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Court of Appeals No. 67515-0-I
No. 67704-7-I (Consolidated)

IN THE SUPREME COURT OF THE
STATE OF WASHINGTON

WILLIAM RALPH, individually,
Appellant,

NOV 20 2012

vs.

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STATE OF WASHINGTON DEPARTMENT OF NATURAL
RESOURCES, a Washington State Public Agency,
Respondent.

WILLIAM FORTH, individually; GUY BAUMAN, individually;
EILEEN BAUMAN, individually; LINDA STANLEY, individually and
as personal representative IN RE THE ESTATE OF CORAL COTTON;
ROCHELLE STANLEY as personal representative IN RE THE ESTATE
OF CORAL COTTON; DONALD LEMASTER, individually; and
DAVID GIVENS, individually

Appellants,

vs.

STATE OF WASHINGTON DEPARTMENT OF NATURAL
RESOURCES, a Washington State Public Agency; WEYERHAEUSER
COMPANY, a Washington Corporation; and GREEN DIAMOND
RESOURCE COMPANY, a Washington Corporation,

Respondents.

PETITION FOR REVIEW

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COURT OF APPEALS
STATE OF WASHINGTON
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I. IDENTITY OF PETITIONER

William Ralph and William Forth ask this Court to accept review of the decision designated in Part II below.

II. THE DECISION OF THE COURT OF APPEALS

The petitioners before this Court, William Ralph and William Forth, each filed a lawsuit in King County to recover damages for extensive flooding to their property located in Lewis County. The defendants moved to dismiss both lawsuits, arguing that the superior court, King County, lacked subject matter jurisdiction under RCW 4.12.010. Ralph and Forth countered that RCW 4.12.010 is a venue statute and does not divest subject matter jurisdiction. In the alternative, they argued that their causes of action were transitory and RCW 4.12.010 did not apply.

The superior court dismissed both lawsuits for lack of subject matter jurisdiction, and Ralph and Forth each appealed to Division One. Their appeals were consolidated because both cases presented identical legal issues arising from an identical procedural posture. For clarity, this brief henceforth refers to Ralph and Forth collectively as “Ralph.”

Division One held that RCW 4.12.010 applied because the lawsuits alleged injury to land. The court rejected the notion that the lawsuits were

transitory rather than local in nature, even though the complaints requested only monetary damages. Division One further held that RCW 4.12.010 divested the superior court of jurisdiction to hear Ralph's case. Division One recognized that this Court has recently and repeatedly "interpreted filing restrictions similar to the one in RCW 4.12.010 as specifying venue, and expressly overruled previous decisions holding the statutes jurisdictional." However, citing Supreme Court authority from the 1940s and 1950s, Division One was constrained to hold that RCW 4.12.010 affected jurisdiction. Division One followed the precedent from the 1940s and 1950s even though it was "difficult to reconcile" with several of this Court's recent decisions. *In essence, Division One clearly signaled that it was deferring an opinion to this Court.*

III. ISSUES PRESENTED FOR REVIEW

This Court has repeatedly held that article IV, section 6 of the Washington State Constitution confers universal original jurisdiction on the superior court. These holdings recognize that the separation of powers doctrine prohibits legislative statutes from divesting the superior court's constitutionally-granted jurisdiction. Here, Division One's decision conflicts with several of this Court's recent decisions holding that statutes

similar to RCW 4.12.010 cannot divest the superior court of original jurisdiction to hear tort actions under article IV, section 6.

In a similar vein, this case presents a significant question of law under the Washington State Constitution. Both Division One and the cases it exclusively relied upon never analyzed RCW 4.12.010 under the modern view that article IV, section 6 unambiguously confers original subject matter jurisdiction on the superior court to hear tort actions. Just as this Court decided whether statutes similar to RCW 4.12.010 could constitutionally divest a trial court of jurisdiction, the same question presents here. This case must be accepted to determine whether article IV, section 6 applies uniformly to statutes that do not vest jurisdiction in a court of lesser jurisdiction. Otherwise, Washington law on this crucial point will remain inconsistent and Ralph's constitutional rights will have been ignored.

This Court has also repeatedly held that a party who suffers only monetary damages has a transitory cause of action. Contrary to this established law, Division One held that Ralph's lawsuit was local, as opposed to transitory, because he had an "injury to land." Division One's analysis and decision ignored the fact that Ralph claimed only monetary damages and that his title would never be affected by the lawsuit.

Thus, Ralph submits the following issues:

- A. **Should review be granted under RAP 13.4(b)(1) because Division One's opinion is contrary to several of this Court's recent cases holding that a statute cannot divest the superior court of original jurisdiction under article IV, section 6?**
- B. **Should review be granted under RAP 13.4 (b)(3) because a significant question under the Washington State Constitution is involved?**
- C. **Should review be granted under RAP 13.4(b)(1) and (2) because Division One's opinion is contrary to well-settled law stating that a party who suffers only monetary damages has a transitory cause of action?**

IV. STATEMENT OF THE CASE

A. Procedural history

William Ralph is one of six plaintiffs who filed a tort action in one county to recover from damage to real and personal property located in a different county.¹ In all six of these lawsuits, the defendants filed a motion to dismiss for lack of subject matter jurisdiction, arguing that RCW 4.12.010 limits jurisdiction for "any injuries" to real property to the county in which the property is situated.

¹ Five cases were filed in King County Superior Court: (1) *Davis et al. v. State Dep't of Nat. Res. et al.*, King County Superior Court Case No. 10-2-42010-0 KNT (Cayce, J.); (2) *Forth et al. v. State Dep't of Nat. Res. et al.*, King County Superior Court Case No. 10-2-42009-6 KNT (McCullough, J.); (3) *Carey et al. v. State Dep't of Nat. Res.*, King County Superior Court Case No. 10-2-42011-8 KNT (Mack, J); (4) *Ralph v. Weyerhaeuser, et al.*, King County Superior Court Case No. 10-2-42012-6 KNT (Gain, J.); and (5) *Ralph v. State Dep't of Nat. Res., King County Superior Court Cause No. 11-2-05769-1 KNT (McCullough, J.)*. And one was filed in Pierce County Superior Court: *Triol et al v. State Dep't of Nat. Res. et al.*, Pierce County Superior Court Case No. 11-2-06140-5 (Hogan, J.).

Three judges heard three of the six cases and denied the defendants' motions to dismiss for lack of subject matter jurisdiction; these cases are currently stayed at trial court, pending the outcome of this appeal. In the other three cases, two judges granted the defendants' motions to dismiss. Two of the dismissed cases, *Ralph v. State Dep't of Nat. Res.*, 67515-0-I, and *Forth v. State Dep't of Nat. Res., et al.*, 67704-7-I, are the subject of this petition for review. As explained above, *Ralph* and *Forth* were consolidated on appeal for judicial efficiency, and this brief refers to them collectively as "Ralph" because both appeals involve identical legal issues arising from an identical procedural posture.

B. Relevant Facts

Ralph is a resident of Lewis County, Washington, where he owns real property. CP-Ralph at 3; CP-Forth at 2. In December 2007, his property flooded when landslides displaced waters from the Chehalis River. CP-Ralph at 3; CP-Forth at 2.

Seeking recovery from damages to real and personal property, Ralph filed suit in the superior court, King County. CP-Ralph at 4, 11; CP-Forth at 5-6, 13. His complaint alleged that the defendants' unreasonably dangerous and unlawful forest practices on steep and unstable slopes of the Chehalis River basin caused their properties to

flood. CP-Ralph at 2, 4-7; CP-Forth at 2, 6-9. Ralph suffered monetary damages necessary to, among other things, restore real property, replace or repair personal property, and recover lost business expectancies. CP-Ralph at 10-11; CP-Forth at 9-12. He pleaded only special and general damages. CP-Ralph at 10; CP-Forth at 12.

The defendants moved to dismiss Ralph's lawsuit under CR 12(h)(3) for lack of subject matter jurisdiction. CP-Ralph at 19-32; CP-Forth 38-48. Essentially, the defendants argued that the superior court, Lewis County, was the only court with proper subject matter jurisdiction over the lawsuit because Ralph alleged injury to his real property. CP-Ralph at 21-23; CP-Forth at 40-41. When an action arises out of an injury to property, the defendants contended, RCW 4.12.010 applies. CP-Ralph at 21-22; CP-Forth at 40-41. When RCW 4.12.010 applies, the defendants further contended, only the superior court in the county in which the real property is located—here Lewis County—has subject matter jurisdiction. CP-Ralph at 22; CP-Forth at 41. Superior Court Judge LeRoy McCullough, King County, agreed with the defendants and dismissed Ralph's lawsuit for lack of subject matter jurisdiction. CP-Ralph at 171-72; CP-Forth at 166-68.

Ralph appealed to Division One and raised two issues. First, Ralph argued that article IV, section 6 of the Washington State Constitution confers universal original subject matter jurisdiction and, therefore, RCW 4.12.010 cannot divest the superior court, King County, of its jurisdiction over his lawsuit. Division One recognized that this Court has recently and repeatedly “interpreted filing restrictions similar to the one in RCW 4.12.010 as specifying venue, and expressly overruled previous decisions holding the statutes jurisdictional.” However, citing cases from the 1940s and 1950s, Division One was constrained to hold that RCW 4.12.010 affected jurisdiction. Division One followed the precedent from the 1940s and 1950s even though it was “difficult to reconcile” with several of this Court’s recent decisions.

Ralph also argued in the alternate that RCW 4.12.010 did not apply because he was claiming only monetary damages. Division One rejected his argument, reasoning that his complaint involved “injury to land” and therefore was local in nature.

V. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

RAP 13.4(b)(1) provides that review will be accepted where the decision of the Court of Appeals is in conflict with a decision of the Supreme Court. On several recent occasions, this Court has held that the

superior court's original subject matter jurisdiction conferred under article IV, section 6 cannot be divested by operation of legislatively created statutes. Here, *without performing any constitutional analysis*, Division One held that RCW 4.12.010 divested the superior court of jurisdiction to hear Ralph's case. Thus, Division One's decision is in conflict with several of this Court's recent decisions, which warrants review under RAP 13.4(b)(1).

