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STATE OF WASHINGTON
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No. 95945-5

Franklin County Superior Court Cause No. 18-2-50522-11
IN THE SUPREME COURT OF THE STATE OF WASHINGTON

PROSECUTING ATTORNEY, SHAWN P. SANT AND FRANKLIN
COUNTY,

Petitioners

vs:

THE JUDGES OF THE BENTON AND FRANKLIN COUNTIES
SUPERIOR COURT: JUDGE JOE BURROWES, JUDGE ALEX
EKSTROM, JUDGE CAMERON MITCHELL, JUDGE CARRIE
RUNGE, JUDGE JACQUELINE SHEA-BROWN, JUDGE BRUCE
SPANNER, AND JUDGE SAM SWANBERG,

Respondents

BRIEF OF RESPONDENTS

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I. INTRODUCTION

The petitioners misapprehend the issues in this case. The Order of Appointment which petitioners challenge was a statutorily-authorized appointment adopted because the Franklin County Prosecuting Attorney had an admitted conflict of interest governed by RPC 1.7, Conflict of Interest: Current Clients. That conflict disqualified the Prosecutor from representing the Superior Court of Franklin County and from rescinding his appointment of a special prosecuting attorney that he earlier made. Either the Prosecutor's original appointment of the special prosecutor remained in effect, or the Superior Court's adoption of the Order of Appointment on May 21, 2018, was a valid administrative act undertaken pursuant to the authority of RCW 36.27.030, in order to permit the constitutionally-created and empowered Superior Court to preserve representation in its Mandamus action to enforce a lawful court rule and order applicable to its subordinate, the statutorily-defined Franklin County Superior Court Clerk.

RCW 36.27.030 authorizes the court to appoint a special prosecutor to stand in for the elected prosecutor when the latter has a disability, such as the ethical conflict that the Prosecutor here had.¹

¹RCW 36.27.030 provides, in pertinent part: "When from illness or other cause the prosecuting attorney is temporarily unable to perform his or her duties, the court or judge

The Order of Appointment was adopted following an attempt by the Prosecutor to revoke his earlier appointment of conflict counsel to represent the Superior Court. The Order was not an adjudicative order entered in connection with a civil action, and it was not the commencement of a civil action. The Order is not appealable.

II. RESTATED ISSUES

1. Is a county Prosecuting Attorney subject to the Rules of Professional Conduct (RPC) governing conflicts of interest?
Answer: yes.
2. When a Prosecuting Attorney recognizes that he has a conflict governed by the RPC, and appoints outside counsel to represent the judicial branch of government in a dispute with an officer who is subordinate to that branch, is he thereafter disqualified from making any decisions relative to the matter for which he made the appointment, including being disqualified from rescinding that appointment absent agreement of the party represented? Answer: yes.
3. Where a conflicted Prosecutor purports to rescind his appointment of outside counsel to advise and represent the judicial branch of

may appoint some qualified person to discharge the duties of such officer in court until the disability is removed.”

government in litigation, can the Superior Court act pursuant to RCW 36.27.030 to appoint counsel to represent the judicial branch? Answer: yes.

4. Should the Supreme Court declare unequivocally that the Superior Court has authority to direct the Superior Court Clerk as to how the Clerk shall perform his duties relating to the records, files and other books and papers appertaining to the Court, particularly as provided in LGR 3 of the Benton and Franklin Counties Superior Court? Answer: yes.
5. Given the Prosecutor's appointment of conflict counsel pursuant to RCW 36.27.040, for litigation by the Superior Court against its subordinate clerk, is the county obligated to pay the attorneys' fees and costs incurred in that representation? Answer: yes.
6. Should the Supreme Court declare that the Superior Court had authority to appoint a special prosecutor under the facts of this case, and order Franklin County to pay the attorney's fees and costs associated with the attorney's representation, based upon statute and contract? Answer: yes.
7. Does the improper manner of commencing this appellate action, and its purpose to thwart the Superior Court's attempt to compel compliance with its court rule, warrant an award of attorney's fees

and costs to the respondents pursuant to RAP 18.1, RAP 18.9, and RCW 4.84.185? Answer: yes.

III. STATEMENT OF THE CASE

In December 2017, the judges of the Benton and Franklin Counties Superior Court disagreed with the Franklin County Superior Court Clerk's unilateral decision to restrict judges' access to court records to electronic forms of those records. Their disagreement was not aimed at thwarting an orderly transition to the "Odyssey" system – which eventually will exclusively provide electronic versions of court records. Instead, the judges were concerned that they did not have access to records maintained by the Clerk in some of the locations where Court business was conducted, and because work-flows and work-queues were not sufficiently established to assure that persons who were entitled to or in need of timely delivery of court orders, warrants and other time-sensitive records would receive those records in a timely manner. ACP 176-78 (Declaration of Judge Bruce Spanner); and ACP 193.²

The judges wanted the Court Clerk to maintain paper copies of Court files so that until proper procedures were established, traditional paper copies could be accessed and utilized. The Clerk refused the

² Respondents adopt the same record-identifying terms as petitioners have used. Respondents have also submitted supplemental clerk's papers, and they are identified herein as "SACP 1, 2 & 3."

judges' request. ACP 177. Accordingly, the judges adopted Local General Rule 3 (LGR 3). It requires the clerks of Benton and Franklin Counties to "keep and maintain paper files for all cases and file types, by forthwith filing all pleadings and papers in paper files, except as may be otherwise authorized in writing by the Court."³ ACP 183. The Court also issued an administrative order directing the Clerk to maintain paper copies of Court files pending resolution of the methods for assuring the necessary access, routing and delivery. ACP 177-78; and ACP 179-82.

