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S. Ct. No. 90827-3

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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

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GRANT COUNTY PROSECUTING ATTORNEY,

Respondent,

v.

JERRY JASMAN, a single person,

Petitioner,

and

CRAIG MORRISON, Intervener,

Petitioner.

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SUPPLEMENTAL BRIEF OF RESPONDENT

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## I. INTRODUCTION

This supplemental brief expands upon arguments contained in the brief of respondent and the answer to the petition for review. The Grant County Prosecuting Attorney's decision not to address certain issues in this supplemental brief should not be considered as a concession, but should be interpreted as the Prosecutor's determination that the unaddressed issues are adequately discussed in its other briefs.

## II. STATEMENT OF THE ISSUES

1. Whether Jerry Jasman met his burden of establishing that he lawfully held the office of deputy coroner when he signed Washington State Certificates of Death on April 21, 2011, June 24, 2011, February 15, 2012, and February 24, 2012?

2. Whether public policy, as embodied in RCW 9.92.120, disqualifies an individual, who was convicted of malfeasance in office, from serving as a deputy coroner?

3. Whether a county employee is entitled to a publicly funded counsel to defend the employee's ability to perform a specific task?

4. Whether Coroner Morrison has established that the limitations placed upon the expenditure of public funds for the litigation expenses of a county official in both *Hoppe v. King County*, 95 Wn.2d 332, 622 P.2d 845 (1980), and *Osborn v. Grant County*, 130 Wn.2d 615, 926 P.2d 911 (1996), are incorrect and harmful?

### III. ARGUMENT

#### A. JERRY JASMAN DID NOT ESTABLISH THAT HE HELD ANY OF THE POSITIONS ENUMERATED IN RCW 70.58.170 OR RCW 70.58.180 WHEN HE COMPLETED THE FOUR DEATH CERTIFICATES

A quo warranto proceeding provides the exclusive means by which the public may protect itself from the unlawful occupancy of a public office. In bringing a quo warranto action, a prosecutor acts to protect the public generally by ensuring that only authorized individuals exercise the power of the state. *See generally* 17 Eugene McQuillin, *The Law of Municipal Corporations* § 50:2, at 726 (3rd ed. rev. 2014).

When a quo warranto proceeding is brought to try title to a public office, the burden rests on the defendant, as against the state, to show a right to the office from which the defendant is sought to be ousted. 65 Am. Jur. 2d, *Quo Warranto* § 103, at 162 (2011). To satisfy this burden, the defendant must show a good legal title and not merely a right de facto.<sup>1</sup> *Id.*

In the instant case, Jerry Jasman completed four death certificates between April 21, 2011 and February 24, 2012. Jasman identified his title on each death certificate as “Chief Investigator.”<sup>2</sup> *See* CP 26 at box 53; CP

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<sup>1</sup>In the Court of Appeals, Jasman asserted that he can sign death certificates under the “de facto official doctrine.” *See Lee v. Jasman*, 183 Wn. App. 28, 62, 332 P.3d 1106 (2014), *review granted*, \_\_\_ Wn.2d \_\_\_ (Feb. 4, 2015).

<sup>2</sup>The position of “Coroner Investigator” was authorized by the Grant County Board of County Commissioners on December 6, 2010. *See* CP 106; Grant County Board of Commissioner’s Minutes of the December 7, 2010, Meeting at item 17 (available at [http://www.grantcountywa.gov/Master\\_Archive/BOCC\\_Hearing\\_Archive/Minutes/2010/120610%20Minutes.pdf](http://www.grantcountywa.gov/Master_Archive/BOCC_Hearing_Archive/Minutes/2010/120610%20Minutes.pdf) (Last visited Feb. 24, 2015)). Jasman acknowledged receipt of the

29 at box 53; CP 34 at box 53; CP 37 at box 53. The Grant County Coroner, Craig Morrison contemporaneously identified Jasman as the “Chief Investigator,” specifically disclaiming that Jasman was deputized. *See* CP 168 (“I employed Jerry as my Chief Investigator, an at-will employee, rather than deputizing him as an appointed official.”). Because RCW 70.58.170 and .180 do not authorize a “coroner investigator” to sign or electronically approve a certificate of death, the trial court’s order barring Jasman from signing death certificates, CP 294, must be affirmed.