In a similar vein, RAP 13.4(b)(3) provides that review will be accepted where the decision of the Court of Appeals involves a significant question of law under the Washington State Constitution. Here, Division One's decision involves a significant constitutional question that it declined to address, namely, whether RCW 4.12.010 is unconstitutional as applied to limit the superior court's subject matter jurisdiction that article IV, section 6 confers. As Division One recognized, this Court has on several occasions "interpreted filing restrictions similar to the one in RCW 4.12.010 as specifying venue, and expressly overruled previous decisions holding the statutes jurisdictional." Division One did not reach the crucial constitutional issue, however, because it felt constrained by a line of cases from the 1940s and 1950s that interpreted RCW 4.12.010 was jurisdictional, *even though those cases never evaluated the statute under*

article IV, section 6. Thus, the constitutional question remains undecided, and review is warranted under RAP 13.4(b)(3).

Furthermore, Division One's holding that Ralph's lawsuit was local in nature because it involved "injury to land" also conflicts with precedent from this Court. RAP 13.4(b)(3) (1), (2). Under well-settled Washington law, tort actions involving claims for monetary damages are transitory, not local. Any "injury to land" here is a distinction without difference, where Ralph's only damages flowed to him personally. In this regard, Division One's decision also conflicted with several of this Court's decisions.

A. Review is warranted under RAP 13.4(b)(1) because Division One's opinion is contrary to several of this Court's recent cases holding that a statute cannot divest the superior court of original jurisdiction under article IV, section 6.

Division One's opinion conflicts with several of this Court's recent cases holding that legislative statutes cannot displace original jurisdiction under article IV, section 6. In those cases, this Court held that article IV, section 6 controls and, when necessary, overruled precedents that incorrectly classified the superior court's jurisdiction as statutory. *See State v. Posey*, 174 Wn.2d 131, 272 P.3d 840 (2012); *ZDI Gaming, Inc. v. State ex rel. Washington State Gambling Comm'n*, 173 Wn.2d 608, 616–18, 268 P.3d 929 (2012); *Williams v. Leone & Keeble, Inc.*, 171 Wn.2d

726, 730, 734, 254 P.3d 818 (2011); *Dougherty v. Dep't of Labor & Indus.*, 150 Wn.2d 310, 316–20, 76 P.3d 1183 (2003); *Young v. Clark*, 149 Wn.2d 130, 133–34, 65 P.3d 1192 (2003); *Shoop v. Kittitas County*, 149 Wn.2d 29, 38, 65 P.3d 1194 (2003); *Marley v. Dep't of Labor & Indus.*, 125 Wn.2d 533, 541, 886 P.2d 189 (1994).²

“Washington superior courts have jurisdiction by grant of authority from the Washington State Constitution.” *Williams*, 171 Wn.2d at 820. Under article IV, section 6, “The superior court shall . . . have **original jurisdiction in all cases and of all proceedings** in which jurisdiction shall not have been by law vested exclusively in some other court.” (Emphasis added). On numerous occasions, this Court has interpreted this clear language as conferring equal jurisdiction to the superior court; the legislature cannot limit the superior court’s jurisdiction in a certain matter unless it vests authority over such matters in some other court, such as a court of limited jurisdiction. *Young*, 149 Wn.2d 130; *Shoop*, 149 Wn.2d 29. Thus, the legislature has authority only to “carve out” the limited jurisdiction of **inferior** courts; otherwise, the superior court retains universal original jurisdiction in all cases and over all proceedings. Const.

² A similar trend is also apparent at the federal level, where courts have strived to “us[e] the term ‘jurisdictional’ only when it is apposite” and to “curtail . . . ‘drive-by jurisdictional rulings.’” *Reed Elsevier v. Muchnick*, __ U.S. __, 130 S. Ct. 1237, 1243–44, 176 L.Ed.2d 18 (2010) (quoting *Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83, 118 S. Ct. 1003, 140 L.Ed.2d 210 (1998)); see also *Payne v. Peninsula Sch. Dist.*, 653 F.2d 863, 869 (2011).

art. IV, § 6; *Young*, 149 Wn.2d at 133-34 (citing *Moore v. Perrot*, 2 Wn. 1, 4, 25 P. 906 (1891)).

Here, the legislature did not enact RCW 4.12.010 to “carve out” the limited jurisdiction of an inferior court, as its plain language states, in relevant part:

Actions for the following causes shall be commenced in the county in which the subject of the action, or some part thereof, is situated:

(1) For the recovery of, for the possession of, for the partition of, for the foreclosure of a mortgage on, or for the determination of all questions affecting the title, or for any injuries to real property.

Because it has not vested jurisdiction in some other court, RCW 4.12.010 cannot constitutionally limit the superior courts’ original jurisdiction. *See Posey*, 174 Wn.2d 131; *ZDI Gaming, Inc.*, 173 Wn.2d 608; *Williams*, 171 Wn.2d 726; *Dougherty*, 150 Wn.2d 310; *Young*, 149 Wn.2d 130; *Shoop*, 149 Wn.2d 293; *Marley*, 125 Wn.2d 533. By declining to examine RCW 4.12.010 under article IV, section 6 but still holding that the statute limited the superior court’s jurisdiction, Division One’s opinion conflicts with several of this Court’s decisions.

ZDI Gaming, which was decided earlier this year, helps illustrate how Division One’s opinion is in conflict. There, this Court held that RCW 9.46.095 cannot be read to restrict the superior court’s jurisdiction;

otherwise, it would violate article IV, section 6. *Id.* at 619. “As we ruled long ago, ‘Any legislation, therefore, the purpose or effect of which is to divest, in whole or in part, a constitutional court of its constitutional powers, is void as being an encroachment by the legislative department upon the judicial department.’” *Id.* at 617 (quoting *Blanchard v. Golden Age Brewing Co.*, 188 Wash. 396, 415, 63 P.2d 397 (1936)). Rather than displacing jurisdiction, *ZDI Gaming* held that RCW 9.46.095 related to venue, and thus, dismissal was not an available to the trial court as a remedy. *Id.* at 618

Nine years earlier, in *Young*, this Court reached the same conclusion with a different statute, reversing earlier precedent to the contrary. There, the issue was whether former RCW 4.12.020(3) (1941) violated article IV, section 6. 149 Wn.2d at 133. The statute gave a motor vehicle accident plaintiff “the option of suing either in the county in which the cause of action or some part thereof arose, or in the county in which the defendant resides, or if there be more than one defendant, where some one of the defendants resides, at the time of the commencement of the action.” *Id.* The *Young* Court held, “Our previous interpretation of RCW 4.12.020 construed the statute to limit subject matter jurisdiction as among superior courts. So understood, the statute violates article IV, section 6 of the state constitution.” *Id.* at 134. “[T]he filing restrictions of RCW

4.12.020(3) relate only to the venue in which such actions may be tried.”

Id.

In *Young*'s companion case, *Shoop*, this Court considered yet a different statute, former RCW 36.01.050 (1997), which limited the superior court in which a county may be sued. 149 Wn.2d at 33, 35. Relying on its holding in *Young*, the *Shoop* Court stated, “we hold our previous interpretation of RCW 36.01.050 (1963) as a jurisdictional statute is inconsistent with article IV, section 6 of the Constitution.” *Id.* at 38. The *Shoop* Court interpreted article IV, section 6 as precluding “any subject matter restrictions as among superior courts,” and consequently, the court overruled prior decisions that interpreted former RCW 36.01.050 as jurisdictional. *Id.* at 37; *see also Dougherty*, 150 Wn.2d 310 (RCW 51.52.110 identified venue and was not a grant of jurisdiction).

In sum, this Court has repeatedly held that a statute cannot divest the superior court of original jurisdiction, even overturning conflicting precedent when necessary. As Division One acknowledged, its *Ralph* decision stands in direct opposition to this extensive—and growing—line of cases. By failing to account for this Court's recent holdings and article IV, section 6, Division One rendered a decision that was contrary to this Court's established precedent.

B. Review is warranted under RAP 13.4(b)(3) because a significant question under the Washington State Constitution is involved.

Division One declined to extend several of this Court's recent cases and instead relied on *Cugini v. Apex Mercury Mining Co.*, 24 Wn.2d 401, 165 P.2d 82 (1946), and *Snyder v. Ingram*, 48 Wn.2d 637, 296 P.2d 305 (1956). *Cugini* and *Snyder* are a part of a handful of cases in the 1940s and 1950s standing for the general proposition that the precursor statute of RCW 4.12.010 is jurisdictional in nature; they are part of a line of cases that, as Division One previously recognized, has "a tendency to speak of improper venue and lack of subject matter jurisdiction as though they mean the same thing." *Shoop v. Kittitas County*, 108 Wn. App. 388, 398, 30 P.3d 529 (2001), *aff'd on other grounds*, *Shoop*, 149 Wn.2d 29.

In *Cugini*, plaintiffs filed suit in Lewis County to quiet title to a tract of timber. 24 Wn.2d at 402. Defendants moved to transfer the action to Pierce County on the ground of witness convenience, and the trial court granted the motion. *Id.* On appeal, an issue was whether the trial court erred in transferring the case to Pierce County. *Id.* The *Cugini* Court concluded that "this court has not been consistent in deciding those cases in which § 204 applies" and stated:

The provisions of § 204 are jurisdictional in character. Actions involving title or injury to real property may only be commenced in the county in which the real property is

situated. Otherwise, the action must be dismissed for want of jurisdiction.

