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STATE OF WASHINGTON
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NO. 92749-9

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, on the Relation of Gregory M. Banks,
Prosecuting Attorney of Island County,

Appellant,

vs.

SUSAN E. DRUMMOND, and Law Offices of Susan Elizabeth
Drummond, PLLC;

Respondents,

and

ISLAND COUNTY BOARD OF COMMISSIONERS,

Respondent.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR ISLAND COUNTY

The Honorable Brian L. Stiles, Judge

STATE'S RESPONSE TO BRIEF OF AMICUS CURIAE
WASHINGTON STATE ASSOCIATION OF COUNTIES

GREGORY M. BANKS, WSBA No. 22926
Island County Prosecuting Attorney

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ATTACHMENT TO EMAIL

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I. INTRODUCTION

Amicus curiae, Washington State Association of Counties (WSAC), offers numerous policy arguments in support of allowing a board of county commissioners (BOCC)¹ to hire, at taxpayer expense, an attorney to perform duties assigned to the elected prosecuting attorney. Notably absent from WSAC's brief is any explanation as to why this Court should overrule *State ex rel. Johnson v. Melton*,² *Northwestern Improvement Co. v. McNeil*,³ *Hoppe v. King County*,⁴ and *State ex rel. Hunt v. Okanogan County*.⁵

Until the Washington Constitution is amended, the electorate's choice of the county's legal representative may be disturbed by the county commissioners only when a court of competent jurisdiction finds, pursuant

¹WSAC refers to the board of county commissioners as the "county legislative authority" throughout its brief. This label, while accurate, does not recognize the *sui generis* nature of the board of county commissioners.

A board of county commissioners in a non-charter county performs a variety of functions that include executive/administrative duties. See generally *Miller v. Pacific County*, 91 Wn.2d 744, 753-54, 592 P.2d 639 (1979) (Utter, C.J., dissenting) ("RCW 36.32, and particularly 36.32.120, reveals that county commissioners perform a variety of functions, including both legislative and executive/administrative duties. General legislative responsibilities include adoption of formal budgetary and taxing enactments and general police power ordinances and resolutions. However, the commissioners also are charged with the executive/administrative functions of managing county funds and accounts, prosecuting and defending actions by and against the county, and overseeing the care and use of county property."); *State ex rel. Bain v. Clallam County Board of County Commissioners*, 77 Wn.2d 542, 548, 463 P.2d 617 (1970) ("Within its sphere of responsibility, the board of county commissioners exercises the county's legislative power along with certain executive and, to a very limited degree, perhaps some judicial authority.").

In recognition that the board of county commissioners are not solely legislators, the State will refer to them in this brief by their full title or by the abbreviation "BOCC."

²192 Wash. 379, 73 P.2d 1334 (1937).

³100 Wash. 22, 170 P. 338 (1918).

⁴95 Wn.2d 332, 340, 622 P.2d 845 (1980).

⁵153 Wash. 399, 280 Pac. 31 (1929).

to RCW 36.27.030, that the incumbent prosecuting attorney is temporarily unable to perform his or her duties. Absent such a finding, county commissioners may not contract with a private attorney to perform duties "which any prosecuting attorney is authorized or required by law to perform," RCW 36.32.200, without the prosecuting attorney's consent.

The following is a brief response to selected points in WSAC's amicus brief. Points not addressed in this response are not conceded; rather they are not addressed because the State believes them to be adequately addressed in the State's Brief of Appellant and in the Reply Brief of Appellant.

II. ISSUE PRESENTED

Whether the constitutionally-based rule that a board of county commissioners may not authorize someone to perform the duties of an independently elected county official, precludes a board of county commissioners from contracting with a private attorney when the elected prosecuting attorney (1) has not been found to be temporarily unable to perform the work by a court of competent jurisdiction pursuant to RCW 36.27.030, and (2) has not consented to the private attorney's assumption of all or some of the prosecuting attorney's duties?

III. ARGUMENT

A. **WSAC's Policy Arguments Are Insufficient to Overrule this Court's Settled Case Law and Provide No Basis for Ignoring the Washington Constitution.**

The Washington Constitution unbundles governmental power at both the state and county level. *See* Brief of Appellant, at 10-13. The dividing of executive power among numerous separately elected officials is an existing

feature of legions of state and local governments in the United States.⁶ Unbundling executive authority enhances democratic accountability and government performance.⁷

This Court has been a staunch defender of the Washington Constitution's unbundled government. An unbroken line of cases prohibit transferring the duties of one separately elected official to another elected official or to a private person. *See, e.g. State ex rel. Johnston v. Melton*, 192 Wash. 379, 73 P.2d 1334 (1937) (prosecuting attorney may not appoint someone to perform duties assigned to the sheriff); *Northwestern Improvement Co. v. McNeil*, 100 Wash. 22, 33, 170 Pac.338 (1918) (county commissioners are not allowed to contract with a private individual to perform the functions of the separately elected assessor). WSAC has not demonstrated that this Court's fidelity to the Washington Constitution is incorrect and harmful.⁸

Statutes that authorize the transfer of a directly elected county officer's duties to another individual have either been struck down or limited. *See, e.g., State ex rel. Johnston v. Melton, supra* (striking down as unconstitutional a statute that authorized the prosecuting attorney to appoint investigators, who would be imbued with "the same authority as the sheriff of the county"); *Hoppe v. King County*, 95 Wn.2d 332, 340, 622 P.2d 845

⁶See Christopher R. Berry & Jacob E. Gersen, *The Unbundled Executive*, 75 U. Chi. L. Rev. 1385, 1386, 1399-1400 (2008).

⁷*Id.* at 1386.

⁸This Court will only overrule its own precedent if the precedent is both incorrect and harmful. *See, e.g., State v. Barber*, 170 Wn.2d 854, 864-65, 248 P.3d 494 (2011). Incorrectness and harmfulness are separate inquiries. *State v. Otton*, 185 Wn.2d 673, 687-88, 374 P.3d 1108 (2016).

(1980) (stating that RCW 36.32.200 provides for the payment of special prosecutors who are appointed pursuant to RCW 36.27.030); *State ex rel. Hunt v. Okanogan County*, 153 Wash. 399, 421, 280 Pac. 31 (1929) (restricting Rem. Rev. Stat. 4075, the predecessor to RCW 36.32.200, to employment contracts with an attorney to perform functions, such as lobbying, that are not already assigned to the prosecuting attorney). WSAC has not established that the restrictions this Court imposed upon the use of RCW 36.32.200 to contract with private attorneys are both incorrect and harmful.

The unbundled executive form of government is not without its critics. Many individuals and organizations favor a strong unitary executive or consolidation of powers in one entity on the grounds that authority that is not centralized tends to be weak.⁹ The empirical evidence, however, is that unbundled local governments are largely effective.¹⁰ While an unbundled form of government will experience some loss in coordination and efficiency, the unbundled government produces political outcomes that are closer to public preferences.¹¹

B. Washington's Unbundled Form of Government Necessarily Reduces the "Independence" of Any Elected Official or Body of Officials.

WSAC's amicus brief expresses its belief that the county board of commissioners must be allowed to retain legal counsel at will "to maintain

⁹The Unbundled Executive, 75 U. Chi. L. Rev. at 1402.

¹⁰*Id.*, at 1402.

¹¹*Id.*, at 1401. See also Jacob E. Gersen, Unbundled Powers, 96 Va. L. Rev. 301, 314-15 (2010).

their independence from the county's prosecuting attorney's office." Brief of Amicus Curiae Washington State Association of Counties (Amicus Brief), at 6. In essence, WSAC's argument is that continued fidelity to the Washington Constitution will erode the BOCC's "independence."

WSAC's policy arguments are largely based upon unsworn letters. These letters, which express the author(s)'s desire to be able to retain private counsel as desired, do not state that the county BOCC actually utilized RCW 36.32.200 to retain a private attorney without first obtaining an RCW 36.27.030 finding of disability. *See* CP 687 to 695. These letters do indicate that many of the BOCCs have retained private counsel with the consent of the prosecuting attorney.¹² None of the letters identify a specific legal need that went unmet in their jurisdiction. WSAC, however, believes that these letters support a conclusion that following the Washington Constitution and this Court's precedent would "have significant adverse impacts on counties throughout the state." Amicus Brief at 1. That conclusion is mistaken.

The competent declarations from current and former Benton, Columbia, Grant, Island, Jefferson, Kitsap, Douglas, Okanogan, Pacific, San Juan, Skagit, Snohomish, Spokane, and Walla Walla County prosecuting attorneys or deputy prosecuting attorneys reveal that complying with the Washington Constitution and this Court's precedent allows all of the

¹²*See* CP 687 (Chelan County has "always had the support of our Prosecutor" when contracting for legal services); CP 691 ("The King County Prosecuting Attorney has been consistently supportive of our employment of legal counsel"); CP 695 (Spokane County BOCC stating it has "never had a circumstance where we have used the provisions of RCW 36.32.200 to employee legal counsel where the Prosecuting Attorney has not supported our action").

county's legal needs to be met. *See* CP 285-293 and 643-676.¹³ Prosecuting attorneys regularly engage outside counsel in response to conflicts of interest, excessive workload, or to perform legal tasks that require specialized knowledge. *Id.* Fidelity to the Washington Constitution and compliance with this Court's precedent, therefore, is not having "a detrimental impact on the public interest." *State v. Barber*, 170 Wn.2d 854, 865, 248 P.3d 494 (2011) (summarizing the standard for "harmfulness").

WSAC, nonetheless, contends that an unfettered right to expend public funds to hire a private attorney to perform the prosecutor's duties is necessary because (1) the prosecuting attorney "may have his/her own policy perspective," Amicus Brief, at 4; (2) the levels of experience and expertise in a prosecuting attorney's office may be "thin," *id.*; (3) deputy prosecuting attorneys are selected by the prosecutor, *id.*; (4) legislative authorities need second opinions, *id.* at 4, 6; and (5) deputy prosecuting attorneys may simultaneously advise other elected officials who may not share the BOCC's policy positions, *id.* at 4-5.