After the quo warranto was filed, Jerry Jasman resigned from the position of “deputy coroner.” *See* CP 96 and CP 98. Jasman, however, produced no evidence that he held the position of “deputy coroner” between April 21, 2011 and February 24, 2012.

A citizen inquiring as to what Jasman’s status was in the period between April 21, 2011 and February 24, 2012, would have discovered no oath of office or order appointing Jasman to the office of deputy coroner on file with the county auditor.<sup>3</sup> *See* CP 40. A citizen attempting to ascertain

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job description on December 2, 2010. CP 82.

<sup>3</sup>The Washington Constitution and various statutes require oaths of office to be filed with various public officials to enable a citizen to easily ascertain that the person who is claiming the power to exercise the State’s authority is so empowered. *See, e.g.*, Const. art. 4, § 28 (the oath of judges “shall be filed in the office of the secretary of state”); RCW 35.23.081 (oath of office of city officers “shall be filed with the county auditor”); RCW 35.27.120 (every officer of a town shall file his or her oath of office with the county auditor); RCW 36.16.060 (the oaths of offices of county officers and their deputies are to be filed in the office of the county auditor); RCW 43.01.020 (the oath of office of state officers “shall be filed in the office of the secretary of state before the officer shall be qualified to discharge any official duties: PROVIDED, That the oath of the secretary of state shall be filed in the office of the state auditor); RCW 52.14.070 (before beginning the duties of office, each fire

Jasman's status in the period between April 21, 2011, and February 24, 2012, would see that the Grant County Coroner's Office labeled Jasman "Chief Investigator" on the office's official letterhead. *See, e.g.*, CP 90.

A citizen contacting Coroner Morrison directly might receive a copy of an oath of office that Jasman signed on November 22, 2010. *See* CP 161. That oath of office, expired as a matter of law when Coroner Morrison's first term expired on December 31, 2010.<sup>4</sup> *See generally Spokane County v. State*, 136 Wn.2d 644, 655, 966 P.2d 305 (1998) ("Unless a deputy's appointment is revoked, the term of office for a deputy prosecutor ends when the term of the elected prosecutor ends."); *State ex rel. Day v. King County*, 50 Wn.2d 427, 428 n. 1, 312 P.2d 637 (1957) ("[t]he term of a deputy sheriff expires with the term of the sheriff who appointed him"); 3 Eugene McQuillin, *The Law of Municipal Corporations* § 12:62, at 315 (3rd ed. rev. 2012) ("The deputy's term of office is limited by that of the principal."); 63C

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commissioner must take an oath and file it in the office of the auditor of the county in which the district is located). The statutes that require the oaths of office to be collected in a designated location provides certainty as to who is and is not a public officer. *See* 67 C.J.S. *Officers and Public Employees* § 2, at 175 (2012) ("Public policy requires that there be certainty as to who are and who are not public officers and public employees.").

<sup>4</sup>Coroner Morrison's terms of office are set by statute. *See generally* RCW 36.16.020 (4 year terms); Former RCW 29A.20.040 (commencement of term of offices); RCW 36.16.110(1) (person appointed to serve a vacancy in a county office only holds the office until the next general election and the election and appointment of the person's successor).

Coroner Morrison was issued a notice of election on November 22, 2010, CP 10, and took the oath of office to complete Jasman's term of office the same day. CP 11. *See also* CP 142 ¶ 7; CP 155 ¶ 2. Coroner Morrison was issued a second notice of election on December 28, 2010, for the term beginning January 1, 2011. CP 13. Coroner Morrison completed his oath of office for this second term on December 28, 2010. CP 14.

Am. Jur. 2d, *Public Officers and Employees* § 39, at 516 (2009) (“In the absence of some statutory provision to the contrary, the commission or appointment of a deputy officer runs or continues only during the term of the officer making the appointment.”).

