr. Uminski relies on *Ruse v. Dep't of Labor & Indus.*, 138 Wn.2d 1, 977 P.2d 570 (1999). But *Ruse* is distinguishable from this case in that the issue in *Ruse* was not whether Mr. Ruse properly perfected his

appeal to the Superior Court but, rather, whether he sustained an occupational disease pursuant to RCW 51.08.140. In that instance, review is limited to examination of the record to see whether substantial evidence supports the findings made after the Superior Court's de novo review and whether the Court's conclusions of law flow from the findings. *Rogers v. Dep't of Labor & Indus.*, 151 Wn.App. 174, 180, 210 P.3d 355 (2009).

By contrast, whether the Superior Court has jurisdiction to hear a particular matter is a question of law. *Dougherty v. Dep't of Labor & Indus.*, 150 Wn.2d 310, 314, 76 P.3d 1183 (2003). Furthermore, as this Court has stated, whether the claimant substantially complied with a statute is a mixed question of law that is also reviewed de novo. *Humphrey Indus., Ltd. v. Clay St. Associates, LLC,* 170 Wash.2d 495, 242 P.3d 846, 850 (2010). Consequently, Division II was not bound by the substantial evidence standard, as Mr. Uminski asserts, and was free to make its own determination on whether the claimant substantially complied with RCW 51.52.110.

3. Requiring the Director to have actual knowledge of a Notice of Appeal to find substantial compliance achieves the practical purpose of RCW 51.52.110

The requirement that the Director of the Department have actual knowledge of a Notice of Appeal actually achieves the purpose of substantial compliance. Mr. Uminski asserts that Division II's holding will

create an untenable burden of proof and adverse policy incentives. This argument is nothing more than an attempt to distract from Mr. Uminski's own failure to perfect his appeal pursuant to statute.

First, the requirement that the Director have actual knowledge of a Notice of Appeal is only required when the party appealing the Decision and Order of the Board failed to comply with the service requirements of RCW 51.52.110 necessary to perfect the appeal. This standard was announced in *Saltis* when this Court first applied substantial compliance to invoke Superior Courts appellate jurisdiction. *See In re Saltis,* 94 Wn.2d at 896. As Division I noted in *Petta v. Dep't of Labor & Indus.*, where substantial compliance has been found there has been actual, if procedurally faulty, compliance with the statute. 68 Wn.App. 406, 409, 842 P.2d 1006 (1992). The only way for there to be procedurally faulty actual compliance with the statute is for the appealing party to show the Director had actual knowledge of the Notice of Appeal. Consequently, Division II's opinion in this matter is perfectly in line with the precedent of this Court.

Second, rather than creating adverse policy incentives, requiring the appealing party to prove the Director had actual knowledge of the Notice of Appeal encourages litigants to perfect their appeals in accordance with statute. Substantial compliance has been defined as actual

compliance in respect to the substance essential to every reasonable objective of the statute. *Black*, 131 Wn.2d at 552. RCW 51.52.110 provides that "such appeal shall be perfected by filing with the clerk a Notice of Appeal and by serving a copy thereof by mail, or personally, on the Director and on the Board." Therefore, whereas in this case the Department did not participate before the Board and had no assigned AAG, the only way to achieve actual compliance with substance of RCW 51.52.110 is to prove the Director had actual knowledge of the Notice of Appeal. Again, it must be noted, this inquiry only occurs if a party appealing a Decision and Order of the Board to Superior Court fails to serve his Notice of Appeal on the required parties denoted in the statute.

Third, Mr. Uminski again raises this argument that the Director had actual knowledge because of Mr. Johnson becoming the Department's attorney of record. Mr. Uminski, again, raises *Black* to support his assertions but, as discussed above in *Black*, service was made on the AAG who represented the Department before the Board. By contrast, in this case, Mr. Uminski's Notice of Appeal was simply forwarded from the Board to the AGO. Mr. Johnson's declaration indicates he only became the attorney of record after he and other attorneys determined the Department would not participate and he signed the Notice of Non-participation. CP 23. As Division II rightly noted, Mr. Johnson does not

indicate that the Director participated in that decision or that the Director is routinely consulted about decisions to participate or not in Superior Court appeals. *Unpublished Opinion* at 6.