WSAC's justifications for this Court to retreat from the black letter rule adopted in *Northwestern Improvement Company* and applied to RCW 36.32.200 in *State ex rel Hunt*, are indicative of WSAC's frustration at having an attorney selected by the voters. Their frustration is not grounds for disenfranchising the electorate or for the unauthorized expenditure of taxpayer funds. The BOCC may not discharge, supplant or replace the

¹³The declarations of the Island County Prosecuting Attorney, Gregory Banks, may be found in the appendix to the Reply Brief of Appellant. For the Court's convenience, the declarations from the other current or former prosecuting attorneys or deputy prosecuting attorneys are reproduced in appendix A.

prosecuting attorney.¹⁴

That the prosecuting attorney may be of a different political party than the members of the BOCC or may have a different policy perspective is a potentiality that has existed since the Washington Constitution was adopted in 1889. This aspect of our constitution's unbundled powers provisions is part of the necessary checks and balances that protect against the concentration and abuse of power. If WSAC believes that form of checks and balances should be changed, the remedy is a political one – to amend the constitution to change the relationship between the BOCC and the prosecuting attorney. That remedy must be sought with the legislature and the people, and not with the judiciary. *See generally* Washington Constitution article XXIII.

C. An Attorney is Not Required to Share His Client's Political Views or Policy Goals.

An absence of common vision is not an impediment to the prosecuting attorney's ability to represent the county and to perform the duties identified in RCW 36.27.020. The Rules of Professional Responsibility, which apply to all attorneys, explain that a prosecuting attorney is not required to share a client's "political, economic, social or

¹⁴*See also Oster v. Valley County*, 2006 MT 180,333 Mont. 76, 140 P.3d 1079, 1084 (2006) ("the Commissioners may neither hire nor fire the county attorney once the voters have elected him"); *Coyle v. Board of Chosen Freeholders*, 170 N.J. 260, 787 A.2d 881 (2002) (the general rule that a client has discretion to discharge an attorney, with or without cause does not apply to public positions, such as county attorney, where term of office and cause for discharge are controlled by statute; RPC 1.16(a)(3) does not require a public attorney to withdraw from representation during his or her term of office); *Salt Lake County Comm'n v. Short*, 199 UT 73, 985 P.2d 899, 907 (1999) ("the Commission cannot hire outside counsel to advise it when it disagrees with the advice of the elected attorney, or when it does not like the manner in which that person performs the duties of the office").

moral views or activities.” RPC 1.2(b). A prosecuting attorney, in providing advice to the BOCC, may, in addition to the law, refer to “other considerations such as moral, economic, social and political factors, that may be relevant to the client’s situation.” RPC 2.1. A prosecuting attorney, regardless of his or her own political or policy viewpoints, is required to abide by the BOCC’s decisions regarding the objectives of representation. RPC 1.2(a).

The BOCC’s perceived deficiencies in a prosecuting attorney’s legal knowledge do not provide a basis for supplanting him or her. A person is only eligible to be elected prosecuting attorney if he or she “has been admitted as an attorney and counselor of the courts of this state.” RCW 36.27.010. Having been deemed qualified by this Court to practice law in this state, the prosecuting attorney is deemed qualified to advise on all areas of Washington law. *Herron v. McClanahan*, 28 Wn. App. 552, 561, 625 P.2d 707 (1981) (citing APR 5). If the BOCC’s perception that the prosecuting attorney lacks experience or expertise is accurate, this does not mean that he cannot provide competent representation. Comment 2 to RPC 1.1 (“A lawyer can provide adequate representation in a wholly novel field through necessary study.”). The BOCC’s remedy if the prosecuting attorney does not provide competent representation is not for the BOCC to transfer some of the prosecuting attorney’s duties to another, the remedy is the election of another who has the desired skills. *Northwester Improvement Co. v. McNeil*, *supra*.

The BOCC’s desire to control who is appointed to serve as a deputy prosecuting attorney, which deputy prosecuting attorney is assigned to which task, and the priority that deputy prosecuting attorneys place upon the various

tasks, has been previously rejected by this Court and the court of appeals. See *In re Recall of Sandhaus*, 134 Wn.2d 662, 670, 953 P.2d 82 (1998) (balancing priorities in a public office with limited funds and personnel is vested within the discretion of the prosecuting attorney); *Osborn v. Grant County*, 130 Wn.2d 615, 624, 926 P.2d 911 (1996) (“the Board has no authority to interfere with an elected county officer’s hiring decisions”); *Herron v. McClanahan*, *supra* (prosecuting attorney not subject to recall for transferring a deputy from the criminal division to the civil division).

The prosecuting attorney answers for any missteps in hiring and office management, not to the BOCC, but to the voters. *Sandhaus*, 134 Wn.2d at 670 (“whether [the prosecuting attorney] is doing a satisfactory job of managing his office is a quintessential political issue which is properly brought before the voters at a regular election”); *Osborn*, 130 Wn.2d at 624 (“If an official makes a poor hiring decision, the official is accountable not to the board of commissioners, but to the public. If the public dislikes [the hiring decision], the ballot is its recourse.”).

The BOCC’s desire for a second opinion does not provide a basis for abandoning the Washington constitution. A disagreement between the BOCC and the prosecuting attorney does not give the BOCC a warrant to enter into an RCW 36.32.200 contract with a private attorney. *Hoppe*, 95 Wn.2d at 340. The BOCC is not entitled to second guess the judgment of the prosecuting attorney at public expense. *Id.* The prosecuting attorney is not entitled to refuse to comply with the BOCC’s ultimate decision on how to proceed. See generally RPC 1.2(a).

The BOCC's concern that the prosecuting attorney or deputy prosecuting attorney that provides the BOCC with legal advice should not be exposed to the differing viewpoints of the other elected officials does not present a basis for ignoring the Washington constitution's unbundled power structure. The prosecuting attorney has an organization as a client— the county. Members of the organization are allowed to have different policy positions on issues confronting the county. In representing the county, the prosecuting attorney is entitled to consider the viewpoints of all of the county's officers in providing legal advice to the BOCC. *See* RPC 2.1. With respect to litigation involving the county, the BOCC's position prevails over any contrary views of the other elected county officials. *See* RCW 36.32.120(6); RPC 1.13(a); RPC 1.2(a).

When a discrete governmental agency or unit within the county is adverse to another discrete governmental agency or unit within the county, the prosecuting attorney has a number of options. The prosecuting attorney may assign separate attorneys to represent each discrete unit. *See Wash. Med. Disciplinary Bd. v. Johnston*, 99 Wn.2d466, 480,663 P.2d457 (1983). The prosecuting attorney may also utilize the authority vested in him by RCW 36.27.040 to appoint a special deputy prosecuting attorney to represent one or both of the entities.¹⁵ If the prosecuting attorney does not make adequate provisions for his or her statutory client to receive conflict-free legal representation, the court may step in and appoint a special prosecuting

¹⁵The declarations found at CP 285-293 and 643-676, which are reproduced in appendix A, reveal that prosecuting attorneys throughout the State regularly appoint outside counsel in response to conflicts.

attorney pursuant to RCW 36.27.030. WSAC has not demonstrated that this framework, which is consistent with the Washington Constitution and this Court's precedent, is insufficient to protect the public's interest.

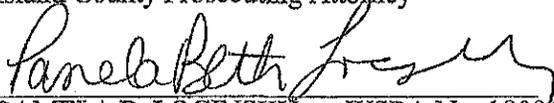
IV. CONCLUSION

When the Washington Constitution was written in 1889, the delegates understood that changing circumstances may render some of the provisions obsolete, inadequate or harmful. To address this concern, the Washington Constitution contains two methods by which it may be amended. See Washington Constitution article XXIII, sections 1 and 2. Both methods require a vote of the people. *Id.*

It is apparent that WSAC believes that the current limitations upon the hiring of outside counsel is harmful. WSAC's remedy, however, is not to ignore the Washington Constitution, its remedy is to amend the constitution.

Respectfully submitted this 7th day of September, 2016.

GREGORY M. BANKS, WSBA No. 22926
Island County Prosecuting Attorney



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Special Deputy Prosecuting Attorney
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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 7th day of September, 2016, I served copies of the document upon which this proof of service appears, by e-mail, pursuant to the prior agreement of counsel to

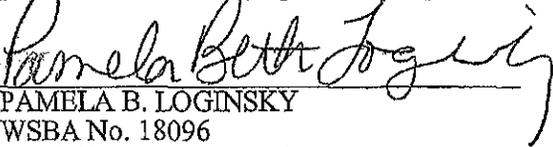
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Jeff Even, Deputy Solicitor General at JeffE@ATG.WA.GOV

Joshua Weiss, Counsel for Washington State Association of Counties at JWeiss@wsac.org

Signed under the penalty of perjury under the laws of the state of Washington this 7th day of September, 2016, at Olympia, Washington.


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

APPENDIX A

Declaration of Andy Miller In Support of Plaintiff's Amended Motion for Summary Judgment	CP 285
Declaration of Lawrence H. Haskell In Support of Plaintiff's Amended Motion for Summary Judgment	CP 2857
Declaration of Karl Sloan In Support of Plaintiff's Amended Motion for Summary Judgment	CP 292
Declaration of David Alvarez In Support of Plaintiff's Amended Motion for Summary Judgment	CP 643
Declaration of Jacquelyn M. Aufderheide In Support of Plaintiff's Amended Motion for Summary Judgment	CP 646
Declaration of Steven M. Clem In Support of Plaintiff's Amended Motion for Summary Judgment	CP 649
Declaration of Rea L. Culwell In Support of Plaintiff's Amended Motion for Summary Judgment	CP 652
Declaration of Juelanne Dalzell In Support of Plaintiff's Amended Motion for Summary Judgment	CP 655
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Declaration of James L. Nagle In Support of Plaintiff's Amended Motion for Summary Judgment	CP 667

Declaration of Mark Roe In Support of Plaintiff's Amended Motion for
Summary Judgment CP 670

Declaration of Richard Weyrich In Support of Plaintiff's Amended Motion
for Summary Judgment CP 673

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IN THE SUPERIOR COURT FOR ISLAND COUNTY, WASHINGTON

STATE OF WASHINGTON, on the
Relation of Gregory M. Banks,
Prosecuting Attorney of Island County,

NO. 15-2-00465-9

Plaintiff,

DECLARATION OF ANDY MILLER

vs.