At the start of his second term, Coroner Morrison did not sign an order (re)appointing Jasman as a deputy coroner nor did he administer an oath of office to Jasman. *See* CP 142 ¶ 11; CP 155 ¶ 4. Jasman, therefore, never produced good legal title to the office of “deputy coroner.” The order barring him from exercising the duties of a deputy coroner must be affirmed.

**B. JERRY JASMAN IS INELIGIBLE TO SERVE AS A DEPUTY CORONER**

As a result of his disorderly conduct conviction, Jerry Jasman is barred by RCW 9.92.120 from “ever afterward holding any public office in this state.”<sup>5</sup> Jasman contends that RCW 9.92.120 only applies to elective office. Jasman’s argument, however, is against the weight of authority.

The word “officer” is a term of vague and variable import, the meaning of which may depend upon the circumstances under which it is used. *See Nelson v. Troy*, 11 Wash. 435, 440-41, 39 P. 974 (1895) (stating that the meaning given to the term “officer” in the constitution will not apply in other

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<sup>5</sup>The harshness of this statute is ameliorated by RCW 9.96.060. RCW 9.96.060 provides Jasman with the opportunity to vacate his disorderly conduct conviction. *See generally Matsen v. Kaiser*, 74 Wn.2d 231, 443 P.2d 843 (1968) (a sheriff who was convicted of a felony during an earlier term became eligible to hold a public office upon the vacation of his conviction following a successful period of probation); *State v. Smith*, 158 Wn. App. 501, 246 P.3d 812 (2010) (vacation of a conviction pursuant to RCW 9.96.060(3) removes all adverse consequences of the conviction).

contexts); *State ex rel Brown v. Blew*, 20 Wn.2d 47, 50-51, 145 P.2d 554 (1944) (discussing the difficulty of formulating a definition of “public officer”); 3 Eugene McQuillin, *The Law of Municipal Corporations* § 12:58, at 281-82 (3rd ed. rev. 2012) (the meaning of the word “officer” must be determined based on the intent and subject matter of the law in which the word is employed; the word is “sufficiently comprehensive to embrace all persons in any public station or employment conferred by government, whether national state or local”). Text writers and courts agree, however, that the most important characteristic in determining whether an individual is a public officer is the exercise of some portion of the state sovereign power for the benefit of the public. *See, e.g., Brown*, 20 Wn.2d at 51; 67 C.J.S. *Officers and Public Employees* § 2, at 176 (2012); 63C Am. Jur. 2d *Public Officers and Employees* § 9, at 490-91 (2009); 3 Eugene McQuillin, *The Law of Municipal Corporations* § 12:59, at 294-95 (3rd ed. rev. 2012). The sovereign power of a county is exercised by its officers, including the county coroner. RCW 36.01.030.

The legislature takes a broad view of the term “officer.” In RCW 1.16.065, the Legislature declared that “[w]henver any term indicating an officer is used it shall be construed, when required, to mean any person authorized by law to discharge the duties of such officer.” This definition clearly includes deputy coroners who are authorized by RCW 36.16.070 to discharge the duties of the coroner.

The legislature has sprinkled the code with other similarly broad definitions of the term “officer.” *See, e.g.*, RCW 9A.04.110(13) (defining the terms “officer” and “public officer” to include every person who is lawfully exercising or assuming to exercise some power of government); RCW 42.23.020(2) (defining the terms “municipal officer” and “officer” to include all elected and appointed officers and their deputies and all other persons “exercising or undertaking to exercise any of the powers of a municipal officer”). The position of “deputy coroner” is clearly an “officer” under both of these definitions.

Many jurisdictions, including this Court, utilize a multi-part test to decide whether a position is a “public office” and its incumbent a “public officer.” *See generally State ex rel. McIntosh v. Hutchinson*, 187 Wash. 61, 63-64, 59 P.2d 1117 (1936) (identifying five factors to consider in deciding whether someone is an “officer” or an “employee”); 67 C.J.S. *Officers and Public Employees* § 13, at 186-187 (2012) (identifying five factors to consider in deciding whether a person is an “officer” or an “employee” and noting that “[n]o single criterion is dispositive in determining whether an individual is a public officer, and not all the criteria are necessary to find an individual is a public officer”); 63C Am. Jur. 2d *Public Officers and Employees* § 9, at 490-91 (2009) (identifying seven key considerations as to whether a public position is a public officer or merely a public employee); 3 Eugene McQuillin, *The Law of Municipal Corporations* § 12:59, at 297-98

(3rd ed. rev. 2012) (identifying a number of criteria to be considered in determining whether a position is an officer or a mere employment).