While the dismissal of Mr. Uminski's appeal is a harsh but proper result, without proving the Director had actual knowledge of his Notice of Appeal, "a finding that there was substantial compliance on these facts would render the requirements of RCW 51.52.110 virtually meaningless." *Petta*, 68 Wn.App. at 411, 842 P.2d 1006 (1992).

4. Chapter 4.92 RCW does not apply and Division II's decision does not conflict with its own decision in *Reeves*.

This Court should deny review because Division II's opinion in this matter does not conflict with *Reeves v. Dep't of General Admin.*, 35 Wn.App. 533, 667 P.2d 1133 (1983). First, Chapter 4.92 RCW concerns tortious actions and claims against the State. It does not apply to industrial insurance claims which are brought pursuant to Title 51 RCW. The Department would only nominally be a party in this case as Clark County is a self-insured employer rather than the primary defendant in a claim brought pursuant to Chapter 4.92 RCW. This is further evidenced by Mr. Johnson filing a Notice of Non-participation on behalf of the Department.

As Division I noted in *Rogers v. Dep't of Labor & Indus.*, "Washington's Industrial Insurance Act include judicial review provisions that are specific to workers' compensation determinations." 151 Wn.App. 174, 179, 210 P.3d 355 (2009). As such, Chapter 4.92.020 service of summons and complaint does not apply to appeals brought to Superior Court under the Industrial Insurance Act, and even if it did, Mr. Uminski cannot escape the fact he did not serve his Notice of Appeal on the Director or on AGO, and it is only by the Board forwarding it to the AGO that Mr. Johnson received a copy of it.

Second, Mr. Uminski's arguments regarding the "deeper holding" of *Reeves* is nonsensical. The *Reeves* court explicitly stated:

> we cannot --and -- do not interpret RCW 4.92.020, which directs service upon the Attorney General of a summons and complaint in original actions brought against the State, as directing service upon the public official of a copy of a Notice of Appeal from an administrative tribunal when the Legislature has specifically directed that service of such notice ...

35 Wn.App. at 537, 667 P.2d 1133. The *Reeves* court further reasoning regarding substantial compliance is context of analyzing CR 5(b)(1). In this matter, Division II, in accordance with this Court's precedent in *Black*, did not stop its analysis as the *Reeves* court did once it was determined that Mr. Uminski did not comply with the statutory service requirements of RCW 51.52.110. In fact, it is odd that Mr. Uminski is

chastising Division II for not stopping its analysis once it determined he did not comply with the statutory service requirements. Rather, Division II then went through the proper substantial compliance analysis of *Black* and reached the correct result when it was determined that the Director of the Department did not have actual knowledge of Mr. Uminski's Notice of Appeal. Again, it must be noted, this analysis was necessitated by Mr. Uminski's failure to perfect his appeal in accordance with RCW 51.52.110 by failing to serve the Director.

Finally, Division II's opinion was actually consistent with its own published opinion in *Krawiec v. Red Dot Corp* in which Division II affirmed the opinion dismissing Krawiec's appeal from the Decision and Order of the Board for failing to serve a copy of her Notice of Appeal on the Board. 189 Wash. App. 234, 354 P.3d 854 (2015). Unlike *Reeves*, *Krawiec* actually concerns Superior Court appeals brought pursuant to RCW 51.52.110. Therefore, this Court should decline review as Division II's opinion is consistent with its own published opinions regarding RCW 51.52.110.

VI. CONCLUSION

This Court should deny Mr. Uminski's Petition for Review. He has failed to identify any way in which Division II's opinion in this matter is

inconsistent with this Court's precedent, applied the incorrect standard of review, conflicts with Division II's own published decisions, or presents an issue of substantial public interest. This is a simple case in which Mr. Uminski failed to serve the necessary parties pursuant to RCW 51.52.110 required to perfect his appeal from the Board Decision and Order to Superior Court.