IN SUPPORT OF PLAINTIFF'S AMENDED
MOTION FOR SUMMARY JUDGMENT

SUSAN E. DRUMMOND, and Law
Offices of Susan Elizabeth Drummond,
PLLC,

Defendants,

and

ISLAND COUNTY BOARD OF
COMMISSIONERS,

Intervenor/Defendant, and
Counterclaim Plaintiff.

I, ANDY MILLER, declare that I have personal knowledge of the matters set forth below
and that I am competent to testify to the matters stated herein. I am the elected Prosecuting
Attorney in Benton County. I was elected in November 1986 and have served continuously from
January 1, 1987 to the present date. Prior to being elected, I was a Benton County deputy
prosecutor for six years.

DECLARATION
IN SUPPORT OF PLAINTIFF'S
AMENDED MOTION FOR
SUMMARY JUDGMENT

PROSECUTING ATTORNEY
OF ISLAND COUNTY
P.O. Box 5000
Coupeville, Washington 98239
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ICProsecutor@co.island.wa.us

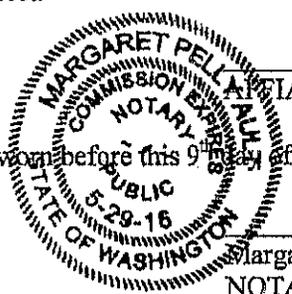
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I have had occasion to appoint outside counsel to represent Benton County on numerous occasions. At no time in my 29 year tenure has a lawyer represented Benton County without my appointment or approval.

There have been cases in the last twenty nine years when the Benton County Board of Commissioners have expressed interest in litigation requiring counsel with specialized experience. In these cases I and/or my Chief Civil Deputy Prosecutor have consulted with the County Commissioners and gotten input as to potential attorneys to represent the County. After such consultation, I have made the final decision as to who would represent Benton County.

No lawyer has been retained or paid to represent Benton County over my objection. No lawyer was retained or paid to represent Benton County over the objection of my predecessor in office while I was a deputy prosecutor.

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



Andy Miller

AFFIANT

Subscribed and sworn before this 9th day of December, 2015 by Andy Miller.

Margaret Pelly Ault

Margaret Pelly Ault
NOTARY PUBLIC
Residing in Kennewick, WA
Appointment expires: 5/29/2016

DECLARATION
IN SUPPORT OF PLAINTIFF'S
AMENDED MOTION FOR
SUMMARY JUDGMENT

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IN THE SUPERIOR COURT FOR ISLAND COUNTY, WASHINGTON

STATE OF WASHINGTON, on the Relation
of Gregory M. Banks, Prosecuting Attorney of
Island County,

Plaintiff,

vs.

SUSAN E. DRUMMOND, and Law Offices of
Susan Elizabeth Drummond, PLLC,

Defendants,

and

ISLAND COUNTY BOARD OF
COMMISSIONERS,

Intervenor/Defendant, and
Counterclaim Plaintiff.

NO. 15-2-00465-9

**DECLARATION OF
LAWRENCE H. HASKELL**

**IN SUPPORT OF PLAINTIFF'S
AMENDED MOTION FOR
SUMMARY JUDGMENT**

I, Lawrence H. Haskell, declare that I have personal knowledge of the matters set forth below and that I am competent to testify to the matters stated herein.

(1) I am the duly elected Prosecuting Attorney for Spokane County, Washington. I took office on January 1, 2015. Prior to that date, I was a Deputy

**DECLARATION OF LAWRENCE H. HASKELL
IN SUPPORT OF PLAINTIFF'S AMENDED
MOTION FOR SUMMARY JUDGMENT
Page 1 of 5**

**SPOKANE COUNTY
Prosecuting Attorney's Office
1100 West Mallon
Spokane, Washington 99260
(509) 477-3660**

1 Prosecuting Attorney for Spokane County for approximately 15 years (May 26, 1998
2 through May 1, 2002; June 8, 2005 through August 12, 2012; and June 1, 2013 through
3 December 31, 2014).
4

5
6 (2) Spokane County uses legal counsel outside of the Prosecutor's Office under
7 circumstances where the Spokane County Prosecuting Attorney determines that the office
8 does not have unique legal expertise required to provide advice and representation to its
9 statutory clients or there are conflicts. Examples of instances where Spokane County has
10 used legal counsel outside the Prosecutor's Office include, but are not necessary limited
11 to:
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15 a. Bond Counsel regarding the authorization, issuance, sale and delivery of
16 general obligation, revenue and utility local improvement district bonds,
17 road improvement district bonds and warrants, notes and other debt
18 instruments;
19
20 b. Outside legal counsel to assist in contract negotiations regarding the design
21 and construction of a \$144 Million Spokane County Regional Water
22 Reclamation Facility;
23
24 c. Outside legal counsel to assist in the update of Spokane County's Master
25 Shoreline Program;
26
27 d. Outside legal counsel to assist in conjunction with interest arbitration
28 proceedings under chapter 41.56 RCW;
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- e. Outside legal counsel for tort claims against Spokane County and/or its elected officials under covered through the Washington Counties Risk Pool; and
- f. Outside legal counsel in instances where there is a conflict in the Prosecuting Attorney's Office representing of one or more of its statutory clients.

(3) The Spokane County Prosecuting Attorney's Office is directly involved in all decisions regarding the use of legal counsel outside the Prosecuting Attorney's Office to provide advice and representation to its statutory clients. Except with respect to representation through the Washington Counties Risk Pool, the Chief Civil Deputy Prosecuting Attorney discusses the need for outside legal counsel with the statutory clients. In instances where the Chief Civil Deputy Prosecuting Attorney believes that the Civil Department does not possess the unique legal expertise required, after consultation with the Prosecuting Attorney, the Chief Civil Deputy Prosecuting Attorney compiles a list of outside legal counsel having the required legal expertise. The Chief Civil Deputy Prosecuting Attorney confers with the Prosecuting Attorney as to which outside legal counsel is best suited to provide such advice. The Prosecuting Attorney through the Chief Civil Deputy Prosecuting Attorney advises the respective statutory client of the outside legal counsel's unique expertise who the Prosecuting Attorney is willing to specially deputize or prepare a contract under RCW 36.32.200 for the Court's

**DECLARATION OF LAWRENCE H. HASKELL
IN SUPPORT OF PLAINTIFF'S AMENDED
MOTION FOR SUMMARY JUDGMENT
Page 3 of 5**

**SPOKANE COUNTY
Prosecuting Attorney's Office
1100 West Mallon
Spokane, Washington 99260
(509) 477-3660**

1 consideration. I am unaware of any circumstance in Spokane County where the Board of
2
3 County Commissioners or any elected official has employed outside legal counsel to
4 provide legal representation or advice to any statutory client without the approval of the
5 Prosecuting Attorney but for in the matter of *Westerman v. Cary*, 125 Wn. 2d 277, 892.
6 P. 2d 1067 (1994).
7

8
9 (4) Two methods are used in conjunction with the employment of outside legal
10 counsel to provide legal representation or advice to statutory clients of the Prosecuting
11 Attorney.
12

13 In most circumstances, outside legal counsel is specially deputized as provided for
14 in RCW 36.27.040.
15

16 In circumstances where it is determined that the Prosecuting Attorney does not
17 want to be responsible on his/ her bond required under RCW 36.16.050 or there may be
18 potential risk of exceeding Spokane County's insurance coverage under the Washington
19 Counties Risk Pool, the Prosecuting Attorney's Office prepares and approves as to form
20 and content a contract to hire outside legal counsel for presentation to the Spokane
21 County Superior Court as provided for under RCW 36.32.200.
22
23
24

25 (5) In all instances where the Spokane County Prosecuting Attorney specially
26 deputizes outside legal counsel to provide unique legal advice and representation or
27 where the Spokane County Prosecuting Attorney prepares and approves as to form and
28 content a contract to hire outside legal counsel to provide unique legal advice and
29
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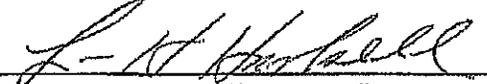
DECLARATION OF LAWRENCE H. HASKELL
IN SUPPORT OF PLAINTIFF'S AMENDED
MOTION FOR SUMMARY JUDGMENT
Page 4 of 5

SPOKANE COUNTY
Prosecuting Attorney's Office
1100 West Mallon
Spokane, Washington 99260
(509) 477-3660

1 representation, the compensation to be paid outside legal counsel is not included in the
2
3 Prosecuting Attorney's budget. Instead, compensation paid to outside legal counsel is
4
5 subject to review and approval by the Chief Civil Deputy Prosecuting Attorney and then
6
7 forwarded to the Spokane County Chief Executive Officer and/or Spokane County Risk
8
9 Manager for payment. This procedure eliminates process of supplementing the Spokane
10
11 County Prosecuting Attorney's budget and facilitates the Spokane County Chief
12
13 Executive Officer and/or Spokane County Risk Manager in allocating outside legal
14
15 counsel's fees as determined appropriate in the budgetary process.

16
17 I declare under the penalty of perjury of the laws of the State of Washington that
18
19 the foregoing is true and correct.

20
21 Dated this 21st day of December, 2015, at Spokane, Washington.