With due regard to the enumerated criteria, the universal consensus is that a deputy, who may do anything the officer may do, is himself or herself an officer. *See generally* 56 Am. Jur. 2d *Municipal Corporations, Counties, and Other Political Subdivisions* § 208, at 330 (2010) (“a deputy [appointed pursuant to statutory authority] is generally considered a public officer”); 63C Am. Jur. 2d *Public Officers and Employees* § 40, at 516 (2009) (“A deputy is generally considered a public officer, especially where the appointment is permanent and not merely casual for a special service, and where he or she is required to take an oath of office.”); 67 C.J.S. *Officers and Public Employees* § 468, at 644 (2012) (“Where provision is made by statute for the position of deputy, such a deputy is regarded as a public officer.”); 3 Eugene McQuillin, *The Law of Municipal Corporations* § 12:62, at 316 (3rd ed. rev. 2012) (where a deputy is “authorized to act for and in place of the principal, the deputy is a public officer”). The fact that a deputy is appointed rather than elected to his or her position is of no consequence. *See generally* 67 C.J.S. *Officers and Public Employees* § 13, at 187 (2012) (mode of selection is not determinative of whether an individual is an “officer” or an “employee”); 3 Eugene McQuillin, *The Law of Municipal Corporations* § 12:56, at 279 (3rd ed. rev. 2012) (“Officers are either elected or appointed and may be either constitutional or statutory.”); 3 Eugene McQuillin, *The*

*Law of Municipal Corporations* § 12:117, at 61 (3rd ed. rev. 2012) (there are two legal methods of conferring office – appointment or election).

The Revised Code of Washington treats “deputies” and “employees” as separate classes. A county officer needs specific approval from the board of county commissioners to “employ deputies and other necessary employees.” See RCW 36.16.070. Only “[a] deputy may perform any act which his or her principal is authorized to perform.” *Id.*

Jasman, who acknowledges that the position of deputy coroner is created by statute, argues that the position lacks the defined duties, definitive term, and independence required for a “public office” or “public officer.” See Brief of Appellant/Cross-Respondents at 28-30. In making these arguments, Jasman focuses on his personal situation rather than the characteristics of the position of “deputy coroner.”

Jasman’s contention that he is not a “public officer” because he serves “at the will of the appointing officer, and may be terminated at any time, for any reason,”<sup>6</sup> is contrary to the weight of authority. The “tenure” requirement of the common law public office test requires that the office have some permanence and continuity. See, e.g., 63C Am. Jur. 2d *Public Officers and Employees* § 6, at 488-89 (2009). “The elements of tenure and duration as requisites of a public office have been held to relate to the office itself, and not to the incumbent.” 67 C.J.S. *Officers and Public Employees* § 15, at 188

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<sup>6</sup>Brief of Appellant at 19.

(2012). The position of coroner has a tenure fixed by statute. *See* RCW 36.16.020 (fixing the term of office of all county officers at four years). The position of deputy coroner is co-extensive with the term of the coroner who appoints the deputy. *See supra* at pages 4-5. While a coroner may revoke the appointment issued to a deputy coroner and the electorate may recall the coroner,<sup>7</sup> the fact that the incumbent's term may be cut short does not prevent either position from qualifying as an "office."