Id. However, because the plaintiffs filed suit in the county where the property was situated, the *Cuigini* Court affirmed the trial court's transfer of venue. *Id.*

In *Snyder*, plaintiffs sued defendants in King County, contending that they were the rightful owners of a specific 1955 Buick car. 48 Wn.2d at 637. Plaintiffs sought to recover possession of the Buick or, alternatively, its value. *Id.* Defendants moved to dismiss under RCW 4.12.010(2), arguing that King County lacked jurisdiction because the Buick was located in Chelan County at the time plaintiffs commenced the lawsuit. *Id.* at 638. After surveying several cases decided in the 1940s, including *Cugini*, the *Snyder* Court stated that "this court is now committed to the doctrine that [RCW 4.12.010] is a jurisdictional statute, rather than one of venue." *Id.* at 638.

Like Division One here, *neither Cugini nor Snyder considered RCW 4.12.010 under article IV, section 6.* Having failed to recognize the original jurisdiction that Washington's Constitution confers, *Cugini's* and *Snyder's* view that RCW 4.12.010 affected jurisdiction was an error of constitutional magnitude. Division One's reliance on them without examining article IV, section 6, therefore, was also constitutional error.

The question presented is whether RCW 4.12.010 can divest the superior court of its original jurisdiction under article IV, section 6. No case has decided this exact issue before; however, this Court has held on numerous occasions before filing restriction statutes similar to RCW 4.12.010 cannot displace the original jurisdiction that article IV, section 6 confers. Including *Ralph*, ***five lawsuits are in jeopardy of being dismissed based on the outcome of this appeal***, in direct contravention of Washington's Constitution. This Court must accept review to correct Division One's manifest constitutional error in holding that RCW 4.12.010 divested the superior court, King County, of original jurisdiction. Further, review must be accepted to the extent that *Cuigini* and *Snyder* must be overturned as resting on an unconstitutional premise.

C. Review is warranted under RAP 13.4(b)(1) and (2) because Division One's opinion is contrary to well-settled law stating that a party who suffers only monetary damages has a transitory cause of action.

Division One's opinion also conflicts with several decisions stating that a party who suffers only monetary damages, like *Ralph*, has a transitory cause of action. *Ralph's* claims are personal to him and transitory in nature because every claim in his complaint simply encompasses monetary damages to real property. See *State ex rel. U.S. Trust Co. v. Phillips*, 12 Wn.2d 308, 316-17, 121 P.2d 360 (1942);

McLeod v. Ellis, 2 Wn. 117, 122, 26 P. 76 (1891); *Washington State Bank v. Medalia Healthcare L.L.C.*, 96 Wn. App. 547, 555, 984 P.2d 1041, 1047 (1999); *Shelton v. Farkas*, 30 Wn. App. 549, 553, 635 P.2d 1109 (1981). Because Ralph is solely seeking monetary damages, the superior court will not have to deal directly with the real and personal property that the defendants are alleged to have negligently damaged. Accordingly, his claims are personal and transitory in nature.

McLeod lends support to this conclusion. There, the defendant cut down, removed, and disposed of trees located on the plaintiff's property, causing damages valued at approximately \$4,200. 2 Wn. at 119. The plaintiff did not file the suit in the same county in which the property was located, and the defendant challenged the superior court's jurisdiction. *Id.* *McLeod* held that the action was not one for injuries to realty but rather was an action for the value of trees "as personalty merely, without any claim for injury to his land." *Id.* at 122. Here, Ralph has similar claims of monetary damages flowing from a tort affecting his property. This does not, however, necessarily constitute "injury to land" because all damages sought are monetary. *Id.*

Furthermore, this Court has also held an action other than conversion to be transitory. *Silver Surprise, Inc. v. Sunshine Mining Co.*,

74 Wn.2d 519, 520, 445 P.2d 334 (1968). In *Silver Surprise*, the plaintiff brought a breach of contract claim concerning an exchange of conveyances and mining of property located in Idaho. The superior court dismissed for lack of subject matter jurisdiction because it viewed the subject of the action to be the determination of the title to the property in Idaho. *Id.* at 522. *Silver Surprise* reversed, holding that the contract action was transitory and that “[t]he view is generally maintained that where the relief sought acts upon the party personally and does not require the court to deal directly with ‘the real estate itself’, the proceeding need not be maintained in the state or county where the property is situate.” *Id.* at 525-527.

Here, Ralph’s tort action seeks relief in the form of monetary damages personal to him and does not affect title to their property. His claims deal with an “injury” to real property only in the most literal sense: floodwaters damaged real property and personal belongings. But this form of “injury” is not what RCW 4.12.010 contemplates. Instead, RCW 4.12.010 contemplates an “injury” to real property in the more abstract sense, meaning that *title* is affected, and accordingly, RCW 4.12.010 requires such actions are to be brought in the county in which the property is located to protect future owners. *Seymour v. La Furgey*, 47 Wn. 450, 451-52, 92 P. 267 (1907) (“It is the policy of our law that all transactions

affecting the title to real estate shall be matters of record in the county where such real estate is situated, so that anyone concerned therewith may be informed as to the condition of its title by an examination of the public records in such county.”). Future owners will have nothing to gain from notice that the defendants’ negligence caused Ralph to suffer monetary damages. This action affects Ralph personally, not his land or title to land in the abstract.

Certainly Ralph’s real property is part of a lawsuit because floodwater damaged it, but contrary to Division One’s opinion, this alone does not make the action local in nature. 14 Karl B. Tegland, Washington Practice Civil Procedure §6:5 (2011) (citing *State v. Superior Court of Spokane County*, 110 Wn. 49, 187 P. 708 (1920)) (“The mere fact that real estate is attached in an action which would otherwise be considered a transitory action does not convert the action into a local action.”). To the contrary, as discussed above, Ralph’s lawsuit is transitory in nature because he seeks to litigate their personal interests in the property and to recover in the form of the money damages that he suffered. Ralph only pleaded general and special damages; he only seeks to be made whole personally for the defendants’ negligence. For these reasons, Division One’s decision that Ralph’s action was an “injury to land” conflicts with Washington law. Review is warranted on this issue.

VI. SUMMARY AND CONCLUSION

As Division One recognized, it was constrained by *Cuigini* and *Snyder* to hold that RCW 4.12.010 divested the superior court of original jurisdiction under article IV, section 6. But neither Division One nor the cases it relied upon properly examined RCW 4.12.010 under Washington's constitution, an approach that directly conflicts with several of this Court's recent decisions. The superior court is one bench, and the legislature cannot divest the original jurisdiction that article IV, section 6 confers, unless it vests that authority in a court of lesser jurisdiction. Several lawsuits, including Ralph's, were improperly dismissed for want of jurisdiction under RCW 4.12.010, even though this statute does not vest authority to hear cases in a court of lesser jurisdiction.

RESPECTFULLY SUBMITTED this 13th day of November, 2012.

PFAU COCHRAN VERTETIS AMALA, PLLC

By:  _____

Darrell L. Cochran, WSBA No. 22851
Loren A. Cochran, WSBA No. 32773
Kevin M. Hastings, WSBA No. 42316

VII. APPENDIX

EXHIBIT A

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

WILLIAM RALPH, individually; WLLIAM)
 FORTH, individually; GUY BAUMAN,)
 individually; EILEEN BAUMAN,)
 individually; LINDA STANLEY,)
 individually and as personal)
 representative of ESTATE OF CORAL)
 COTTON; ROCHELLE STANLEY, as)
 personal representative of ESTATE OF)
 CORAL COTTON; DONALD)
 LEMASTER, individually; and DAVID)
 GIVENS, individually,)

Appellants,)

v.)

STATE OF WASHINGTON)
 DEPARTMENT OF NATURAL)
 RESOURCES, a Washington State)
 public agency; WEYERHAEUSER)
 COMPANY, a Washington)
 corporation; and GREEN DIAMOND)
 RESOURCE COMPANY, a)
 Washington corporation,)

Respondent.)

No. 67515-0-I
 consolidated with
 No. 67704-7-I

PUBLISHED OPINION

FILED: October 15, 2012

ELLINGTON, J. — Under RCW 4.12.010(1), actions alleging injury to property must be commenced in the county where that property is located. The plaintiffs here filed their actions in the wrong county, and the trial court dismissed the lawsuits for want of jurisdiction. Because Washington Supreme Court precedent interprets RCW 4.12.010 as jurisdictional, the trial court was required to dismiss, and we affirm.

BACKGROUND

In December 2007, heavy rains caused the Chehalis River to overflow its banks, resulting in widespread flooding in Lewis County. The properties of William Ralph and William Forth were among those affected. In 2010, Forth sued the Department of Natural Resources, Weyerhaeuser Company, and Green Diamond Resource Company (collectively DNR) in King County Superior Court, alleging negligence, trespass, tortious interference with contractual relations and business expectancy, conversion, inverse condemnation, unlawful agency action, and violations of the Shoreline Management Act of 1971¹ and the State Environmental Policy Act.² He sought injunctive and declaratory relief as well as general and specific damages related to the flooding. In 2011, Ralph filed a nearly identical lawsuit, also in King County. Ralph and Forth asserted that DNR's poor forestry practices made its land unstable and that during the 2007 storm, debris from landslides originating on DNR land flowed into the Chehalis River, displacing the water and flooding the river basin.

DNR moved to dismiss both actions, arguing that King County Superior Court lacked subject matter jurisdiction under RCW 4.12.010, which requires that cases involving injury to real property be brought in the county where the affected property is located. Ralph and Forth responded that RCW 4.12.010 concerns only venue, not jurisdiction. In the alternative, they claimed that their causes of action were transitory, not local, so that RCW 4.12.010 did not apply. The trial court dismissed

¹ Ch. 90.58 RCW.

² Ch. 43.21C RCW.

both cases without prejudice for want of subject matter jurisdiction. Ralph and Forth (collectively Ralph) filed separate appeals, which this court consolidated.

DISCUSSION

We first address Ralph's claim that RCW 4.12.010 does not apply here.