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Lawrence H. Haskell, WSBA #27826
Spokane County Prosecuting Attorney

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IN THE SUPERIOR COURT FOR ISLAND COUNTY, WASHINGTON

STATE OF WASHINGTON, on the
Relation of Gregory M. Banks,
Prosecuting Attorney of Island County,

NO. 15-2-00465-9

Plaintiff,

DECLARATION OF KARL SLOAN

vs.

REGARDING PLAINTIFF'S AMENDED
MOTION FOR SUMMARY JUDGMENT

SUSAN E. DRUMMOND, and Law
Offices of Susan Elizabeth Drummond,
PLLC,

Defendants,

and

ISLAND COUNTY BOARD OF
COMMISSIONERS,

Intervenor/Defendant, and
Counterclaim Plaintiff.

I, Karl F. Sloan, declare that I have personal knowledge of the matters set forth below and that I am competent to testify to the matters stated herein.

That I am the prosecuting attorney for Okanogan County, and have held the position since being elected in 2002.

That Okanogan County does utilize outside legal counsel when specialized representation is necessary, when potential conflicts arise in representation by our office, or when cases are referred to the County's Risk Pool.

DECLARATION
REGARDING PLAINTIFF'S
AMENDED MOTION FOR
SUMMARY JUDGMENT

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That when the need for retention of outside counsel has arisen, we have appointed counsel as a special deputy prosecutor pursuant to RCW 36.27.040.

That when the need for retention of outside counsel has arisen, we have coordinated, and worked cooperatively, with the County's Board of County Commissioners to facilitate the necessary representation.

That as a result, our County has not retained or appointed counsel pursuant to RCW 36.32.200.

That the costs associated with the use of outside counsel have been paid through the County's general budget, or as part of the Risk Pool fees. In those cases where we have had to utilize conflict counsel on criminal cases, any costs associated with the prosecution has remained the responsibility of the prosecutor's office.

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

Signed this 14 day of December, 2015, at Okanogan, Washington.



Karl F. Sloan

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IN THE SUPERIOR COURT FOR ISLAND COUNTY, WASHINGTON

STATE OF WASHINGTON, on the
Relation of Gregory M. Banks,
Prosecuting Attorney of Island County,

Plaintiff,

vs.

SUSAN E. DRUMMOND, and Law
Offices of Susan Elizabeth Drummond,
PLLC,

Defendants,

and

ISLAND COUNTY BOARD OF
COMMISSIONERS,

Intervenor/Defendant, and
Counterclaim Plaintiff

NO. 15-2-00465-9

DECLARATION OF DAVID ALVAREZ

**IN SUPPORT OF PLAINTIFF'S AMENDED
MOTION FOR SUMMARY JUDGMENT**

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

1. I am the Chief Civil Deputy Prosecuting Attorney for Jefferson County and have served in that position continuously since August 1999.

DECLARATION OF DAVID ALVAREZ
Page 1

MICHAEL E. HAAS
PROSECUTING ATTORNEY
FOR JEFFERSON COUNTY
Courthouse - P.O. Box 1220
Port Townsend, WA 98368
(360) 385-9180

- 1 2. This County has a newly-elected Prosecuting Attorney, Michael Haas, who has held
2 office since January of 2015.
- 3 3. Jefferson County uses an outside consultant, rather than the resources of the Prosecutor's
4 Office, to represent the County in negotiations with its collective bargaining units.
- 5 4. The consultant for those matters is retained by the County by the Board of County
6 Commissioners.
- 7 5. Jefferson County is a member of the Washington Counties Risk Pool.
- 8 6. Jefferson County also has used outside counsel for tort claims against the County that are
9 tendered to the Washington Counties Risk Pool for defense. Counsel in these cases are
10 chosen and retained by the Risk Pool, as said counsel have the expertise in the areas
11 necessary to defend the specific claims brought against the County.
- 12 7. The Risk Pool representative and I will typically discuss the person or firm the Risk Pool
13 intends to hire for the defense of a claim against Jefferson County. I generally defer to the
14 Risk Pool's choice because the Risk Pool has a "stable" of attorneys they retain based
15 primarily on the type(s) of tort(s) alleged.
- 16 8. These attorneys are not County employees and do not receive appointments as Special
17 DFAs.
- 18 9. Jefferson County has also used outside counsel for the defense of other claims brought
19 against the County when it has been determined the expertise of outside counsel is
20 needed. This is also done based on my advice and recommendation, and with the express
21 consent of the Board of County Commissioners. These cases have included, by way of
22 example only, lawsuits brought against the county based on alleged violations of the
23 Growth Management Act, the Shoreline Management Act and the Public Records Act.
- 24 10. Representation in the matters listed directly above is through a contract approved by this
office and by appointment of outside counsel as a special deputy prosecuting attorney.
11. Typically, the County Commission/County Administrator pays for the outside counsel
defending cases that are not within the coverage provided to the County by the Risk Pool.

DECLARATION OF DAVID ALVAREZ
Page 2

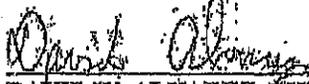
MICHAEL E. HAAS
PROSECUTING ATTORNEY
FOR JEFFERSON COUNTY
Courthouse - P.O. Box 1220
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(360) 385-9180

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- 12. This office will appoint outside counsel as special DPA to represent the State of Washington in criminal matters where this office would have a conflict of interest.
- 13. No lawyer has been retained or paid to represent Jefferson County over the objection of the Prosecutor's Office during my 16+ years of being the civil DPA for Jefferson County.
- 14. That fact is reflective of the close and excellent working relationship between the County Commission and the Prosecuting Attorney's Office that has been in existence for the entire time I have worked in this office.
- 15. I am not aware of any situation where the County Commissioners even threatened to use RCW 36.32.200 to retain outside legal counsel but then did not do so. Instead, the various processes laid out above describe how and when outside counsel has been utilized.
- 16. I am aware of two occasions when the Jefferson County Commissioners utilized the tool available to them through RCW 36.32.200.
- 17. One occasion arose when Recall Petitions were filed against two sitting County Commissioners. Since this office is statutorily the counsel for the municipal corporation and not for any individuals who serve as officials of that corporation, particularly those who are alleged to have acted in an "ultra vires" manner, a conflict arose and this office could not defend the individual elected officials against the recall petitions.
- 18. The second conflict occasion arose when there was a dispute between the prior elected Prosecuting Attorney and the elected District Court Judge, both clients of this office.

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

Signed this 9th day of December, 2015, at Port Townsend, Washington.


 DAVID W. ALVAREZ, WSPA #29194
 Chief Civil DPA, Jefferson County

DECLARATION OF DAVID ALVAREZ
Page 3

MICHAEL E. HAAS
 PROSECUTING ATTORNEY
 FOR JEFFERSON COUNTY
 Courthouse - P.O. Box 1220
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 (360) 385-9180

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IN THE SUPERIOR COURT FOR ISLAND COUNTY, WASHINGTON

STATE OF WASHINGTON, on the Relation of
Gregory M. Banks, Prosecuting Attorney
of Island County,

Plaintiff,

vs.

SUSAN E. DRUMMOND, and Law Offices of
Susan Elizabeth Drummond, PLLC,

Defendants,

and

ISLAND COUNTY BOARD OF
COMMISSIONERS,

Intervenor/Defendant, and
Counterclaim Plaintiff.

NO. 15-2-00465-9

DECLARATION OF JACQUELYN M.
AUFDERHEIDE IN SUPPORT OF
PLAINTIFF'S AMENDED MOTION
FOR SUMMARY JUDGMENT

I, Jacquelyn M. Aufderheide, declare that I have personal knowledge of the matters set forth below and that I am competent to testify to the matters stated herein.

1. I have been employed as a deputy prosecuting attorney by the Kitsap County Prosecuting Attorney since September 1996. I served as Senior Deputy Prosecuting Attorney from 1999 to 2006 when I was promoted to Chief of the Civil Division, the position I currently hold. During my tenure with the Civil Division, I have become familiar with the process the

DECLARATION
IN SUPPORT OF PLAINTIFF'S
AMENDED MOTION FOR
SUMMARY JUDGMENT

PROSECUTING ATTORNEY
OF ISLAND COUNTY
P.O. Box 5000
Culpeville, Washington 98239
360-675-7363
ICProsecutor@co.island.wa.us

1 Prosecuting Attorney's Office uses when contracting for legal services with outside counsel and
2 appointing special deputies in civil matters. As Chief, I oversee legal services provided to Kitsap.
3 County by outside counsel and records of such maintained by the Civil Division.
4

5
6 2. In civil matters, the Kitsap County Prosecuting Attorney's Office occasionally
7 contracts for professional legal services pursuant to the Prosecuting Attorney's inherent powers
8 and authorities, and occasionally appoints special deputies pursuant to RCW 36.27.040. Outside
9 counsel are retained by the Civil Division when necessary due to a conflict of interest, workload
10 constraints, or insufficient subject matter expertise.

11
12 3. In civil matters, selection of outside counsel is made by the Prosecuting
13 Attorney's Office except that when Kitsap County was a member of the Washington County's
14 Risk Pool, the Civil Division and Risk Pool would collaborate on who would represent the
15 County in defense of a tort action. No lawyer was retained or paid to represent Kitsap County
16 without the advice and consent of the Kitsap County Prosecuting Attorney. Kitsap County has
17 been self-insured for tort claims since October 2010, and since that time the selection of outside
18 counsel retained to assist with Kitsap County in defense of tort claims has been made by the
19 Prosecuting Attorney's Office.

20
21 4. Services rendered to the Civil Division by outside counsel are generally paid for
22 by the Department or fund benefitted by the outside legal services. For example, if a civil matter
23 concerns condemnation of property for a County road or litigation concerning a road
24 construction contract, the Department of Public Works will ultimately be charged the cost of
25 outside legal services provided in those matters.