Jasman's contention that a deputy coroner does not have the requisite level of independence to be an officer because "they must perform duties assigned by the appointing officer" and "[t]he appointing officer is responsible for the acts of deputies"<sup>8</sup> is also contrary to the weight of authority. The fact that a deputy coroner is subordinate to that of the coroner does not prevent the position from being an office or the incumbent from being an officer. *See generally* 63C Am. Jur. 2d *Public Officers and Employees* § 5, at 488 (2009) (the duties of a public office must be performed independently and without control of a superior officer, other than the law, unless they are those of an inferior or subordinate officer, created or authorized by the legislature and by it placed under the general control of a superior officer or body."); 67 C.J.S. *Officers and Public Employees* § 17, at 189-190 (2012) ("In brief, a subordinate or inferior officer is nevertheless

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<sup>7</sup>*See* Const. art. 1, § 33.

<sup>8</sup>Brief of Appellant at 18 and 19.

an officer.”).

The Washington Legislature specifically authorized the position of deputy coroner to assist the coroner in performing the duties contained in various statutes. *See, e.g.*, RCW 36.16.070 (coroner may appoint deputies); Chapter 36.24 RCW (duties of county coroner); RCW 68.50.010 (coroner’s jurisdiction over remains); RCW 70.58.170 and 70.58.180 (coroner to complete death certificates and determine the cause of unattended deaths). Jasman is barred by RCW 9.92.120 and his conviction for disorderly conduct from performing the statutory duties of a coroner. The trial court, therefore, did not err when it entered the order barring Jasman from serving as either a coroner or a deputy coroner.

**C. JERRY JASMAN POSSESSED NEITHER A STATUTORY NOR CONSTITUTIONAL RIGHT TO PUBLICLY FUNDED COUNSEL IN THE QUO WARRANTO ACTION**

Quo warranto actions in Washington are civil, not criminal. *State ex rel. Carroll v. Simmons*, 61 Wn.2d 146, 150-151, 377 P.2d 421 (1962). By statute, the prosecuting attorney is only required to represent a county employee in a civil case when the employee is being sued for money damages which the county government is responsible for paying. *See* RCW 4.96.041(1). No damages are possible in a quo warranto action brought by the prosecuting attorney, *see* RCW 7.56.040, and the Grant County Prosecuting Attorney’s complaint contained no request for damages. *See* CP

1-39. A quo warranto action, therefore, falls outside the scope of RCW 4.96.041. *See Colby v. Yakima County*, 133 Wn. App. 386, 136 P.3d 131 (2006) (both an action to defend the right to hold office and an action to defend a charge of official misconduct fall outside the scope of RCW 4.96.041).

The instant matter, moreover, was filed against Jerry Jasman personally, rather than against “Jerry Jasman, county employee.” *See* RCW 7.56.010(1) (“when the person shall usurp, intrude upon, or unlawfully hold or exercise any public office”); 65 Am. Jur. 2d *Quo Warranto* § 21 at 94 (2011) (a proceeding in quo warranto “is not against the respondent officer in an official capacity . . . the writ is said to be directed to the person holding the office and exercising its functions rather than to the officer as such”); 17 Eugene McQuillin, *The Law of Municipal Corporations* § 50:15, at 786 (3rd ed. rev. 2014) (“Proceedings by information in the nature of quo warranto to try the title to office affect the parties as individuals and not as officials. Thus, where an individual usurps, intrudes on or holds or executes any office or franchise, the proceedings should be instituted against the offending individual by name.”).

Constitutionally, an indigent individual is only entitled to publicly funded counsel in a civil action when incarceration is a real and immediate possibility. *See, e.g., Tetro v. Tetro*, 86 Wn.2d 252, 544 P.2d 17 (1975) (right to publicly funded counsel whenever a contempt hearing may result in a jail

sentence). While some orders in a quo warranto proceeding may serve as a predicate for a contempt adjudication,<sup>9</sup> this possibility is insufficient to entitle an indigent party to free legal assistance. *See generally State v. Walker*, 87 Wn.2d 443, 553 P.2d 1093 (1976) (the mere possibility that an indigent putative father in a filiation proceeding could be jailed for violating the order imposing a child support obligation is insufficient to require, constitutionally, the appointment of counsel).

Jasman, who has never claimed to be indigent, admitted in the Court of Appeals that there is no basis for providing him with counsel at public expense and/or for appointing a special prosecuting attorney to represent him in this quo warranto action:

Judge Fearing: Is both Mr. Jasman and Mr. Morrison seeking attorney fees to be paid by the county in this case?