RCW 4.12.010 reads in pertinent part:

Actions for the following causes shall be commenced in the county in which the subject of the action, or some part thereof, is situated:

(1) For the recovery of, for the possession of, for the partition of, for the foreclosure of a mortgage on, or for the determination of all questions affecting the title, *or for any injuries to real property.*^[3]

Despite the statute's clear mandate, Ralph argues that his causes of action are "transitory," rather than "local," and are therefore properly brought in any county where jurisdiction over the defendants can be achieved.⁴ We must disagree.

"The nature of a claim for relief is determined by the facts alleged in the complaint and as adduced thereunder, and by the relief requested."⁵ In rem proceedings are local in nature, whereas a transitory action is one which at common law may be tried wherever personal service can be obtained.⁶ Ralph asserts that because he seeks only monetary damages, his claims are transitory and King County

³ (Emphasis added.)

⁴ Appellant's Br. at 19.

⁵ Silver Surprise, Inc. v. Sunshine Mining Co., 74 Wn.2d 519, 522, 445 P.2d 334 (1968).

⁶ Shelton v. Farkas, 30 Wn. App. 549, 553 n.6, 635 P.2d 1109 (1981).

is an appropriate venue. He relies on McLeod v. Ellis,⁷ Washington State Bank v. Medalia Healthcare LLC,⁸ and Silver Surprise, Inc. v. Sunshine Mining Co.⁹

In McLeod, our Supreme Court determined that an action for the conversion of trees was transitory because it was “one for the value of his trees as personalty merely, without any claim for injury to his land.”¹⁰ Thus, even though the land was in Pierce County, the case was properly heard in Thurston County territorial district court. Building on the reasoning of McLeod, this court held in Washington State Bank that a conversion action seeking exclusively monetary recovery “is in personam and transitory in nature and is therefore not subject to the requirement of RCW 4.12.010(2) that local actions be commenced in the county where the personal property is located.”¹¹ And in Silver Surprise, our Supreme Court held that a breach of contract action is transitory and can be heard by any court with jurisdiction over the defendant.¹²

The salient difference between these cases and this one is that Ralph alleges injury to his land. Actions for injury to property have long been regarded as local.¹³

⁷ 2 Wash. 117, 26 P. 76 (1891).

⁸ 96 Wn. App. 547, 984 P.2d 1041 (1999).

⁹ 74 Wn.2d 519, 445 P.2d 334 (1968).

¹⁰ McLeod, 2 Wash. at 122.

¹¹ Washington State Bank, 96 Wn. App. at 558.

¹² Silver Surprise, 74 Wn.2d at 526.

¹³ See McLeod, 2 Wash. at 120-21 (referring to actions included in the former version of RCW 4.12.010 as “always local”); 14 KARL B. TEGLAND, WASHINGTON PRACTICE: CIVIL PROCEDURE § 6:5, at 185 (2d ed. 2009) (“Actions seeking possession or partition of real estate, and actions for injuries to real estate, are . . . local actions.”).

The cases Ralph relies upon do nothing to alter this understanding, and we decline to extend their holdings beyond their intended scope. Because Ralph's claims involve injury to land, RCW 4.12.010 applies.

Next, Ralph claims that even if RCW 4.12.010 applies, its requirements relate to venue, not jurisdiction. He contends that interpreting the statute otherwise contravenes article IV, section 6 of the Washington State Constitution.¹⁴ Ralph's argument, however, is inconsistent with Washington Supreme Court precedent, which we must follow.

Subject matter jurisdiction is a question of law and our review is de novo.¹⁵ Subject matter jurisdiction governs the court's authority to hear a particular type of controversy, not a particular case.¹⁶ "If the type of controversy is within the subject matter jurisdiction, then all other defects or errors go to something other than subject matter jurisdiction."¹⁷ When a court lacks subject matter jurisdiction, it must dismiss the case.¹⁸ Venue, on the other hand, is a procedural issue and relates to location.

¹⁴ Article IV, section 6 reads in pertinent part, "The superior court shall also have original jurisdiction in all cases and of all proceedings in which jurisdiction shall not have been by law vested exclusively in some other court."

¹⁵ Williams v. Leone & Keeble, Inc., 171 Wn.2d 726, 729, 254 P.3d 818 (2011).

¹⁶ Dougherty v. Dep't of Labor & Indus., 150 Wn.2d 310, 317, 76 P.3d 1183 (2003).

¹⁷ Id. at 316 (quoting Marley v. Dep't of Labor and Indus., 125 Wn.2d 533, 539, 886 P.2d 189 (1994)).

¹⁸ Young v. Clark, 149 Wn.2d 130, 133, 65 P.3d 1192 (2003).

"It 'is the place where the power to adjudicate is to be exercised, that is, the place where the suit may or should be heard.'"¹⁹

Our Supreme Court has determined that RCW 4.12.010 is a jurisdictional statute. In Cugini v. Apex Mercury Mining Co., the court held that actions involving title or injury to real property are jurisdictional in character and may be commenced only in the county in which the real property is located.²⁰ "Otherwise, the action must be dismissed for want of jurisdiction."²¹ Ten years later, in Snyder v. Ingram,²² the court rejected the argument that RCW 4.12.010 is really a venue statute: "We have considered this section in several cases, sometimes interpreting it as a venue statute and other times as a jurisdictional statute. Be that as it may, this court is now committed to the doctrine that this is a jurisdictional statute, rather than one of venue."²³

¹⁹ Dougherty, 150 Wn.2d at 316 (quoting 77 AM. JUR. 2D *Venue* § 1, at 608 (1997)).

²⁰ 24 Wn.2d 401, 409, 165 P.2d 82 (1946) (interpreting former Rem. Rev. Stat. § 204(1) (1881), *recodified* as RCW 4.12.010).

²¹ Id.

²² 48 Wn.2d 637, 638, 296 P.2d 305 (1956) (citing Miles v. Chinto Mining Co., 21 Wn.2d 902, 904, 153 P.2d 856, 156 P.2d 235 (1945) (holding that Spokane County had no jurisdiction over an action concerning the title to real property located in Stevens County because the former version of RCW 4.12.010 "has been regarded as a statute affecting jurisdiction"); Cugini, 24 Wn.2d at 409; Alaska Airlines v. Molitor, 43 Wn.2d 657, 665, 263 P.2d 276 (1953) ("We have held that the provisions of [RCW 4.12.010] are jurisdictional and cannot be waived.")).

²³ Snyder, 48 Wn.2d at 638. Ralph contends that Snyder is factually distinguishable because it concerned personal property, the possession of a Buick automobile. But the cases Snyder relied upon interpreted the real property section of RCW 4.12.010. In fact, the Snyder court noted that its holding would apply equally to RCW 4.12.010(1) and RCW 4.12.010(2). Snyder, 48 Wn.2d at 639. Ralph's contention is thus unconvincing.

Ralph claims that Snyder is no longer good law under more recent Washington Supreme Court cases: Young v. Clark,²⁴ Shoop v. Kittitas County,²⁵ and Dougherty v. Department of Labor and Industries.²⁶ In those cases, the court interpreted filing restrictions similar to the one in RCW 4.12.010 as specifying venue, and expressly overruled previous decisions holding the statutes jurisdictional. In Dougherty, for example, the court stated, "Statutes which require actions to be brought in certain counties are generally regarded as specifying the proper venue and 'are ordinarily construed not to limit jurisdiction of the state courts to the courts of the counties thus designated.'"²⁷

We recognize that it is difficult to reconcile Young, Shoop, and Dougherty with Snyder. Indeed, our Supreme Court acknowledged the conflict in Five Corners Family Farmers v. State Department of Ecology:

If RCW 4.12.010 applied, that would raise the troublesome issue of whether that statute is one of jurisdiction, or one of venue Unless we were to overrule Snyder, if RCW 4.12.010 required that this case be filed in Franklin County, the proper remedy would have been dismissal, not transfer. The parties have not briefed this issue, and we decline to address it.^[28]

²⁴ 149 Wn.2d 130, 65 P.3d 1192 (2003) (holding that the filing restrictions of RCW 4.12.020(3) relate to venue).

²⁵ 149 Wn.2d 29, 65 P.3d 1194 (2003) (holding that the interpretation of RCW 36.01.050 as jurisdictional was inconsistent with article IV, section 6).

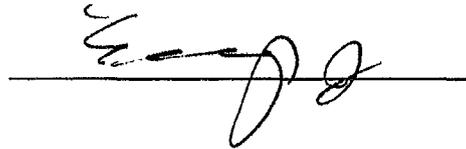
²⁶ 150 Wn.2d 310, 76 P.3d 1183 (2003) (holding that the RCW 51.52.110 designation of the proper county in which to file a worker's compensation claim identified venue and was not a grant of jurisdiction).

²⁷ Dougherty, 150 Wn.2d at 316 (quoting 77 AM. JUR. 2D *Venue* § 44, at 651 (1997)).

²⁸ 173 Wn.2d 296, 315 n.5, 268 P.3d 892 (2011) (citations omitted).

While the Supreme Court may overrule Snyder (and Cugini), this court cannot. We are not free to ignore the plain language of those decisions, and neither was the trial court.²⁹ Thus, the trial court properly dismissed Ralph's case.³⁰

Affirmed.

A handwritten signature in black ink, appearing to be "Snyder", written over a horizontal line.

WE CONCUR:

A handwritten signature in black ink, "Leach, C. J.", written over a horizontal line.A handwritten signature in black ink, appearing to be "Jan J.", written over a horizontal line.

²⁹ See Green v. Normandy Park, 137 Wn. App. 665, 691-92, 151 P.3d 1038 (2007); Broom v. Morgan Stanley DW, Inc., 169 Wn.2d 231, 236 P.3d 182 (2010) ("We have previously disapproved of overruling binding precedent sub silentio."); State v. Gore, 101 Wn.2d 481, 487, 681 P.2d 227 (1984) ("[O]nce this court has decided an issue of state law, that interpretation is binding on all lower courts until it is overruled by this court.").