Filed
Washington State
Court of Appeals
Division Two

July 21, 2020

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

PAUL UMINSKI, Respondent, v. CLARK COUNTY, Appellant.	No. 53007-4-II UNPUBLISHED OPINION

CRUSER, J. – Clark County (County), a self-insured employer, appeals from the superior court's order denying the County's motion to dismiss Paul Uminski's appeal to the superior court of the denial of his worker's compensation claim against the County. Because the record does not establish that the Director of the Department of Labor and Industries (Director) was served with or had actual notice of Uminski's appeal, we reverse the superior court's denial of the County's motion to dismiss and remand this matter to the superior court to dismiss the appeal.[1]

FACTS

I. BACKGROUND

Paul Uminski was working as a deputy sheriff in Clark County when he was diagnosed with carpal tunnel syndrome. Uminski filed a workers' compensation claim with the Department

[1] Because we reverse based on no proof of actual notice, we do not address the County's arguments regarding fortuitous knowledge, attorney of record, or the inapplicability of substantial compliance for statutory timelines.

of Labor and Industries (Department). The Department denied the claim, and the Board of Industrial Insurance Appeals (Board) affirmed the Department's decision.

Uminski filed a notice of appeal with the superior court. Uminski's certificate of service stated that he served the notice of appeal on the Board's counsel and on the County's counsel. The certificate of service did not show service on the Director, the Department, or the Department's counsel. The parties do not dispute that Uminski did not serve the Director, the Department, or the Department's counsel.

II. COUNTY'S MOTION TO DISMISS

The County moved to dismiss the appeal, arguing that superior court lacked jurisdiction because Uminski had not served the Director as required under RCW 51.52.110. In support of the motion to dismiss, the County attached an affidavit from Roxanne Yaconetti, the "correspondence liaison for the Director." Clerk's Papers (CP) at 19. Yaconetti described the normal process for processing appeals from Board decisions. She stated that there was no record of the Director having received a notice of appeal to the superior court in this matter.

Uminski opposed the motion to dismiss. Although he admitted that he had not served the notice of appeal in a manner reasonably calculated to give the Director notice, Uminski argued that the Director had actual notice of the appeal. Uminski asserted that there was proof of actual notice because Assistant Attorney General (AAG) James Johnson "filed the Department's Notice of Non-Participation with Clark County superior Court" and that actual notice to the AAG was sufficient. CP at 22.

In support of his argument, Uminski attached a declaration from Johnson. Johnson stated that he was "an [AAG] assigned to the Labor and Industries Division of the Attorney General's Office [(AGO)]." CP at 23. On June 14, 2018, "the Labor and Industries Division of the [AGO]

received" a copy of the notice of appeal filed by Uminski. CP at 23. Johnson did not explain how the AGO obtained a copy of the notice of appeal.[2]

Johnson further stated,

> The Department does not appear and participate in all superior court appeals involving self-insured employers. Therefore, that same day, June 14, 2018, AGO staff forwarded to me and other attorneys copies of [notice of appeal] so we could decide whether the Department of Labor and Industries would actively participate in the case. By June 15, 2018, we had decided not to participate.

CP at 23-24. Johnson commented, "The decision not to participate meant that I was the attorney of record assigned to the appeal, and would file a notice of non-participation, as I later did." CP at 24.

The County responded that Uminski had not established substantial compliance with the service requirement under RCW 51.52.110 because substantial compliance requires an actual attempt to comply with the service requirement, not just the incidental actual notice that occurred here. The County also asserted that notice to an AAG was not the same as the Director receiving notice.