Mr. George Ahrend: To the extent they are inseparable, we believe that the right to the appointment of special counsel would be probably limited to Mr. Morrison.

Judge Fearing: You are not claiming that a special prosecutor needed to be hired to represent Mr. Jasman. Is that correct?

Mr. George Ahrend: Correct with a caveat. And the caveat is this is a weird quo warranto action. Normally a quo warranto action is brought against an elected official because there is no other way to

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<sup>9</sup>RCW 7.56.080 authorizes a court to imprison a defendant who refuses to deliver over books and papers when ordered to do so by the court.

remove him. With an employee, they can be fired or their duties can be curtailed. And so, because this is a strange quo warranto action the issue of Mr. Jasman's ability to serve and Mr. Morrison's ability to run his office are very much intertwined. So that is the caveat. But in the abstract, theoretical, hypothetical answer to the question is Mr. Jasman would not be entitled to his attorney fees to defend a quo warranto action.

Court of Appeals, Div. Three oral argument, *Lee v. Jasman*, No. 31519-3-III (Feb. 5, 2014), at 37 min, 38 sec., audio recording by Court of Appeals, available at [http://www.courts.wa.gov/appellate\\_trial\\_courts/appellateDockets/index.cfm?fa=appellateDockets.showOralArgAudioList&courtId=a03&docketDate=20140205](http://www.courts.wa.gov/appellate_trial_courts/appellateDockets/index.cfm?fa=appellateDockets.showOralArgAudioList&courtId=a03&docketDate=20140205) (Last visited Feb. 23, 2015). *See also* Brief of Appellant at 31 (conceding that no statute explicitly requires the prosecuting attorney to defend a county officer in a quo warranto action).

**D. THE PUBLIC IS NOT REQUIRED TO FUND A COUNTY OFFICER'S LITIGATION**

The Washington Constitution created the office of prosecuting attorney to represent the county in legal matters. *See* Const. art. 11, § 5. The duties of the prosecuting attorney have largely remained unchanged throughout our state's history. *Compare* RCW 36.27.020 *with* Bal. Code, § 468 (P.C. § 4190).<sup>10</sup> Throughout the last century, this Court has consistently

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<sup>10</sup>Bal. Code, § 468 (P.C. § 4190) provided that:

"The prosecuting attorney in each county is hereby required to give legal

held that while the prosecuting attorney has a duty to provide legal advice to county officers, the prosecuting attorney has no obligation to represent a county officer in civil actions.<sup>11</sup> See generally *Osborn v. Grant County*, 130 Wn.2d 615, 625, 926 P.2d 911 (1996) (a prosecuting attorney has no duty to commence a civil action on behalf of a county officer whenever the officer makes such a request); *Hoppe v. King County*, 95 Wn.2d 332, 339, 622 P.2d 845 (1980) (same); *Bates v. School Dist.*, 45 Wash. 498, 502-03, 88 P. 944 (1907) (prosecutor not required to defend school district in a civil action that was filed against the school district for actions taken upon the advice of the prosecutor); *Fisher v. Clem*, 25 Wn. App. 303, 607 P.2d 326 (1980) (RCW 36.27.020 does not compel the prosecuting attorney to bring a civil action on behalf of a county officer), *overruled on other grounds by Brouillet v. Cowles Publishing Co.*, 114 Wn.2d 788, 793-94, 791 P.2d 526 (1990).

Over the last century, this Court has repeatedly held that a county officer who wishes “to second-guess the judgment of the prosecuting attorney” he must do it at his own expense. *Hoppe*, 95 Wn.2d 340. Even

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advice, when required, to all county and precinct officers, and directors and superintendents of common schools, in all matters relating to their official business, and when so required, he shall draw up, in writing, all contracts, obligations, and like instruments of an official nature, for the use of said officers.”

*Bates v. School Dist.*, 45 Wash. 498, 502, 88 P. 944 (1907).