26
27 5. During my tenure as a deputy prosecuting attorney, no lawyer has been retained,
28 or paid to represent Kitsap County over the objection of the Kitsap County Prosecutor, no action
29 has been taken under RCW 36.32.200 to employ or contract with any attorney or counsel for
30 legal services, and no action has been taken under RCW 36.27.030 whereby a court or judge
appointed legal counsel to discharge the duties of the Kitsap County Prosecuting Attorney.

DECLARATION
IN SUPPORT OF PLAINTIFF'S
AMENDED MOTION FOR
SUMMARY JUDGMENT

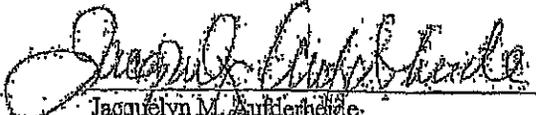
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IGProsecutor@co.island.wa.us

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

Signed this 14th day of December, 2015, at Port Orchard, Washington.


Jacquelyn M. Audernette

DECLARATION
IN SUPPORT OF PLAINTIFF'S
AMENDED MOTION FOR
SUMMARY JUDGMENT

Page 3 of 3

PROSECUTING ATTORNEY
OF ISLAND COUNTY
P.O. Box 5000
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ICProsecutor@pocisland.wa.us

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IN THE SUPERIOR COURT FOR ISLAND COUNTY, WASHINGTON

STATE OF WASHINGTON, on the
Relation of Gregory M. Banks,
Prosecuting Attorney of Island County,

NO. 15-2-00465-9

Plaintiff,

DECLARATION OF STEVEN M. CLEM
IN SUPPORT OF PLAINTIFF'S AMENDED
MOTION FOR SUMMARY JUDGMENT

vs.

SUSAN E. DRUMMOND, and Law
Offices of Susan Elizabeth Drummond,
PLLC,

Defendants,

and

ISLAND COUNTY BOARD OF
COMMISSIONERS,

Intervenor/Defendant, and
Counterclaim Plaintiff.

I, Steven M. Clem, declare that I have personal knowledge of the matters set forth below
and that I am competent to testify to the matters stated herein.

1. I am the elected Prosecuting Attorney for Douglas County, Washington. I was elected
in 1994 and have served continuously since 1994, having been re-elected to five terms.

2. Douglas County uses Bond Counsel and Labor Law Counsel, who are attorneys not
employed in my office.

DECLARATION
IN SUPPORT OF PLAINTIFF'S
AMENDED MOTION FOR
SUMMARY JUDGMENT

PROSECUTING ATTORNEY
OF ISLAND COUNTY
P.O. Box 5000
Coupeville, Washington 98239
360-679-7363
ICProsecutor@co.island.wa.us

1 3. Bond Counsel provides legal services relating to the issuance of General Obligation
2 Bonds and works closely with the County Treasurer when Douglas County is contemplating the
3 issuance of bonds to finance capital works. There have been very few occasions over the last 21
4 years when Bond Counsel has been used, as Douglas County does not have many bond
5 issuances. The scope of Bond Counsel's work is limited to a specific bond issuance proposal
6 and of relatively short duration. I consult with the County Treasurer regarding the selection of
7 Bond Counsel, and review and approve written contracts for Bond Counsel services. Copies of
8 opinions and draft documents issued by Bond Counsel are provided to me for my review, input
9 and approval.

10 4. Labor Law Counsel provides legal services relating to negotiation of collective
11 bargaining agreements, grievances filed by collective bargaining units, union-member employee
12 discipline matters and other services relating to issues involving union-member employees and
13 the unions. Labor Law Counsel works closely with the County Administrator on an on-going
14 basis. I consult with the County Administrator regarding the selection of Labor Law Counsel,
15 and review and approve written contracts for Labor Law Counsel services. Copies of
16 correspondence are provided to me, and Labor Law Counsel's opinions and draft documents are
17 provided to me for my review, input and approval. Due to the close, on-going working
18 relationship among the County Administrator, Labor Law Counsel and my office, Labor Law
19 Counsel has been appointed as a Special Deputy Prosecuting Attorney.

20 5. The expense for the services of Bond Counsel and Labor Law Counsel are not
21 included within the budget of the Prosecuting Attorney.

22 6. Douglas County has also been represented by various Tort Defense Counsel directly
23 retained by and paid by the Washington Counties Risk Pool under the terms of the Pool's
24 Interlocal Agreement, Claims Handling Procedures and Memorandum of Liability Coverage.
25 Douglas County does not retain or contract directly with Tort Defense Counsel, but the expense
26 of Tort Defense Counsel services may be subject to Douglas County's deductible and require
27 some reimbursement to the Pool. I approve each Tort Defense Counsel selected by the Pool
28 prior to the Pool making the assignment of counsel.
29

30

DECLARATION
IN SUPPORT OF PLAINTIFF'S
AMENDED MOTION FOR
SUMMARY JUDGMENT

Page 2 of 3

PROSECUTING ATTORNEY
OF ISLAND COUNTY
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360-679-7363
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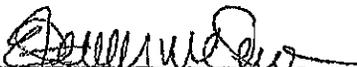
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7. I am in my sixth term as the elected Douglas County Prosecuting Attorney. No attorney has ever provided legal services to Douglas County, the Board of County Commissioners and/or Douglas County's elected and appointed officials without my prior approval -- and certainly has never provided services over my objection.

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

Signed this 5th day of December, 2015, at Wahatville, Washington.



Steven M. Clem, WSBA #7466
Douglas County Prosecuting Attorney

DECLARATION
IN SUPPORT OF PLAINTIFF'S
AMENDED MOTION FOR
SUMMARY JUDGMENT

Page 3 of 3

PROSECUTING ATTORNEY
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IN THE SUPERIOR COURT FOR ISLAND COUNTY, WASHINGTON

STATE OF WASHINGTON, on the
Relation of Gregory M. Banks,
Prosecuting Attorney of Island County,

NO. 15-2-00463-9

Plaintiff,

DECLARATION OF REA L. CULWELL

vs.

IN SUPPORT OF PLAINTIFF'S AMENDED
MOTION FOR SUMMARY JUDGMENT

SUSAN E. DRUMMOND, and Law
Offices of Susan Elizabeth Drummond,
PLLC,

Defendants,

and

ISLAND COUNTY BOARD OF
COMMISSIONERS,

Intervenor/Defendant, and
Counterclaim Plaintiff.

I, Rea L. Culwell, declare that I have personal knowledge of the matters set forth below
and that I am competent to testify to the matters stated herein.

1. I am the elected Prosecuting Attorney for Columbia County, Washington;
2. I have continuously held the office of Columbia County Prosecuting Attorney since
January 1, 2007;
3. Since taking office, Columbia County has contracted with utilized outside counsel
three times with my approval as Prosecuting Attorney;

DECLARATION
IN SUPPORT OF PLAINTIFF'S
AMENDED MOTION FOR
SUMMARY JUDGMENT

PROSECUTING ATTORNEY
OF ISLAND COUNTY
P.O. Box 5000
Coupeville, Washington 98239
360-679-7363
ICProsecutor@no.island.wa.us

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4. Since taking office, Columbia County has not hired or contracted with outside counsel without my approval; Columbia County has not hired or contracted with outside counsel without my appointment of the outside counsel as a special deputy prosecutor;
5. I have consulted with Dwight Robanske, current Columbia County Commissioner, having served for 15 years as such and he informed me that at no time did Columbia County contract with outside counsel over the prosecuting attorney's objection and, in the rare instances when outside counsel was hired, it was with the prosecutor's consent and/or suggestion, and the prosecutor appointed the outside counsel as a special deputy prosecutor;
6. The circumstances in which outside counsel was utilized by the County with my permission are as follows:
 - a. Two labor-employment issue involving claims made by employees who had been terminated by the County involving potentially complicated fact pattern;
 - b. A land use/code compliance matter wherein the Columbia County Building and Planning Director disagreed with my decision regarding whether the case could be successfully prosecuted criminally;
7. In regards to 6. a. above, I alone, as Prosecuting Attorney, chose outside counsel;
8. In regards to 6. b. above, both the Director of Building and Planning and I thought of the same attorney to represent the County, a former Kittitas County Deputy Prosecutor now in private practice whom we had respectively worked with before, and thus it was agreed;
9. In regards to 6. a. above, the attorney will ultimately be paid by the County out of the County's Risk Management budget;
10. In regards to 6. b. above, the attorney has not been compensated, but I believe the attorney will be paid from the Building and Planning budget, however this is not a set County policy;

DECLARATION
IN SUPPORT OF PLAINTIFF'S
AMENDED MOTION FOR
SUMMARY JUDGMENT

PROSECUTING ATTORNEY
OF ISLAND COUNTY
P.O. Box 5000
Coupeville, Washington 98239
360-679-7363
ICProsecutor@co.island.wa.us

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11. From time to time, an average of less than one matter a year, Columbia County will tender defense of a claim that is covered by the Washington County Risk Pool, the County's insurer, pursuant to the County's agreement with the Risk Pool; in those matters, the anticipated potential monetary liability is above the deductible amount; in all cases, if an outside attorney is engaged, that attorney is approved by the Prosecuting Attorney and is appointed as a special deputy prosecutor; and

12. In the land use/code compliance matter mentioned in 5. a., in addition to the Director of Planning and Building, the Columbia County Board of County Commissioners were insistent prior to entering into any agreement with the outside counsel for work and prior to paying that outside counsel any compensation, I, as Prosecuting Attorney, must agree to the representation and appoint that attorney as a special deputy appointment; without my approval and appointment, the attorney would not have been engaged.

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

Signed this 11 day of December, 2015, at Seattle, Washington.


R. L. COLWELL

DECLARATION
IN SUPPORT OF PLAINTIFF'S
AMENDED MOTION FOR
SUMMARY JUDGMENT

PROSECUTING ATTORNEY
OF ISLAND COUNTY
P.O. Box 5000
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IN THE SUPERIOR COURT FOR ISLAND COUNTY, WASHINGTON

STATE OF WASHINGTON, on the
Relation of Gregory M. Banks,
Prosecuting Attorney of Island County,

NO. 15-2-00465-9

Plaintiff,

DECLARATION OF

vs.