³⁰ Neither party addresses an issue of considerable concern: the potential effects of treating RCW 4.12.010 as applying only to venue, on the stability and security of land title registration under the Torrens Act, chapter 65.12 RCW. If the Supreme Court accepts review, it may wish to seek friend of the court briefs on that question.

EXHIBIT B



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RCW 4.12.010

Actions to be commenced where subject is situated.

Actions for the following causes shall be commenced in the county in which the subject of the action, or some part thereof, is situated:

(1) For the recovery of, for the possession of, for the partition of, for the foreclosure of a mortgage on, or for the determination of all questions affecting the title, or for any injuries to real property.

(2) All questions involving the rights to the possession or title to any specific article of personal property, in which last mentioned class of cases, damages may also be awarded for the detention and for injury to such personal property.

[Code 1881 § 47; 1877 p 11 § 48; 1869 p 12 § 48; 1860 p 7 § 15; 1854 p 133 § 13; RRS § 204.]



EXHIBIT C

officers shall not be increased or diminished during the term for which they shall have been elected. The legislature may in its discretion abolish the offices of the lieutenant governor, auditor and commissioner of public lands.

ARTICLE IV THE JUDICIARY

SECTION 1 JUDICIAL POWER, WHERE VESTED.

The judicial power of the state shall be vested in a supreme court, superior courts, justices of the peace, and such inferior courts as the legislature may provide.

Court of appeals: Art. 4 Section 30.

SECTION 2 SUPREME COURT. The supreme court shall consist of five judges, a majority of whom shall be necessary to form a quorum, and pronounce a decision. The said court shall always be open for the transaction of business except on nonjudicial days. In the determination of causes all decisions of the court shall be given in writing and the grounds of the decision shall be stated. The legislature may increase the number of judges of the supreme court from time to time and may provide for separate departments of said court.

SECTION 2(a) TEMPORARY PERFORMANCE OF JUDICIAL DUTIES. When necessary for the prompt and orderly administration of justice a majority of the Supreme Court is empowered to authorize judges or retired judges of courts of record of this state, to perform, temporarily, judicial duties in the Supreme Court, and to authorize any superior court judge to perform judicial duties in any superior court of this state. [AMENDMENT 38, 1961 House Joint Resolution No. 6, p 2757. Approved November, 1962.]

SECTION 3 ELECTION AND TERMS OF SUPREME COURT JUDGES. The judges of the supreme court shall be elected by the qualified electors of the state at large at the general state election at the times and places at which state officers are elected, unless some other time be provided by the legislature. The first election of judges of the supreme court shall be at the election which shall be held upon the adoption of this Constitution and the judges elected thereat shall be classified by lot, so that two shall hold their office for the term of three years, two for the term of five years, and one for the term of seven years. The lot shall be drawn by the judges who shall for that purpose assemble at the seat of government, and they shall cause the result thereof to be certified to the secretary of state, and filed in his office. The supreme court shall select a chief justice from its own membership to serve

select a chief justice from its own membership to serve for a four-year term at the pleasure of a majority of the court as prescribed by supreme court rule. The chief justice shall preside at all sessions of the supreme court. In case of the absence of the chief justice, the majority of the remaining court shall select one of their members to serve as acting chief justice. After the first election the terms of judges elected shall be six years from and after the second Monday in January next succeeding their election. If a vacancy occur in the office of a judge of the supreme court the governor shall only appoint a person to ensure the number of judges as specified by the legislature, to hold the office until the election and qualification of a judge to fill the vacancy, which election shall take place at the next succeeding general election, and the judge so elected shall hold the office for the remainder of the unexpired term. The term of office of the judges of the supreme court, first elected, shall commence as soon as the state shall have been admitted into the Union, and continue for the term herein provided, and until their successors are elected and qualified. The sessions of the supreme court shall be held at the seat of government until otherwise provided by law.

[**AMENDMENT 89**, 1995 Substitute Senate Joint Resolution No. 8210, p 2905. Approved November 7, 1995.]

Original text -- Art. 4 Section 3 ELECTION AND TERMS OF SUPREME COURT JUDGES -- *The judges of the supreme court shall be elected by the qualified electors of the state at large at the general state election at the times and places at which state officers are elected, unless some other time be provided by the legislature. The first election of judges of the supreme court shall be at the election which shall be held upon the adoption of this Constitution and the judges elected thereat shall be classified by lot, so that two shall hold their office for the term of three years, two for the term of five years, and one for the term of seven years. The lot shall be drawn by the judges who shall for that purpose assemble at the seat of government, and they shall cause the result thereof to be certified to the secretary of state, and filed in his office. The judge having the shortest term to serve not holding his office by appointment or election to fill a vacancy, shall be the chief justice, and shall preside at all sessions of the supreme court, and in case there shall be two judges having in like manner the same short term, the other judges of the supreme court shall determine which of them shall be chief justice. In case of the absence of the chief justice, the judge having in like manner the shortest or next shortest term to serve shall preside. After the first election the terms of judges elected shall be six years from and after the second Monday in January next succeeding their election. If a vacancy occur in the office of a judge of the supreme court the governor shall appoint a person to hold the office until the election and qualification of a judge to fill the vacancy, which election shall take place at the next succeeding general election, and the judge so elected shall hold the office for the remainder of the unexpired term. The term of office of the judges of the supreme court, first elected, shall commence as soon as the state shall have been admitted into the Union, and continue for the term herein provided, and until their successors are elected and qualified. The sessions of the supreme court shall be held at the seat of government until*

otherwise provided by law.

SECTION 3(a) RETIREMENT OF SUPREME COURT AND SUPERIOR COURT JUDGES. A judge of the supreme court or the superior court shall retire from judicial office at the end of the calendar year in which he attains the age of seventy-five years. The legislature may, from time to time, fix a lesser age for mandatory retirement, not earlier than the end of the calendar year in which any such judge attains the age of seventy years, as the legislature deems proper. This provision shall not affect the term to which any such judge shall have been elected or appointed prior to, or at the time of, approval and ratification of this provision. Notwithstanding the limitations of this section, the legislature may by general law authorize or require the retirement of judges for physical or mental disability, or any cause rendering judges incapable of performing their judicial duties. [AMENDMENT 25, 1951 House Joint Resolution No. 6, p 960. Approved November 4, 1952.]

SECTION 4 JURISDICTION. The supreme court shall have original jurisdiction in habeas corpus, and quo warranto and mandamus as to all state officers, and appellate jurisdiction in all actions and proceedings, excepting that its appellate jurisdiction shall not extend to civil actions at law for the recovery of money or personal property when the original amount in controversy, or the value of the property does not exceed the sum of two hundred dollars (\$200) unless the action involves the legality of a tax, impost, assessment, toll, municipal fine, or the validity of a statute. The supreme court shall also have power to issue writs of mandamus, review, prohibition, habeas corpus, certiorari and all other writs necessary and proper to the complete exercise of its appellate and revisory jurisdiction. Each of the judges shall have power to issue writs of habeas corpus to any part of the state upon petition by or on behalf of any person held in actual custody, and may make such writs returnable before himself, or before the supreme court, or before any superior court of the state or any judge thereof.

SECTION 5 SUPERIOR COURT – ELECTION OF JUDGES, TERMS OF, ETC. There shall be in each of the organized counties of this state a superior court for which at least one judge shall be elected by the qualified electors of the county at the general state election: **Provided,** That until otherwise directed by the legislature one judge only shall be elected for the counties of Spokane and Stevens; one judge for the county of Whitman; one judge for the counties of Lincoln, Okanogan, Douglas and Adams; one judge for the counties of Walla Walla and Franklin; one judge for the counties of Columbia, Garfield and Asotin; one judge for the counties of Kittitas, Yakima and Klickitat; one judge for the counties of Clarke, Skamania

one judge for the counties of Grant, Okanogan, Pacific, Cowlitz and Wahkiakum; one judge for the counties of Thurston, Chehalis, Mason and Lewis; one judge for the county of Pierce; one judge for the county of King; one judge for the counties of Jefferson, Island, Kitsap, San Juan and Clallam; and one judge for the counties of Whatcom, Skagit and Snohomish. In any county where there shall be more than one superior judge, there may be as many sessions of the superior court at the same time as there are judges thereof, and whenever the governor shall direct a superior judge to hold court in any county other than that for which he has been elected, there may be as many sessions of the superior court in said county at the same time as there are judges therein or assigned to duty therein by the governor, and the business of the court shall be so distributed and assigned by law or in the absence of legislation therefor, by such rules and orders of court as shall best promote and secure the convenient and expeditious transaction thereof. The judgments, decrees, orders and proceedings of any session of the superior court held by any one or more of the judges of such court shall be equally effectual as if all the judges of said court presided at such session. The first superior judges elected under this Constitution shall hold their offices for the period of three years, and until their successors shall be elected and qualified, and thereafter the term of office of all superior judges in this state shall be for four years from the second Monday in January next succeeding their election and until their successors are elected and qualified. The first election of judges of the superior court shall be at the election held for the adoption of this Constitution. If a vacancy occurs in the office of judge of the superior court, the governor shall appoint a person to hold the office until the election and qualification of a judge to fill the vacancy, which election shall be at the next succeeding general election, and the judge so elected shall hold office for the remainder of the unexpired term.

Supreme court may authorize superior court judge to perform judicial duties in any superior court: Art. 4 Section 2(a).

SECTION 6 JURISDICTION OF SUPERIOR COURTS.