<sup>11</sup>The only exception is when the officer is being sued for money damages which the county government is responsible for paying. See RCW 4.96.041(1). As discussed *supra* at pages 11-12, no damages are possible in this action.

when a county officer succeeds in proving that the prosecuting attorney's legal opinion was incorrect, the county officer is not entitled to a reimbursement of litigation costs. *See, e.g., Osborn v. Grant County, supra* (county clerk who prevailed in declaratory judgment action on an employment question was not entitled to an award of attorney fees for her litigation costs). To obtain the appointment of a special prosecutor, the county officer must first establish that the prosecutor has a duty to represent the officer in the given matter. *Osborn*, 130 Wn.2d at 624-25.

This Court's holdings in *Hoppe* and *Osborn* are consistent with other cases addressing the expenditure of public funds for attorneys in civil cases. Since the Washington Constitution prohibits the expenditure of public funds absent a legislative appropriation, Const. art. 8, § 4, counsel and other litigation costs cannot be provided in civil cases absent an express statutory authorization. *See, e.g., Bellevue Sch. District v. E.S.*, 171 Wn.2d 695, 257 P.3d 570 (2011) (honoring the legislature's policy choice in RCW 28A.225.035(1) and refusing to require the expenditure of public funds for the provision of counsel for a child in a first truancy hearing); *In re Marriage of King*, 162 Wn.2d 378, 174 P.3d 659 (2007) (indigent parent not entitled to public funds for counsel in a dissolution proceeding absent statutory authorization); *Dependency of Grove*, 127 Wn.2d 221, 897 P.2d 1252 (1994) (no right to public funding of the expenses necessarily incident to effective appeal when a civil litigant does not have a statutory right to counsel);

*Moore v. Snohomish County*, 112 Wn.2d 915, 774 P.2d 1218 (1989) (fees of court appointed psychiatrist could not be paid by the county when the parties to the custody action proved indigent); *State v. Devlin*, 164 Wn. App. 516, 267 P.3d 369 (2011), *review denied*, 174 Wn.2d 1008 (2012) (an estate that substituted for a deceased criminal defendant is not entitled to pursue the appeal at public expense as an estate is not an “offender” under RCW 10.73.150 and no other statute authorizes the expenditure of public funds).

Intervener Coroner Morrison, who concedes that no statute explicitly requires the prosecuting attorney to represent him in this matter, Brief of Appellant at 31, asks this Court to overrule the above unbroken line of precedent. Morrison’s request runs afoul of the principle of stare decisis. This principle “requires a clear showing that an established rule is incorrect and harmful before it is abandoned.” *Riehl v. Foodmaker, Inc.*, 152 Wn.2d 138, 147, 94 P.3d 930 (2004) (quoting *In re Rights to Waters of Stranger Creek*, 77 Wn.2d 649, 653, 466 P.2d 508 (1970)). The respect for precedent “promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process.” *City of Federal Way v. Koenig*, 167 Wn.2d 341, 346, 217 P.3d 1172 (2009) (quoting *Payne v. Tennessee*, 501 U.S. 808, 827, 111 S. Ct. 2597, 115 L. Ed. 2d 720 (1991)).

Morrison cannot demonstrate that the current rule – which prohibits the payment of attorney fees for a county official when the prosecuting

attorney has no duty to represent the county official – is contrary to public policy. Morrison’s inability to do so stems from the simple fact that “Washington has traditionally taken a conservative stance with regard to indigency and the expenditure of public funds.” *Devlin*, 164 Wn. App. at 525.