IN SUPPORT OF PLAINTIFF'S AMENDED
MOTION FOR SUMMARY JUDGMENT

SUSAN E. DRUMMOND, and Law
Offices of Susan Elizabeth Drummond,
PLLC,

Defendants,

and

ISLAND COUNTY BOARD OF
COMMISSIONERS,

Intervenor/Defendant, and
Counterclaim Plaintiff.

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

I served Jefferson County as a duly elected Prosecuting Attorney for three terms and retired
in 2009.

During my years of service I hired outside counsel on several occasions. I recall appointing
outside counsel as a deputy prosecutor to handle three criminal appeals for the office. He was paid

DECLARATION
IN SUPPORT OF PLAINTIFF'S
AMENDED MOTION FOR
SUMMARY JUDGMENT

PROSECUTING ATTORNEY
OF ISLAND COUNTY
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1 out of the Prosecuting Attorney's budget. We had to go outside the office on this occasion because
2 we trying a murder case and the appeals were due around the same time as trial. This attorney was
3 paid from the Prosecuting Attorney's budget. We had an oral contract and of course the document
4 appointing him was filed with the County Auditor.

5 During my tenure as Prosecuting Attorney I appointed Pam Loginsky to act as special
6 deputy prosecutor due to a conflict of interest my office had in a case. Ms. Loginsky was also
7 appointed to handle a very complex criminal appeal. The only charges incurred were out of pocket
8 expenses such as ferry and mileage. Those expenses were paid out of our Prosecutor's budget.
9 Duly executed special deputy prosecutor appointments were filed with the County Auditor.

10 WAPA (Washington Association of Prosecuting Attorneys) once had a training program
11 where my office appointed a WAPA attorney to train new District Court Deputies. The focus of
12 the training was on DUI's. The only fees involved once again were mileage and ferry. Those
13 were paid out of the Prosecutor's budget. His special deputy appointment was filed with the
14 Auditor.

15 The other times I appointed special deputy prosecutors were on those occasions when the
16 county was being sued for damages. These attorneys were part of the county's risk pool and were
17 personally known to me. They worked very closely with the prosecutor's office on every case
18 they defended. No charges were incurred because they were paid by the Risk Pool. There were
19 special deputy appointments on each case they handled that were filed with the Auditor
20

21 I do recall a county commissioner not being happy with how we represented him on a
22 county issue and he tried to hire outside counsel. I explained the law to him and he refrained from
23 engaging outside counsel.

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

26
27 Signed this 8 day of December, 2015, at Port Townsend

28 _____ Washington.
29
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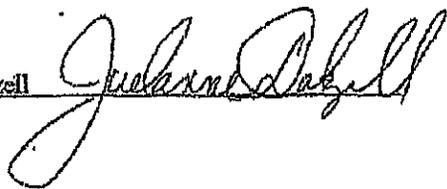
DECLARATION
IN SUPPORT OF PLAINTIFF'S
AMENDED MOTION FOR
SUMMARY JUDGMENT

Page 2 of 3

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Juelanne Dalzell 

Retired Jefferson County Prosecutor.
Bar # 21508
P.O. Box 672
Port Townsend, WA
360 385 6364
Or cell phone
360-531-1005

DECLARATION
 IN SUPPORT OF PLAINTIFF'S
 AMENDED MOTION FOR
 SUMMARY JUDGMENT

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IN THE SUPERIOR COURT FOR ISLAND COUNTY, WASHINGTON

STATE OF WASHINGTON, on the
Relation of Gregory M. Banks,
Prosecuting Attorney of Island County,

NO. 15-2-00465-9

Plaintiff,

DECLARATION OF
GARTH DANO IN SUPPORT OF PLAINTIFF'S
AMENDED MOTION FOR SUMMARY
JUDGMENT

vs.

SUSAN E. DRUMMOND, and Law
Offices of Susan Elizabeth Drummond,
P.L.L.C.,

Defendants,

and

ISLAND COUNTY BOARD OF
COMMISSIONERS,

Intervenor/Defendant, and
Counterclaim Plaintiff.

I, Garth Dano, Grant County Prosecutor, declare that I have personal knowledge of the
matters set forth below and that I am competent to testify to the matters stated herein.

I was elected to my current position in November 2014, and took office on January 5,
2015.

Shortly after taking office, I became aware of a number of "Special Counsel" contracts
existed, which had previously been entered into with outside attorneys, by the Grant County
Board of County Commissioners (BOCC). These "Special Counsel" contracts had been approved.

DECLARATION
IN SUPPORT OF PLAINTIFF'S
AMENDED MOTION FOR
SUMMARY JUDGMENT

PROSECUTING ATTORNEY
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1 by the presiding Grant County Superior Court Judge. These were not Special Deputy Prosecutor
2 appointments with the required oath, as outlined in RCW 36.27.040. The
3 "Special Counsel" contracts were basically personal services agreements. I believe that these
4 agreements did not comport with RCW 36.27.

5 My review of active and expired "Special Counsel" contracts indicated that this was a
6 common practice, in Grant County, dating back at least six years. The BOCC routinely entered
7 into these agreements with little, if any, input from the previous Prosecuting Attorneys.

8 Specifically, in the beginning of 2015, there were four executed and two pending
9 contracts, for "Special Counsel" contracts, for the following:

- 10 1. Advice for environmental, Superfund, and landfill matters;
- 11 2. Assistance for a tax valuation matter;
- 12 3. Assistance for matters arising out of *East v Grant County*, and labor and
13 employment matters;
- 14 4. A second, somewhat redundant, contract for labor and employment issues;
- 15 5. Advice and assistance regarding an active lawsuit against the County by a
16 local Irrigation District; and
- 17 6. Assistance and advice relative to State Bar disciplinary matters provided to
18 the previous elected prosecutor.

19 Budgeting for these "Special Counsel" contracts came generally out of the Grant County
20 budget; a portion came out of the Prosecutor's budget.

21 In addition, the County previously retained "Special Counsel" to handle Public
22 Disclosure requests, and general "civil matters."

23 After much research and consultation with my staff, WAPA, and legal opinion from an
24 outside firm, I came to the legal conclusion, that these types of contracts not only bypassed the
25 statutory standards of the RCW's, but also subverted the electorate's rights under the
26 Constitution to choose who is to be vested with the sovereign power of the Prosecuting Attorney,
27

28 Additionally, it makes sound business sense that the elected Prosecutor appoint Special
29 deputies, if necessary in order to maintain case status, to avoid conflicts of interest, avoid
30

DECLARATION
IN SUPPORT OF PLAINTIFF'S
AMENDED MOTION FOR
SUMMARY JUDGMENT

Page 2 of 3

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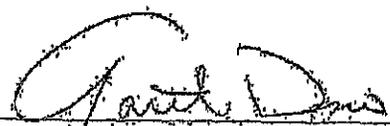
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redundancy, and to provide in-house assistance. Unless I am incapacitated, or otherwise unable to perform my prosecutorial duties, I do not believe the BOCC has the legal authority to enter into such agreements. Our BOCC has acknowledged this, I am in the process of converting all "Special Counsel" contracts into an Appointment and Oath of Office of Special Deputy Prosecutors, which my staff and I will then monitor and track.

I have not had any disagreement with the BOCC concerning my interpretation of the law or my handling of these "Special Counsel" contracts. Our office has the capability and expertise to handle many of these matters in-house, thus saving the Grant County taxpayers substantial moneys.

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

Signed this 14th day of December, 2015, at Ephrata, Washington.



Garth Datio
Grant County Prosecuting Attorney
WSBA # 11226

DECLARATION
IN SUPPORT OF PLAINTIFF'S
AMENDED MOTION FOR
SUMMARY JUDGMENT

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~~IN THE SUPERIOR COURT FOR ISLAND COUNTY, WASHINGTON~~

STATE OF WASHINGTON, on the
Relation of Gregory M. Banks,
Prosecuting Attorney of Island County,

NO. 15-2-00465-9

Plaintiff,

DECLARATION OF RANDALL K. GAYLORD
IN SUPPORT OF PLAINTIFF'S AMENDED
MOTION FOR SUMMARY JUDGMENT

vs.

SUSAN E. DRUMMOND, and Law
Offices of Susan Elizabeth Drummond,
PLLC,

Defendants,

and

ISLAND COUNTY BOARD OF
COMMISSIONERS,

Intervenor/Defendant, and
Counterclaim Plaintiff.

Randall K. Gaylord states and declares:

1. I am of legal age and am competent to provide the following testimony. I am the
elected Prosecuting Attorney for San Juan County, Washington. I was first elected to this
office in 1994, and I was reelected in 1998, 2002, 2006, 2010 and 2014. I have served in
this position for almost 21 years.

2. Prior to taking office in 1994, I met with the former prosecuting attorney Mr.
Fred Canavor about the role of the prosecuting attorney in selecting outside counsel to

DECLARATION OF GAYLORD- 1

SAN JUAN COUNTY PROSECUTOR
350 COURT STREET • P.O. BOX 760
FRIDAY HARBOR WA 98250
TEL (360) 378-4101 • FAX (360) 378-3180

1 represent the County. Mr Canavor told me of the process he had followed to select
2 lawyers, and the procedure to filing an appointment of special deputy prosecuting attorney
3 and obtaining an oath from the duly appointed individual. He also said this appointment
4 should be repeated at start of each term of office. We also discussed the budgetary
5 impacts of hiring a special deputy prosecuting attorney, and he pointed out that the
6 appropriations for the year 1995 included \$30,000 on a line item designed as "outside
7 counsel." This line item in the budget of the prosecutor was and is the only one in the
8 County that was specified and used for outside counsel.