Superior courts and district courts have concurrent jurisdiction in cases in equity. The superior court shall have original jurisdiction in all cases at law which involve the title or possession of real property, or the legality of any tax, impost, assessment, toll, or municipal fine, and in all other cases in which the demand or the value of the property in controversy amounts to three thousand dollars or as otherwise determined by law, or a lesser sum in excess of the jurisdiction granted to justices of the peace and other inferior courts, and in all criminal cases amounting to felony, and in all cases of misdemeanor not otherwise provided for by law; of actions of forcible entry and detainer; of proceedings in insolvency; of actions to

prevent or abate a nuisance; of all matters of probate, of divorce, and for annulment of marriage; and for such special cases and proceedings as are not otherwise provided for. The superior court shall also have original jurisdiction in all cases and of all proceedings in which jurisdiction shall not have been by law vested exclusively in some other court; and said court shall have the power of naturalization and to issue papers therefor. They shall have such appellate jurisdiction in cases arising in justices' and other inferior courts in their respective counties as may be prescribed by law. They shall always be open, except on nonjudicial days, and their process shall extend to all parts of the state. Said courts and their judges shall have power to issue writs of mandamus, quo warranto, review, certiorari, prohibition, and writs of habeas corpus, on petition by or on behalf of any person in actual custody in their respective counties. Injunctions and writs of prohibition and of habeas corpus may be issued and served on legal holidays and nonjudicial days. [AMENDMENT 87, 1993 House Joint Resolution No. 4201, p 3063. Approved November 2, 1993.]

Amendment 65, part (1977) -- Art. 4 Section 6 Jurisdiction of Superior Courts -- *The superior court shall have original jurisdiction in all cases in equity and in all cases at law which involve the title or possession of real property, or the legality of any tax, impost, assessment, toll, or municipal fine, and in all other cases in which the demand or the value of the property in controversy amounts to three thousand dollars or as otherwise determined by law, or a lesser sum in excess of the jurisdiction granted to justices of the peace and other inferior courts, and in all criminal cases amounting to felony, and in all cases of misdemeanor not otherwise provided for by law; of actions of forcible entry and detainer; of proceedings in insolvency; of actions to prevent or abate a nuisance; of all matters of probate, of divorce, and for annulment of marriage; and for such special cases and proceedings as are not otherwise provided for. The superior court shall also have original jurisdiction in all cases and of all proceedings in which jurisdiction shall not have been by law vested exclusively in some other court; and said court shall have the power of naturalization and to issue papers therefor. They shall have such appellate jurisdiction in cases arising in justices' and other inferior courts in their respective counties as may be prescribed by law. They shall always be open, except on nonjudicial days, and their process shall extend to all parts of the state. Said courts and their judges shall have power to issue writs of mandamus, quo warranto, review, certiorari, prohibition, and writs of habeas corpus, on petition by or on behalf of any person in actual custody in their respective counties. Injunctions and writs of prohibition and of habeas corpus may be issued and served on legal holidays and nonjudicial days. [AMENDMENT 65, part, 1977 Senate Joint Resolution No. 113, p 1714. Approved November 8, 1977.]*

Amendment 65 also amended Art. 4 Section 10.

Amendment 28, part (1952) -- Art. 4 Section 6 JURISDICTION OF SUPERIOR COURTS -- *The superior court shall have original jurisdiction in all cases in equity and in all cases at law which involve the title or possession of real property, or the legality of any tax, impost, assessment, toll, or municipal fine, and in all*

other cases in which the demand or the value of the property in controversy amounts to one thousand dollars, or a lesser sum in excess of the jurisdiction granted to justices of the peace and other inferior courts, and in all criminal cases amounting to felony, and in all cases of misdemeanor not otherwise provided for by law; of actions of forcible entry and detainer; of proceedings in insolvency; of actions to prevent or abate a nuisance; of all matters of probate, of divorce, and for annulment of marriage; and for such special cases and proceedings as are not otherwise provided for. The superior court shall also have original jurisdiction in all cases and of all proceedings in which jurisdiction shall not have been by law vested exclusively in some other court; and said court shall have the power of naturalization and to issue papers therefor. They shall have such appellate jurisdiction in cases arising in justices' and other inferior courts in their respective counties as may be prescribed by law. They shall always be open, except on nonjudicial days, and their process shall extend to all parts of the state. Said courts and their judges shall have power to issue writs of mandamus, quo warranto, review, certiorari, prohibition, and writs of habeas corpus, on petition by or on behalf of any person in actual custody in their respective counties. Injunctions and writs of prohibition and of habeas corpus may be issued and served on legal holidays and nonjudicial days. [AMENDMENT 28, part, 1951 Substitute House Joint Resolution No. 13, p 962. Approved November 4, 1952.]

Note: Amendment 28 also amended Art. 4 Section 10.

ORIGINAL TEXT -- ART. 4 Section 6 JURISDICTION OF SUPERIOR COURTS --

The superior court shall have original jurisdiction in all cases in equity, and in all cases at law which involve the title or possession of real property, or the legality of any tax, impost, assessment, toll or municipal fine, and in all other cases in which the demand, or the value of the property in controversy amounts to one hundred dollars, and in all criminal cases amounting to felony, and in all cases of misdemeanor not otherwise provided for by law; of actions of forcible entry and detainer; of proceedings in insolvency; of actions to prevent or abate a nuisance; of all matters of probate, of divorce, and for annulment of marriage; and for such special cases and proceedings as are not otherwise provided for. The superior court shall also have original jurisdiction in all cases and of all proceedings in which jurisdiction shall not have been by law vested exclusively in some other court; and said court shall have the power of naturalization, and to issue papers therefor. They shall have such appellate jurisdiction in cases arising in justice's and other inferior courts in their respective counties as may be prescribed by law. They shall be always open except on non-judicial days, and their process shall extend to all parts of the state. Said courts and their judges shall have power to issue writs of mandamus, quo warranto, review, certiorari, prohibition, and writs of habeas corpus on petition by or on behalf of any person in actual custody in their respective counties. Injunctions and writs of prohibition and of habeas corpus may be issued and served on legal holidays and non-judicial days.

SECTION 7 EXCHANGE OF JUDGES – JUDGE PRO TEMPORE.

The judge of any superior court may hold a superior court in any county at the request of the judge of the superior court thereof, and upon the request of the governor it shall be his or her duty to do so. A case in the superior court may be tried by a judge pro tempore either with the agreement of the parties if the

judge pro tempore is a member of the bar, is agreed upon in writing by the parties litigant or their attorneys of record, and is approved by the court and sworn to try the case; or without the agreement of the parties if the judge pro tempore is a sitting elected judge and is acting as a judge pro tempore pursuant to supreme court rule. The supreme court rule must require assignments of judges pro tempore based on the judges' experience and must provide for the right, exercisable once during a case, to a change of judge pro tempore. Such right shall be in addition to any other right provided by law. However, if a previously elected judge of the superior court retires leaving a pending case in which the judge has made discretionary rulings, the judge is entitled to hear the pending case as a judge pro tempore without any written agreement. [AMENDMENT 94, 2001 Engrossed Senate Joint Resolution No. 8208, p 2327. Approved November 6, 2001.]

Amendment 80 -- Art. 4 Section 7 EXCHANGE OF JUDGES -- JUDGE PRO TEMPORE-- *The judge of any superior court may hold a superior court in any county at the request of the judge of the superior court thereof, and upon the request of the governor it shall be his duty to do so. A case in the superior court may be tried by a judge, pro tempore, who must be a member of the bar, agreed upon in writing by the parties litigant, or their attorneys of record, approved by the court and sworn to try the case. However, if a previously elected judge of the superior court retires leaving a pending case in which the judge has made discretionary rulings, the judge is entitled to hear the pending case as a judge pro tempore without any written agreement.*[Amendment 80, 1987 Senate Joint Resolution No. 8207, p 2815. Approved November 3, 1987.]

ORIGINAL TEXT -- Art. 4 Section 7 EXCHANGE OF JUDGES -- JUDGE PRO TEMPORE-- *The judge of any superior court may hold a superior court in any county at the request of the judge of the superior court thereof, and upon the request of the governor it shall be his duty to do so. A case in the superior court may be tried by a judge, pro tempore, who must be a member of the bar, agreed upon in writing by the parties litigant, or their attorneys of record, approved by the court and sworn to try the case.*

SECTION 8 ABSENCE OF JUDICIAL OFFICER. Any judicial officer who shall absent himself from the state for more than sixty consecutive days shall be deemed to have forfeited his office: *Provided*, That in cases of extreme necessity the governor may extend the leave of absence such time as the necessity therefor shall exist.

SECTION 9 REMOVAL OF JUDGES, ATTORNEY GENERAL, ETC. Any judge of any court of record, the attorney general, or any prosecuting attorney may be removed from office by joint resolution of the legislature, in which three-fourths of the members elected to each house shall concur, for incompetency, corruption, malfeasance, or delinquency in office, or other sufficient cause stated in such resolution. But no removal shall

be made unless the officer complained of shall have been served with a copy of the charges against him as the ground of removal, and shall have an opportunity of being heard in his defense. Such resolution shall be entered at length on the journal of both houses and on the question of removal the ayes and nays shall also be entered on the journal.

Removal, censure, suspension, or retirement of judges or justices: Art. 4 Section 31.

SECTION 10 JUSTICES OF THE PEACE. The legislature shall determine the number of justices of the peace to be elected and shall prescribe by law the powers, duties and jurisdiction of justices of the peace: *Provided, That such jurisdiction granted by the legislature shall not trench upon the jurisdiction of superior or other courts of record, except that justices of the peace may be made police justices of incorporated cities and towns. Justices of the peace shall have original jurisdiction in cases where the demand or value of the property in controversy is less than three hundred dollars or such greater sum, not to exceed three thousand dollars or as otherwise determined by law, as shall be prescribed by the legislature. In incorporated cities or towns having more than five thousand inhabitants, the justices of the peace shall receive such salary as may be provided by law, and shall receive no fees for their own use.* [AMENDMENT 65, part, 1977 Senate Joint Resolution No. 113, p 1714. Approved November 8, 1977.]

Amendment 65 also amended Art. 4 Section 6.