The superior court denied the County's motion to dismiss:

> Well, the issue is whether I have jurisdiction because of the substantial compliance because that term is used in various cases, including *Black vs. Labor & Industries*[,131 Wn.2d 547, 555, 933 P.2d 1025 (1997)]. It's not whether there's any prejudice. Apparently, it's not a standing issue. It's basically a subject matter jurisdiction issue because the person raising it did receive notice within the time limits and everybody else received it. So, it's just a question of whether under these circumstances where the claimant, or the person filing the appeal, didn't serve the documents, but the documents got over to the attorneys that were in the position to make the decision, whether that constitutes substantial compliance for jurisdictional purposes under *Black*. I find that it does; I deny the Motion to Dismiss.

[2] At the hearing on the motion to dismiss, the County asserted that the Board had forwarded a copy of the notice of appeal to the AGO.

RP at 5; CP at 36.

The County sought discretionary review. We granted review.

ANALYSIS

The County argues that the superior court erred in denying the motion to dismiss because Uminski failed to demonstrate that he served the Director as required by RCW 51.52.110. Because the record does not contain any evidence that the Director had actual notice of the appeal, we hold that Uminski has not established substantial compliance with the service requirement, and therefore, the trial court erred in denying the County's motion to dismiss.

I. LEGAL PRINCIPLES

When reviewing a Board decision, the superior court acts in its limited appellate capacity. *Fay v. Nw. Airlines, Inc.*, 115 Wn.2d 194, 197, 796 P.2d 412 (1990). Thus, the appealing party must comply with RCW 51.52.110 for the superior court to have jurisdiction over an appeal from a Board decision. *Fay*, 115 Wn.2d at 198. "Whether a court has subject matter jurisdiction is a question of law reviewed de novo." *Dougherty v. Dep't of Labor & Indus.*, 150 Wn.2d 310, 314, 76 P.3d 1183 (2003) (citing *Crosby v. Spokane County*, 137 Wn.2d 296, 301, 971 P.2d 32 (1999).

Under RCW 51.52.110, the party appealing the Board's decision must file his or her notice of appeal with the clerk of the court and serve the Director, the Board, and the self-insured party within 30 days of a final order or notice of the final order. Generally, if the appealing party fails to timely serve the Director, dismissal of the appeal is required. *See Krawiec v. Red Dot Corp.*, 189 Wn. App. 234, 239, 354 P.3d 854 (2015).

But "the modern preference of courts [is] to interpret their procedural rules to allow creditable appeals to be addressed on the merits absent serious prejudice to other parties."[3] *Graham Thrift Grp., Inc. v. Pierce Cty.*, 75 Wn. App. 263, 268, 877 P.2d 228 (1994). Thus, "[s]ubstantial compliance with the terms of RCW 51.52.110 is . . . sufficient to invoke the superior court's appellate jurisdiction." *Hernandez v. Dep't of Labor & Indus.*, 107 Wn. App. 190, 195, 26 P.3d 977 (2001) (citing *In re Saltis*, 94 Wn.2d 889, 895-96, 621 P.2d 716 (1980)).

"'Substantial compliance is generally defined as actual compliance with the substance essential to every reasonable objective of a statute.'" *Krawiec*, 189 Wn. App. at 241 (quoting *Hernandez*, 107 Wn. App. at 196 (internal quotation marks omitted). The objective of RCW 51.52.110's service requirement "is a practical one meant to insure that interested parties receive actual notice of appeals of Board decisions." *Saltis*, 94 Wn.2d at 895.

Substantial compliance with RCW 51.52.110 occurs when "(1) the [D]irector received actual notice of appeal to the superior court; or (2) the notice of appeal was served in a manner reasonably calculated to give notice to the [D]irector." *Saltis*, 94 Wn.2d at 896. Our Supreme Court has also held that service on the AAG assigned to represent the Department in the matter being

[3] Citing *Graham Thrift Group*, Uminski appears to contend that the superior court had jurisdiction despite the defect in service because the lack of service was not prejudicial to the Department. But *Graham Thrift Group* merely recognizes that "the modern preference of courts to interpret their procedural rules to allow creditable appeals to be addressed on the merits absent serious prejudice to other parties." 75 Wn. App. at 268. RCW 51.52.110 is not, however, a court's procedural rule, nor does *Graham Thrift Group* stand for the proposition that failure to comply or substantially comply with a jurisdictional service requirement is irrelevant as long as a party is not prejudiced by lack of service. The substantial compliance doctrine itself is an acknowledgment of the modern preference of allowing appeals to proceed despite service issues—the preference does not, however, require that the courts entirely ignore statutory service requirements. *Black*, 131 Wn.2d at 552-53.