9 3. Mr. Canavor impressed upon me the important duty of selecting outside counsel
10 and he gave me guidance on managing outside counsel for efficiency and to keep the
11 costs down to the county. His assistant, who later became my assistant, showed me
12 examples of appointments made by Mr. Canavor of special deputy prosecutors and the
13 way they are altered to make sure that they are made for very specific and narrow
14 purposes.

15 4. The first day I assumed office in January 1995 I appointed deputy prosecutors
16 and on that day and over the years, I have appointed many special deputy prosecutors.

17 5. Special deputy prosecutors have been made only for very specific and narrow
18 purposes, such as handling one lawsuit or part of a lawsuit, such as an appeal. I have
19 also appointed special deputy prosecutors to represent the county in issuing bonds, assist
20 on litigation in distant counties, in federal court, on a contract that led to the privatization
21 of solid waste handling, and on some employment matters. Special deputy prosecutor
22 appointments are also made when the source of payment is a special fund such as the
23 Washington Counties Risk Pool or the Land Bank or road fund, and only occasionally
24

DECLARATION OF GAYLORD- 2

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1 are special funds used for payment instead of running the payment through my office and
2 the outside counsel item.

3 6. In my opinion, the approach used in San Juan County is consistent with the law
4 and the best practices for managing outside counsel and it works to avoid unnecessary
5 expenses.

6 7. When the need increases for everyday work such as contracts, land use,
7 employment, and general litigation it has been my policy to request a new hire for the
8 office, either as a lawyer or a lawyer assistant, depending on the nature of the work.

9 8. I consider the subject area of land use to be a difficult one for special deputy
10 prosecutor appointment because 1) it requires almost daily advice for ongoing matters; 2)
11 it involves administrative and court appeals that can last many years; and 3) it would be a
12 great loss to the county to invest in the knowledge of a land use attorney only to have the
13 contract expire.

14 8. In my opinion, legal work on land use matters demands in-house paid employees
15 for the work to be done efficiently and effectively. Moreover, I have participated in
16 salary and compensation reviews to make sure we are paying the appropriate amount
17 necessary to hire and retain a lawyer with the appropriate amount of interest, training and
18 skill. I have found that it is necessary to pay a competitive wage to attract and retain the
19 best people to do the legal work.

20 4. Over the years, I have also spoken to other former elected prosecuting attorneys
21 for San Juan County about the use of outside counsel including Mr. Gene Knapp (now
22 deceased), Mr. Tom Moser and Mr. Michael Redman (now deceased). In addition I have
23 looked at some of the files of these former prosecutors. None of these former prosecuting
24 attorneys mentioned to me that the process of RCW 36.32.200 was ever used to appoint

DECLARATION OF GAYLORD- 3

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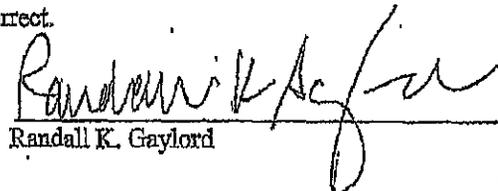
an attorney for San Juan County. I have not seen any files in San Juan County that show that the process of RCW 36.32.200 was ever used.

5. Since taking office on January 1, 1995, the procedure of RCW 36.32.200 has not been used to approve a contract for the appointment of outside counsel to represent the legislative authority, the executive authority or any other department of the county on any matter. I cannot recall any attempt by the legislative authority to attempt to invoke the procedures of RCW 36.32.200.

6. Based upon my personal knowledge and the information provided to me by former prosecuting attorneys, the procedure of RCW 36.32.200 has not been used in the County in the past 40 years and perhaps even longer.

4. I hereby declare under penalty of perjury under the laws of the state of Washington that the forgoing is true and correct.

Dated: 12/14/2005
Friday Harbor Washington


Randall K. Gaylord

DECLARATION OF GAYLORD- 4

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IN THE SUPERIOR COURT FOR ISLAND COUNTY, WASHINGTON

STATE OF WASHINGTON, on the
Relation of Gregory M. Banks,
Prosecuting Attorney of Island County,

NO. 15-2-00465-9

Plaintiff,

DECLARATION OF MARK MCCLAIN

vs.

IN SUPPORT OF PLAINTIFF'S AMENDED
MOTION FOR SUMMARY JUDGMENT

SUSAN E. DRUMMOND, and Law
Offices of Susan Elizabeth Drummond,
P.L.L.C.,

Defendants,

and

ISLAND COUNTY BOARD OF
COMMISSIONERS,

Intervenor/Defendant, and
Counterclaim Plaintiff.

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

I am the Elected Prosecutor for Pacific County and make this declaration based on my own
knowledge and experience as both an Elected Prosecutor and County Commissioner. I began my
term as the Elected Prosecutor for Pacific County in January of this year. Prior to my term as
Prosecutor, I served as the Chief Deputy Prosecutor, beginning my employment with Pacific
County October, 2011. I served as County Commissioner for Kittitas County beginning January,

DECLARATION
IN SUPPORT OF PLAINTIFF'S
AMENDED MOTION FOR
SUMMARY JUDGMENT

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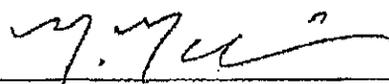
1 2006 and served one four-year term, two of which as Chairman of the Board of County
2 Commissioners.

3
4 In my capacity as Prosecutor, aside from assistance by agreement with the Washington County
5 Risk Pool, which is undertaken in conjunction with my representation of the County, Pacific
6 County does not utilize outside legal counsel.

7 In my capacity as County Commissioner for Kittitas County we did employ one attorney
8 to assist in employment law matters and also retained a land use firm, and their legal staff, to assist
9 in resolving an order of invalidity; however, under both circumstances we did so with the attorney
10 serving as a Special Deputy Prosecutor for Kittitas County and with the agreement of the elected
11 Prosecutor. With regard to the land use issue, the Pacific County Prosecutor's Office served as
12 the legal representative for the County and the land use firm's role was planning.

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

15
16 Signed this 8th day of December, 2015, at South Bend, Washington.

17
18 
19 _____
20 Mark McClain, WSBA#30909
21 Pacific County Prosecutor

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DECLARATION
IN SUPPORT OF PLAINTIFF'S
AMENDED MOTION FOR
SUMMARY JUDGMENT

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IN THE SUPERIOR COURT FOR ISLAND COUNTY, WASHINGTON

STATE OF WASHINGTON, on the
Relation of Gregory M. Banks,
Prosecuting Attorney of Island County,

NO. 15-2-00465-9

Plaintiff,

DECLARATION OF JAMES L. NAGLE

vs.

IN SUPPORT OF PLAINTIFF'S AMENDED
MOTION FOR SUMMARY JUDGMENT

SUSAN B. DRUMMOND, and Law
Offices of Susan Elizabeth Drummond,
FLLC,

Defendants,

and

ISLAND COUNTY BOARD OF
COMMISSIONERS,

Intervenor/Defendant, and
Counterclaim Plaintiff.

I, James L. Nagle, declare that I have personal knowledge of the matters set forth below and that I am competent to testify to the matters stated herein. I am the elected prosecuting attorney of Walla Walla County. I have been the prosecuting attorney of Walla Walla County since January of 1989. Prior to that time I was a deputy prosecuting attorney for Walla Walla County for four years.

Walla Walla County uses counsel outside of the prosecutor's office for representation of the County in negotiations with collective bargaining units and employment law matters. This is

DECLARATION OF JAMES L. NAGLE
IN SUPPORT OF PLAINTIFF'S
AMENDED MOTION FOR
SUMMARY JUDGMENT

Page 1 of 1

PROSECUTING ATTORNEY
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1 due to the fact that Walla Walla County is a small organization and most of the people
2 represented by collective bargaining units are the same county employees that my office works
3 with and gives legal advice to on a day to day basis, and I have determined that it would create
4 an appearance of a conflict of interest for my office to represent the County in such matters.
5 Counsel for these matters are retained by the County by the Board of County Commissioners
6 with my advice and consent. Representation in these matters is through a contract approved by
7 my office.

8
9 Walla Walla County also has used outside counsel for tort claims against the County that
10 are tendered to the Washington Counties Risk Pool for defense. Counsel in these cases are
11 retained by the Risk Pool with my advice and consent, and said counsel have had the expertise in
12 the areas necessary to defend the specific claims brought against the County.

13 Walla Walla County has also used outside counsel for the defense of other claims brought
14 against the County where I have determined the expertise of outside counsel is needed. This is
15 also done based on my advice and recommendation, and with the consent of the Board of County
16 Commissioners. Counsel in these cases have been paid for out of the prosecutor's office budget.
17 These cases have included lawsuits brought against the county for road construction contracts,
18 public disclosure act suits, and other matters not covered by the County's agreement with the
19 Risk Pool. Representation in these matters is through a contract approved by my office, by
20 appointment as a special deputy prosecuting attorney, or both.

21 I have also, from time to time, appointed outside counsel as special deputy prosecutor to
22 represent the State of Washington in criminal matters where my office would have a conflict of
23 interest. I have also appointed outside counsel to handle appeals of criminal cases, and this has
24 also been done by contract.

25 No lawyer has been retained or paid to represent Walla Walla County over my objection.
26 No lawyer was retained or paid to represent Walla Walla County over the objection of my
27 predecessors in office while I was a deputy prosecutor.

28 I declare under the penalty of perjury of the laws of the State of Washington that the
29 foregoing is true and correct.
30

DECLARATION OF JAMES L. NAGLE
IN SUPPORT OF PLAINTIFF'S
AMENDED MOTION FOR
SUMMARY JUDGMENT

Page 2 of 2

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Signed this 27th day of December, 2015, at Walla Walla, Washington.


James L. Nagle WSBA#9637
Prosecuting Attorney for Walla Walla County

DECLARATION OF JAMES L. NAGLE
IN SUPPORT OF PLAINTIFF'S
AMENDED MOTION FOR
SUMMARY JUDGMENT

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IN THE SUPERIOR COURT FOR ISLAND COUNTY, WASHINGTON

STATE OF WASHINGTON, on the
Relation of Gregory M. Banks,
Prosecuting Attorney of Island County,

NO. 15-2-00465-9

Plaintiff,

DECLARATION OF MARK ROE

vs.