Amendment 28, part (1952) -- Art. 4 Section 10 JUSTICES OF THE PEACE -- The legislature shall determine the number of justices of the peace to be elected and shall prescribe by law the powers, duties and jurisdiction of justices of the peace: *Provided, That such jurisdiction granted by the legislature shall not trench upon the jurisdiction of superior or other courts of record, except that justices of the peace may be made police justices of incorporated cities and towns. Justices of the peace shall have original jurisdiction in cases where the demand or value of the property in controversy is less than three hundred dollars or such greater sum, not to exceed one thousand dollars, as shall be prescribed by the legislature. In incorporated cities or towns having more than five thousand inhabitants, the justices of the peace shall receive such salary as may be provided by law, and shall receive no fees for their own use.* [AMENDMENT 28, part, 1951 Substitute House Joint Resolution No. 13, p 962. Approved November 4, 1952.]

Note: Amendment 28 also amended Art. 4 Section 6.

Original text -- Art. 4 Section 10 JUSTICES OF THE PEACE -- *The legislature shall determine the number of justices of the peace to be elected in incorporated cities or towns and in precincts, and shall prescribe by law the powers, duties and jurisdiction of justices of the peace; Provided, That such jurisdiction granted by the legislature shall not trench upon the jurisdiction of superior or other courts of record, except that*

justices of the peace may be made police justices of incorporated cities and towns. In incorporated cities or towns having more than five thousand inhabitants the justices of the peace shall receive such salary as may be provided by law, and shall receive no fees for their own use.

SECTION 11 COURTS OF RECORD. The supreme court and the superior courts shall be courts of record, and the legislature shall have power to provide that any of the courts of this state, excepting justices of the peace, shall be courts of record.

SECTION 12 INFERIOR COURTS. The legislature shall prescribe by law the jurisdiction and powers of any of the inferior courts which may be established in pursuance of this Constitution.

SECTION 13 SALARIES OF JUDICIAL OFFICERS -- HOW PAID, ETC. No judicial officer, except court commissioners and unsalaried justices of the peace, shall receive to his own use any fees or perquisites of office. The judges of the supreme court and judges of the superior courts shall severally at stated times, during their continuance in office, receive for their services the salaries prescribed by law therefor, which shall not be increased after their election, nor during the term for which they shall have been elected. The salaries of the judges of the supreme court shall be paid by the state. One-half of the salary of each of the superior court judges shall be paid by the state, and the other one-half by the county or counties for which he is elected. In cases where a judge is provided for more than one county, that portion of his salary which is to be paid by the counties shall be apportioned between or among them according to the assessed value of their taxable property, to be determined by the assessment next preceding the time for which such salary is to be paid.

Authorizing compensation increase during term: Art. 30 Section 1.

Increase or diminution of compensation during term of office prohibited

county, city or municipal officers: Art. 11 Section 8.

public officers: Art. 2 Section 25.

state officers: Art. 3 Section 25.

SECTION 14 SALARIES OF SUPREME AND SUPERIOR COURT JUDGES. Each of the judges of the supreme court shall receive an annual salary of four thousand dollars (\$4,000); each of the superior court judges shall receive an annual salary of three thousand dollars (\$3,000), which said salaries shall be payable quarterly. The legislature may increase the salaries of judges herein provided.

Compensation of legislators, elected state officials, and judges: Art. 28 Section 1.

SECTION 15 INELIGIBILITY OF JUDGES. The judges of the supreme court and the judges of the superior court shall be ineligible to any other office or public employment than a judicial office, or employment, during the term for which they shall have been elected.

SECTION 16 CHARGING JURIES. Judges shall not charge juries with respect to matters of fact, nor comment thereon, but shall declare the law.

SECTION 17 ELIGIBILITY OF JUDGES. No person shall be eligible to the office of judge of the supreme court, or judge of a superior court, unless he shall have been admitted to practice in the courts of record of this state, or of the Territory of Washington.

SECTION 18 SUPREME COURT REPORTER. The judges of the supreme court shall appoint a reporter for the decisions of that court, who shall be removable at their pleasure. He shall receive such annual salary as shall be prescribed by law.

SECTION 19 JUDGES MAY NOT PRACTICE LAW. No judge of a court of record shall practice law in any court of this state during his continuance in office.

SECTION 20 DECISIONS, WHEN TO BE MADE. Every cause submitted to a judge of a superior court for his decision shall be decided by him within ninety days from the submission thereof; *Provided*, That if within said period of ninety days a rehearing shall have been ordered, then the period within which he is to decide shall commence at the time the cause is submitted upon such a hearing.

SECTION 21 PUBLICATION OF OPINIONS. The legislature shall provide for the speedy publication of opinions of the supreme court, and all opinions shall be free for publication by any person.

SECTION 22 CLERK OF THE SUPREME COURT. The judges of the supreme court shall appoint a clerk of that court who shall be removable at their pleasure, but the legislature may provide for the election of the clerk of the supreme court, and prescribe the term of his office. The clerk of the supreme court shall receive such compensation by salary only as shall be provided by law.

SECTION 23 COURT COMMISSIONERS. There may be appointed in each county, by the judge of the superior court having jurisdiction therein, one or more court commissioners, not exceeding three in number, who shall have authority to perform like duties as a judge of the superior court at chambers, subject to revision by such judge, to take depositions and to perform such other business connected with the

perform such other business connected with the administration of justice as may be prescribed by law.

SECTION 24 RULES FOR SUPERIOR COURTS. The judges of the superior courts, shall from time to time, establish uniform rules for the government of the superior courts.

SECTION 25 REPORTS OF SUPERIOR COURT JUDGES. Superior judges, shall on or before the first day of November in each year, report in writing to the judges of the supreme court such defects and omissions in the laws as their experience may suggest, and the judges of the supreme court shall on or before the first day of January in each year report in writing to the governor such defects and omissions in the laws as they may believe to exist.

SECTION 26 CLERK OF THE SUPERIOR COURT. The county clerk shall be by virtue of his office, clerk of the superior court.

SECTION 27 STYLE OF PROCESS. The style of all process shall be, "The State of Washington," and all prosecutions shall be conducted in its name and by its authority.

SECTION 28 OATH OF JUDGES. Every judge of the supreme court, and every judge of a superior court shall, before entering upon the duties of his office, take and subscribe an oath that he will support the Constitution of the United States and the Constitution of the State of Washington, and will faithfully and impartially discharge the duties of judge to the best of his ability, which oath shall be filed in the office of the secretary of state.

SECTION 29 ELECTION OF SUPERIOR COURT JUDGES. Notwithstanding any provision of this Constitution to the contrary, if, after the last day as provided by law for the withdrawal of declarations of candidacy has expired, only one candidate has filed for any single position of superior court judge in any county containing a population of one hundred thousand or more, no primary or election shall be held as to such position, and a certificate of election shall be issued to such candidate. If, after any contested primary for superior court judge in any county, only one candidate is entitled to have his name printed on the general election ballot for any single position, no election shall be held as to such position, and a certificate of election shall be issued to such candidate: *Provided*, That in the event that there is filed with the county auditor within ten days after the date of the primary, a petition indicating that a write in campaign will be conducted for such single position and signed by one hundred registered voters qualified to vote with respect of the office. then such single

to the same respect of the same, then each single position shall be subject to the general election. Provisions for the contingency of the death or disqualification of a sole candidate between the last date for withdrawal and the time when the election would be held but for the provisions of this section, and such other provisions as may be deemed necessary to implement the provisions of this section, may be enacted by the legislature. [AMENDMENT 41, 1965 ex.s. Substitute Senate Joint Resolution No. 6, p 2815. Approved November 8, 1966.]

SECTION 30 COURT OF APPEALS. (1) *Authorization.*

In addition to the courts authorized in section 1 of this article, judicial power is vested in a court of appeals, which shall be established by statute.

(2) *Jurisdiction.* The jurisdiction of the court of appeals shall be as provided by statute or by rules authorized by statute.

(3) *Review of Superior Court.* Superior court actions may be reviewed by the court of appeals or by the supreme court as provided by statute or by rule authorized by statute.

(4) *Judges.* The number, manner of election, compensation, terms of office, removal and retirement of judges of the court of appeals shall be as provided by statute.

(5) *Administration and Procedure.* The administration and procedures of the court of appeals shall be as provided by rules issued by the supreme court.

(6) *Conflicts.* The provisions of this section shall supersede any conflicting provisions in prior sections of this article. [AMENDMENT 50, 1967 Senate Joint Resolution No. 6; see 1969 p 2975. Approved November 5, 1968.]

Reviser's note: This section which was adopted as Sec. 29 is herein renumbered Sec. 30 to avoid confusion with Sec. 29, supra.

SECTION 31 COMMISSION ON JUDICIAL

CONDUCT. (1) There shall be a commission on judicial conduct, existing as an independent agency of the judicial branch, and consisting of a judge selected by and from the court of appeals judges, a judge selected by and from the superior court judges, a judge selected by and from the limited jurisdiction court judges, two persons admitted to the practice of law in this state selected by the state bar association, and six persons who are not attorneys appointed by the governor.

(2) Whenever the commission receives a complaint against a judge or justice, or otherwise has reason to believe that a judge or justice should be admonished, reprimanded, censured, suspended, removed, or retired, the commission shall first investigate the complaint or belief and then conduct initial proceedings for the purpose of determining whether probable cause exists for conducting a public hearing or hearings to deal with the complaint or belief. The investigation and

deal with the complaint or petition. The investigation and initial proceedings shall be confidential. Upon beginning an initial proceeding, the commission shall notify the judge or justice of the existence of and basis for the initial proceeding.

(3) Whenever the commission concludes, based on an initial proceeding, that there is probable cause to believe that a judge or justice has violated a rule of judicial conduct or that the judge or justice suffers from a disability which is permanent or likely to become permanent and which seriously interferes with the performance of judicial duties, the commission shall conduct a public hearing or hearings and shall make public all those records of the initial proceeding that provide the basis for its conclusion. If the commission concludes that there is not probable cause, it shall notify the judge or justice of its conclusion.