Even if this Court agreed with Morrison’s claim that public policy supports allowing elected officials to obtain legal advice from non-government attorneys at public expense, the decision of whether to allocate public funds for this purpose rests with the legislature.<sup>12</sup> *See Bellevue Sch. Dist*, 171 Wn.2d at 714-15 (Madsen, C.J., concurring) (urging the legislature to consider enacting a statute to provide for counsel at initial truancy hearings); *King*, 162 Wn.2d at 397-98 (“the decision to publicly fund actions other than those that are constitutionally mandated falls to the legislature. Outside of that scenario, it is not for the judiciary to weigh competing claims to public resources.”); *Dependency of Grove*, 127 Wn.2d at 228 (because the legislature has the power to tax, the power to appropriate funds, and is

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<sup>12</sup>Any statute that authorizes another attorney to perform the duties of a prosecuting attorney as codified in RCW 36.27.020, when the prosecuting attorney is able and willing to perform such duties, would likely violate this Court’s precedent. *See generally State ex rel Johnston v. Melton*, 192 Wash. 379, 73 P.2d 1334 (1937) (declaring a statute that authorized the prosecuting attorney to appoint investigators, who would be imbued with “the same authority as the sheriff of the county,” unconstitutional; holding that the legislature, by statute, cannot transfer the duties of one elected officer to other elected officers); *Northwestern Improvement Co. v. McNeil*, 100 Wash. 22, 170 P. 338 (1918) (county commissioners could not hire an expert to value the property for the purposes of taxation, as the responsibility for valuing property for this purpose belongs to the assessor); *Smith v. Lamping*, 27 Wash. 624, 68 P. 195 (1902) (county commissioners may not interfere with the conduct of county business which the legislator has assigned to the auditor).

answerable to the public for the expenditure of taxes collected, it is for the legislature to prioritize the amount of public funds to be made available to assist litigants in civil cases); *Pannell v. Thompson*, 91 Wn.2d 591, 599, 589 P.2d 1235 (1979) (“The decision to create a program as well as whether and to what extent to fund it is strictly a legislative prerogative.”).

#### IV. CONCLUSION

The order prohibiting Jasman from signing death certificates or from serving as a deputy prosecuting attorney must be affirmed. The order denying Jasman and Morrison’s request for attorney fees must be affirmed.

DATED this 6th day of March, 2015.

Respectfully submitted,



IONE S. GEORGE  
WSBA No. 18236  
Special Deputy Pros. Attorney



PAMELA B. LOGINSKY  
WSBA No. 18096  
Special Deputy Pros. Attorney

PROOF OF SERVICE

I, Pamela B. Loginsky, declare that I have personal knowledge of the matters set forth below and that I am competent to testify to the matters stated herein.

On the 6th day of March, 2015, I deposited in the mails of the United States of America, postage prepaid, a copy of the document to which this proof of service is attached in an envelope addressed to:

George M. Ahrend  
Ahrend Albrecht PLLC  
16 Basin St. SW  
Ephrata, WA 98823

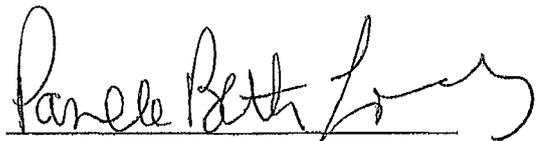
On the 6th day of March, 2015, I e-mailed a copy of the document to which this proof of service is attached to

George M. Ahrend at gahrend@trialappeallaw.com

Ione S. George at Igeorge@co.kitsap.wa.us

I declare under the penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.

Signed this 6th day of March, 2015, at Olympia, Washington.



PAMELA B. LOGINSKY  
WSBA NO. 18096

## OFFICE RECEPTIONIST, CLERK

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**To:** Pam Loginsky; gahrend@ahrendlaw.com; lone George; Shelley Kneip; Alan White  
**Subject:** RE: Grant County Prosecuting Attorney vs. Jasman and Morrison, No. 90827-3

**Rec'd 3/6/2015**

**From:** Pam Loginsky [mailto:Pamloginsky@waprosecutors.org]  
**Sent:** Friday, March 06, 2015 10:22 AM  
**To:** gahrend@ahrendlaw.com; lone George; Shelley Kneip; OFFICE RECEPTIONIST, CLERK; Alan White  
**Subject:** Grant County Prosecuting Attorney vs. Jasman and Morrison, No. 90827-3

Dear Clerk and Counsel:

Attached for filing is the Grant County Prosecuting Attorney's Supplemental Brief.

Please let me know if you encounter any difficulty in opening the document.

Sincerely,

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Washington Association of Prosecuting Attorneys  
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