SUSAN E. DRUMMOND, and Law
Offices of Susan Elizabeth Drummond,
PLLC,

Defendants,

and

ISLAND COUNTY BOARD OF
COMMISSIONERS,

Intervenor/Defendant, and
Counterclaim Plaintiff.

I, MARK ROE, being over eighteen years of age and otherwise competent to testify, hereby
declare under penalty of perjury pursuant to the laws of the State of Washington, that the
following is true to the best of my knowledge.

My name is Mark Roe, and I am the elected Prosecuting Attorney for Snohomish County. I
have been a prosecutor in Snohomish County since 1986, and became Chief Criminal Deputy in
2001.

DECLARATION
OF MARK ROE

PROSECUTING ATTORNEY
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1 1. Beginning in 1992 I was the supervisor of either the Violent Crimes Unit, or Special
2 Assault Unit handling sex crimes and crimes against children.

3
4 2. I am very familiar with Snohomish County practices on the hiring of outside counsel, and
5 who makes the decision to do so. The elected prosecutor makes those decisions.

6
7 3. Snohomish County considers hiring outside counsel in primarily two circumstances: First,
8 if there is an actual conflict, or appearance of a conflict of interest such that in my judgment an
9 attorney outside this office should review and/or handle a matter, be it criminal or civil in nature.
10 Secondly, if I believe we need assistance from outside attorneys with special knowledge in
11 certain subject matter.
12

13 4. In either instance, as the attorney elected to represent the county, I specially deputize
14 anyone I decide to contract with. To my knowledge, not once in my career has one of our county
15 clients attempted to show that my office was "disabled", and then gone on to choose an outside
16 attorney on their own. That certainly has not occurred this century, during my direct involvement
17 as either chief Criminal Deputy, or Prosecuting Attorney.
18

19
20 5. It seems well understood that absent an actual finding of disability, the authority to
21 represent the county in legal matters can only be delegated by the person who legally possesses
22 that authority; the Prosecuting Attorney.
23

24 6. When we 'go outside', we generally enter into a contract with negotiated caps on expense,
25 which can be reassessed once those levels have been reached. We have a duty to be frugal with
26 the taxpayers' money. We represent not only the county entity, but in a general sense, the
27 taxpayers as well. Outside attorneys do not always appreciate the special duties of a prosecutor
28 because it isn't something they have to be aware of every day.
29
30

DECLARATION
OF MARK ROE

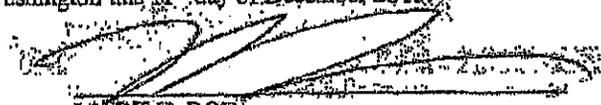
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7. No outside attorney has ever been appointed or contracted with over my objection. No one has even tried to do that. Any suggestion that this routinely happens is certainly inaccurate as to Snohomish County. It's never happened.

SIGNED at Everett, Washington this 11th day of December 2015.



MARK K. ROE

DECLARATION
OF MARK ROE

Page 3 of 3

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IN THE SUPERIOR COURT FOR ISLAND COUNTY, WASHINGTON

STATE OF WASHINGTON, on the
Relation of Gregory M. Banks,
Prosecuting Attorney of Island County,

NO. 15-2-00465-9

Plaintiff,

DECLARATION OF

vs.
SUSAN E. DRUMMOND, and Law
Offices of Susan Elizabeth Drummond,
PLLC,

IN SUPPORT OF PLAINTIFF'S AMENDED
MOTION FOR SUMMARY JUDGMENT

Defendants,

and

ISLAND COUNTY BOARD OF
COMMISSIONERS,

Intervenor/Defendant and
Counterclaim Plaintiff.

I, Richard A. Weyrich, declare that I have
personal knowledge of the matters set forth below and that I am competent to testify to the
matters stated herein.

I am the elected Prosecuting Attorney for Skagit County, State of Washington. I have
served in this position since January 1, 2007. The knowledge that I have is from direct
knowledge as well as information that I have gathered from the two Chief Civil Deputies that
have worked for me while I have been the Prosecutor.

DECLARATION
IN SUPPORT OF PLAINTIFF'S
AMENDED MOTION FOR
SUMMARY JUDGMENT

Page 1 of 4.

PROSECUTING ATTORNEY
OF ISLAND COUNTY
P.O. Box 5000
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360-679-7383
ICProsecutor@co.island.wa.us

1 My office has tried and been mostly successful in limiting our use of outside counsel in
2 recent years. During my first two years in office we went through the process of breaking away
3 from outside counsel contracts which were placing significant financial burdens on Skagit
4 County. I was able to bring in and retain attorneys who were able to handle the work and get
5 things done and lawsuits settled that had been dragging on with no real incentives for outside
6 counsel to resolve.

7 Skagit County only uses outside counsel in very specific situations where we do not feel
8 we have the exact expertise needed, when there is a conflict of interest with our office handling a
9 case, or when the Risk Pool takes over litigation when it is likely that a claim may exceed our
10 insurance deductible.

11 My office makes every effort to limit the scope and length of the contracts as I have
12 never seen one yet where all the money that was allocated was not used in full. We continue to
13 regularly monitor the progress of contracts that we do put into effect and what work is being
14 done for moneys paid. The one area where we consistently use outside counsel is for
15 employment law and we have used the same firm for a number of years, predating my time as
16 Prosecutor. They work for and are paid directly out of the Human Resources budget. When HR
17 wants to hire them, I appoint them as Special Deputy Prosecutors and they serve as long as the
18 appointment remains in effect. We hire bond counsel, again appointed by myself, for a specific
19 project for which we lack the expertise. The most recent example is for the financing of the new
20 Skagit County jail. Our office was instrumental in the selection and hiring of the firm and again
21 monitored progress. We will be hiring, on a limited basis, a firm to assist us in some very
22 complicated litigation over environmental cleanup which also involves bankruptcy of an
23 insurance company. The firm who will be hired will be chosen by the Prosecutor's office after
24 submission of bids and an interview process.

25 In all of the time that I have been Prosecutor, the recommendations for hiring outside
26 counsel have come from my office and were then ratified by the County Commissioners. The
27 Board have asked questions about costs and the need but at no time have they ever denied a
28 request or told us not to proceed. I believe the reason for this is that we go to them before
29 engaging and tell them why the services are needed and answer any questions that they may
30

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1 have. We have never had outside counsel hired by the Commissioners or had them demand that
2 we assent to hiring outside counsel or requested that we hire some specific firm.

3
4 On only one occasion has there been a dispute over hiring outside counsel over my
5 objection. In one of my first two years, the former County Administrator approached the
6 Superior Court about hiring or retaining someone that I did not approve of. This action was taken
7 while I was on vacation and I only found out because the Court contacted me to see if I had
8 objections, which I did. The attempt to hire was summarily rejected by Skagit County Superior
9 Court.

10 At that time we had been working to cut down on outside counsel due to the fact that in
11 the four years prior to my coming to office the sum of \$3,120,905 had been spent on outside
12 counsel and various departments had become use to being able to contact the lawyers at any
13 time. Seeing what this could do to the budget, we limited the ability of unfettered access. When
14 we stopped this practice, the law firms stopped talking to anyone who might have a comment or
15 question since they were no longer getting paid. This is the only instance where a county official
16 has attempted to contract with outside counsel without the Skagit County Prosecutor's Office
17 consent.

18 All of our contracts, with the exception of employment matters, are paid through the
19 budget of the Skagit County Prosecutor's Office and they are all appointed as Special Deputy
20 Prosecuting Attorneys empowered to serve for a specific time and at the will of the Prosecuting
21 Attorney. One area where we do not have control is in our relationship with the Risk Pool who
22 has lawyers to handle tort claims likely to exceed our deductible. We offer our opinions but they
23 are mostly ignored as they are looking out for their financial interests and not necessarily the best
24 interests of Skagit County. If the deductible is not in play, then we handle tort claims in-house.

25 All of our contracts with outside counsel are prepared by my office and then ratified by
26 the Board of County Commissioners. We have had and continue to have a good relationship with
27 our Board and believe we have their trust in our advice relating to legal matters. We are quick to
28 say so if we need help in a specific area and they have shown their confidence in us by approving
29 every contract for outside lawyers that we have proposed. We are like most Prosecutor offices in
30 that we are able to give very good advice in nearly every area of law that affects counties. In

DECLARATION
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Page 3 of 4.

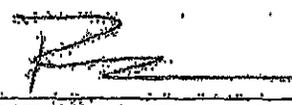
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those few instances where we don't have that expertise in those very specialized areas, we can call on outside counsel in a limited manner. I believe that is how things should work with the Prosecutor's Office and the Board of County Commissioners.

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

Signed this 11 day of December, 2013, at Mount Vernon, Washington.



RICHARD A. WEYRICH

DECLARATION
IN SUPPORT OF PLAINTIFF'S
AMENDED MOTION FOR
SUMMARY JUDGMENT

PROSECUTING ATTORNEY
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From: Pam Loginsky [mailto:pamloginsky@waprosecutors.org]

Sent: Wednesday, September 07, 2016 10:23 AM

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Cc: Gregory Banks <gregb@co.island.wa.us>; Jennifer Wallace <JenniferW@co.island.wa.us>

Subject: State v. Drummond, No. 92749-9

Dear Clerk and Counsel:

Attached for filing is the State's Response to Brief of Amicus Curiae Washington State Association of Counties.

Please do not hesitate to contact me if you should experience any difficulty in opening the document.

Sincerely,

Pam Loginsky
Island County Special Deputy Prosecuting Attorney
206 10th Ave. SE
Olympia, WA 98501

Phone: (360) 753-2175

E-mail: pamloginsky@waprosecutors.org