(4) Upon the completion of the hearing or hearings, the commission in open session shall either dismiss the case, or shall admonish, reprimand, or censure the judge or justice, or shall censure the judge or justice and recommend to the supreme court the suspension or removal of the judge or justice, or shall recommend to the supreme court the retirement of the judge or justice. The commission may not recommend suspension or removal unless it censures the judge or justice for the violation serving as the basis for the recommendation. The commission may recommend retirement of a judge or justice for a disability which is permanent or likely to become permanent and which seriously interferes with the performance of judicial duties.

(5) Upon the recommendation of the commission, the supreme court may suspend, remove, or retire a judge or justice. The office of a judge or justice retired or removed by the supreme court becomes vacant, and that person is ineligible for judicial office until eligibility is reinstated by the supreme court. The salary of a removed judge or justice shall cease. The supreme court shall specify the effect upon salary when it suspends a judge or justice. The supreme court may not suspend, remove, or retire a judge or justice until the commission, after notice and hearing, recommends that action be taken, and the supreme court conducts a hearing, after notice, to review commission proceedings and findings against the judge or justice.

(6) Within thirty days after the commission admonishes, reprimands, or censures a judge or justice, the judge or justice shall have a right of appeal de novo to the supreme court.

(7) Any matter before the commission or supreme court may be disposed of by a stipulation entered into in a public proceeding. The stipulation shall be signed by the judge or justice and the commission or court. The stipulation may impose any terms and conditions deemed appropriate by the commission or court. A stipulation shall set forth all material facts relating to the proceeding and the conduct of the judge or justice.

~~the proceeding and the conduct of the judge or justice.~~

(8) Whenever the commission adopts a recommendation that a judge or justice be removed, the judge or justice shall be suspended immediately, with salary, from his or her judicial position until a final determination is made by the supreme court.

(9) The legislature shall provide for commissioners' terms of office and compensation. The commission shall employ one or more investigative officers with appropriate professional training and experience. The investigative officers of the commission shall report directly to the commission. The commission shall also employ such administrative or other staff as are necessary to manage the affairs of the commission.

(10) The commission shall, to the extent that compliance does not conflict with this section, comply with laws of general applicability to state agencies with respect to rule-making procedures, and with respect to public notice of and attendance at commission proceedings other than initial proceedings. The commission shall establish rules of procedure for commission proceedings including due process and confidentiality of proceedings. [AMENDMENT 97, 2005 Senate Joint Resolution No. 8207, pp 2799, 2800. Approved November 8, 2005.]

Removal by legislature: Art. 4 Section 9.

Amendment 85 (1989) -- Art. 4 Section 31 COMMISSION ON JUDICIAL CONDUCT --

(1) There shall be a commission on judicial conduct, existing as an independent agency of the judicial branch, and consisting of a judge selected by and from the court of appeals judges, a judge selected by and from the superior court judges, a judge selected by and from the district court judges, two persons admitted to the practice of law in this state selected by the state bar association, and six persons who are not attorneys appointed by the governor.

(2) Whenever the commission receives a complaint against a judge or justice, or otherwise has reason to believe that a judge or justice should be admonished, reprimanded, censured, suspended, removed, or retired, the commission shall first investigate the complaint or belief and then conduct initial proceedings for the purpose of determining whether probable cause exists for conducting a public hearing or hearings to deal with the complaint or belief. The investigation and initial proceedings shall be confidential. Upon beginning an initial proceeding, the commission shall notify the judge or justice of the existence of and basis for the initial proceeding.

(3) Whenever the commission concludes, based on an initial proceeding, that there is probable cause to believe that a judge or justice has violated a rule of judicial conduct or that the judge or justice suffers from a disability which is permanent or likely to become permanent and which seriously interferes with the performance of judicial duties, the commission shall conduct a public hearing or hearings and shall make public all those records of the initial proceeding that provide the basis for its conclusion. If the commission concludes that there is not probable cause, it shall notify the judge or justice of its conclusion.

(4) Upon the completion of the hearing or hearings, the commission in open session shall either dismiss the case, or shall admonish, reprimand, or censure the judge or justice, or shall censure the judge or justice and recommend to the

shall censure the judge or justice and recommend to the supreme court the suspension or removal of the judge or justice, or shall recommend to the supreme court the retirement of the judge or justice. The commission may not recommend suspension or removal unless it censures the judge or justice for the violation serving as the basis for the recommendation. The commission may recommend retirement of a judge or justice for a disability which is permanent or likely to become permanent and which seriously interferes with the performance of judicial duties.

(5) Upon the recommendation of the commission, the supreme court may suspend, remove, or retire a judge or justice. The office of a judge or justice retired or removed by the supreme court becomes vacant, and that person is ineligible for judicial office until eligibility is reinstated by the supreme court. The salary of a removed judge or justice shall cease. The supreme court shall specify the effect upon salary when it suspends a judge or justice. The supreme court may not suspend, remove, or retire a judge or justice until the commission, after notice and hearing, recommends that action be taken, and the supreme court conducts a hearing, after notice, to review commission proceedings and findings against the judge or justice.

(6) Within thirty days after the commission admonishes, reprimands, or censures a judge or justice, the judge or justice shall have a right of appeal de novo to the supreme court.

(7) Any matter before the commission or supreme court may be disposed of by a stipulation entered into in a public proceeding. The stipulation shall be signed by the judge or justice and the commission or court. The stipulation may impose any terms and conditions deemed appropriate by the commission or court. A stipulation shall set forth all material facts relating to the proceeding and the conduct of the judge or justice.

(8) Whenever the commission adopts a recommendation that a judge or justice be removed, the judge or justice shall be suspended immediately, with salary, from his or her judicial position until a final determination is made by the supreme court.

(9) The legislature shall provide for commissioners' terms of office and compensation. The commission shall employ one or more investigative officers with appropriate professional training and experience. The investigative officers of the commission shall report directly to the commission. The commission shall also employ such administrative or other staff as are necessary to manage the affairs of the commission.

(10) The commission shall, to the extent that compliance does not conflict with this section, comply with laws of general applicability to state agencies with respect to rule-making procedures, and with respect to public notice of and attendance at commission proceedings other than initial proceedings. The commission shall establish rules of procedure for commission proceedings including due process and confidentiality of proceedings. [AMENDMENT 85, 1989 Substitute Senate Joint Resolution No. 8202, p 3000. Approved November 7, 1989.]

Amendment 77 (1986) -- Art. 4 Section 31 COMMISSION ON JUDICIAL CONDUCT -- REMOVAL, CENSURE, SUSPENSION, OR RETIREMENT OF JUDGES OR JUSTICES -- PROCEEDINGS --

There shall be a commission on judicial conduct consisting of a judge selected by and from the court of appeals judges, a judge selected by and from the superior court judges, a judge selected by and from the district court judges, two persons admitted to the practice of law in this state selected by the state bar association, and four persons who are not attorneys appointed by the governor and confirmed by the senate.

The supreme court may censure, suspend, or remove a judge or justice for violating a rule of judicial conduct and may retire a judge or justice for disability which is permanent or is likely to

become permanent and which seriously interferes with the performance of judicial duties. The office of a judge or justice retired or removed by the supreme court becomes vacant, and that person is ineligible for judicial office until eligibility is reinstated by the supreme court. The salary of a removed judge or justice shall cease.

The supreme court shall specify the effect upon salary when disciplinary action other than removal is taken. The supreme court may not discipline or retire a judge or justice until the commission on judicial conduct recommends after notice and hearing that action be taken and the supreme court conducts a hearing, after notice, to review commission proceedings and findings against a judge or justice.

Whenever the commission receives a complaint against a judge or justice, it shall first conduct proceedings for the purpose of determining whether sufficient reason exists for conducting a hearing or hearings to deal with the accusations. These initial proceedings shall be confidential, unless confidentiality is waived by the judge or justice, but all subsequent hearings conducted by the commission shall be open to members of the public.

Whenever the commission adopts a recommendation that a judge or justice be removed, the judge or justice shall be suspended immediately, with salary, from his or her judicial position until a final determination is made by the supreme court. The legislature shall provide for commissioners' terms of office and compensation. The commission shall establish rules of procedure for commission proceedings including due process and confidentiality of proceedings. [AMENDMENT 77, 1986 Senate Joint Resolution No. 136, p 1532. Approved November 4, 1986.]

Amendment 71 (1980) -- Art. 4 Section 31 JUDICIAL QUALIFICATIONS COMMISSION -- REMOVAL, CENSURE, SUSPENSION, OR RETIREMENT OF JUDGES OR JUSTICES --

There shall be a judicial qualifications commission consisting of a judge selected by and from the court of appeals judges, a judge selected by and from the superior court judges, a judge selected by and from the district court judges, two persons admitted to the practice of law in this state selected by the state bar association, and two persons who are not attorneys appointed by the governor and confirmed by the senate.

The supreme court may censure, suspend, or remove a judge or justice for violating a rule of judicial conduct and may retire a judge or justice for disability which is permanent or is likely to become permanent and which seriously interferes with the performance of judicial duties. The office of a judge or justice retired or removed by the supreme court becomes vacant, and that person is ineligible for judicial office until eligibility is reinstated by the supreme court. The salary of a removed judge or justice shall cease.

The supreme court shall specify the effect upon salary when disciplinary action other than removal is taken. The supreme court may not discipline or retire a judge or justice until the judicial qualifications commission recommends after notice and hearing that action be taken and the supreme court conducts a hearing, after notice, to review commission proceedings and findings against a judge or justice.

The legislature shall provide for commissioners' terms of office and compensation. The commission shall establish rules of procedure for commission proceedings including due process and confidentiality of proceedings. [AMENDMENT 71, 1980 Substitute House Joint Resolution No. 37, p 652. Approved November 4, 1980.]