appealed "is reasonably calculated to give notice to the interested party." *Black*, 131 Wn.2d at 555 (following *Vasquez v. Dept. of Labor & Indus.*, 44 Wn. App. 379, 722 P.2d 854 (1986)).

II. NO PROOF OF THE DIRECTOR'S ACTUAL NOTICE

Here, although, under *Black*, service on the AAG might have been sufficient to establish that Uminski served the notice of appeal in a manner reasonably calculated to give notice to the Director, there was no service on the AGO or Johnson, and Uminski does not argue that he served the notice of appeal in a manner reasonably calculated to give notice to the Director. Instead, Uminski argues that he has established that the Department, the real party in interest, had actual notice of the appeal because Department determined that it would not participate in the appeal.

To establish actual notice, there had to be some evidence that the Director, actually received notice of the appeal. At best, the record shows that Johnson, who later became the Department's attorney of record in this matter, had actual notice of the appeal and that he and other attorneys played a role in deciding whether the Department would participate in the appeal.

As noted above, Johnson's declaration stated,

> The Department does not appear and participate in all superior court appeals involving self-insured employers. Therefore, that same day, June 14, 2018, *AGO staff forwarded to me and other attorneys copies of [notice of appeal] so we could decide whether the Department of Labor and Industries would actively participate in the case. By June 15, 2018, we had decided not to participate.*

CP at 23-24 (emphasis added). This statement establishes that Johnson and "other attorneys" were involved in deciding whether the Department would participate. But Johnson does not mention that the Department or Director actually participated in this decision. And there is nothing in the record establishing that the Department or Director are routinely consulted when the decisions about whether to participate in a case are made by the AGO.

It is mere conjecture that any direct communication with the Director about the notice of appeal occurred. Without something in the record affirmatively establishing that the Director participated in the decision, Uminski fails to show that the Director had actual knowledge of the appeal.

We note that Uminski cites no authority establishing that an AAG's knowledge can be imputed to the Director, and we assume there is no such authority. *Hood Canal Sand & Gravel, LLC v. Goldmark*, 195 Wn. App. 284, 296-97, 381 P.3d 95 (2016) (quoting *DeHeer v. Seattle Post-Intelligencer*, 60 Wn.2d 122, 126, 372 P.2d 193 (1962)). And although *Black* is similar to this case in many ways, it is not helpful because it addressed whether the notice of appeal was served in a manner reasonably calculated to give notice to the Director and it does not address whether an AAG's actual notice would alone be sufficient to show that the Director had actual notice.

Because Uminski fails to show that the Director had actual notice of the appeal, we reverse the superior court's denial of the County's motion to dismiss and remand for dismissal of the appeal.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

CRUSER, J.

We concur:

MAXA, J.

LEE, C.J.

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

PAUL UMINISKI, Petitioner, v. CLARK COUNTY, Respondent.	No **CERTIFICATE OF MAILING**

I hereby certify that I caused to be served the foregoing **Answer to Petition for Review** on the following individuals on November 23, 2020, by mailing to said individuals true copies thereof, certified by me as such, contained in sealed envelopes, with postage prepaid, addressed to said individuals at their last known addresses to wit:

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Anastasia Sandstrom
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And deposited in the post office at Beaverton, Oregon, on said date.

I further certify that I filed the original of the foregoing with:

Clerk of the Court
Washington Supreme Court
415 12th Street W
Olympia, WA 98504

by e-filing it on: November 23, 2020.

GRESS, CLARK, YOUNG & SCHOEPPER

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GRESS, CLARK, YOUNG & SCHOEPPER

November 23, 2020 - 3:04 PM

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