The Franklin County Prosecuting Attorney realized that a dispute existed between the Court and Clerk, offices he would normally advise and represent. Recognizing that he had a conflict of interest that compelled him to decline representation of the two disagreeing parties, he appointed private attorneys from outside his office to separately represent the Court and the Clerk. ACP 5, ll. 4-21; ACP 9, ll. 11-16; ACP 11, ll. 6-9; ACP 13, ll. 2-8; ACP 37, and ACP 36, ll. 24-25 through 40, ll. 14. Heather Yakely was appointed a Special Deputy Prosecuting Attorney to represent the Clerk, and the undersigned attorney, W. Dale Kamerrer, was appointed to represent the Superior Court.

³ The Benton County Clerk is compliant. No records-related issue exists with that Clerk.

The Prosecutor's appointment of conflict counsel for the Superior Court was accompanied by an engagement letter signed by both attorneys expressly stating that the appointment authorized conflict counsel "...to represent the Franklin County Superior Court, to analyze and advise, negotiate and represent in legal proceedings if necessary..." ACP 145. The appointment was effective on February 7, 2018. ACP 146.

The Prosecutor appointed outside counsel because he had a clear understanding that he had an ethical conflict governed by RPC 1.7, which prevented him from representing both the Clerk and the Superior Court, and he understood that legal action could be undertaken to enforce the Local Court Rule. ACP 5, ll. 4-21 (Prosecutor: "I appointed Mr. (Kimmer) (sic) to represent on a conflict basis, that was because there was being action taken against a – a member of Franklin County."); ACP 9, ll. 11-16 (Prosecutor: "I appointed a conflict counsel to the Clerk because there was a threatened legal action against the Clerk..."); ACP 11, ll. 6-9; ACP 13, ll. 2-8; ACP 37; and ACP 36, ll. 24-25, through ACP 40, ll. 14; see especially: ACP 39, ll. 9-11 ("we initially offered to provide representation to the judges just because it appeared that was going to be legal action, taken against the County Clerk").

Since it was clear to the Superior Court that the Clerk would not accept the authorities supporting the Court's control over its records and

comply with LGR 3, they instructed their attorney to pursue a Mandamus action to seek judicial enforcement of the rule. ACP 177-78. That action was commenced on March 21, 2018. ACP 185. Chief Justice Fairhurst appointed Judge Scott Sparks of the Kittitas County Superior Court to preside over the Mandamus action. Appendix A, Declaration and Exhibits of Judge Bruce A. Spanner in Response to Petition/Motions for Supreme Court Review Including Motion to Stay and Motion for Accelerated Consideration of Stay, dated June 15, 2018, at 11.⁴ The Mandamus action identifies the Judges of the Benton and Franklin Counties Superior Court as the plaintiffs. It seeks to uphold the Court's rule requiring the Clerk to comply with LGR 3. It is not a suit against Franklin County. It is not a suit for damages, and its Amended Complaint does not request statutory costs and disbursements. SACP 1-3 (Amended Complaint). It solely seeks to compel the Clerk to comply with LGR 3.

After the Mandamus action was commenced, the Prosecutor raised for the first time that he did not have a sufficient budget to pay for representation of the parties in the Mandamus action. ACP 6, ll. 11-15; ACP 184. Meetings were held with the Franklin County Board of Commissioners, one of which were attended by the Clerk and his attorney

⁴ Appendices A and B are the declarations of Judge Bruce Spanner and Court Administrator, Patricia Austin, originally filed with the Supreme Court in the Motion for Discretionary Review process on June 18, 2018.

(ACP 73), and two that were attended by the Superior Court's attorney by telephone. ACP 17 & 61. The Prosecutor attended all of those meetings and two others (ACP 1 & 127), where he advised the Board on the matters at issue. ACP 5, 93-99, ACP 133, ¶¶10 & 11. On behalf of the judges, the Superior Court's appointed attorney asked the Board to provide funding for the litigation costs. ACP 24, ll. 12-22.

At the Board meeting attended by the Clerk, his attorney and the Prosecutor, but not the judges or their attorney, the Clerk was persuaded to say he would provide paper copies of court records to the judges upon their request – meaning, clearly, that he would not comply with LGR 3, but on a case-by-case basis, when a judge requested a particular record in paper form, the Clerk would print a copy of the same. The exchanges that led to the Clerk's statement are set forth at ACP 103, ll. 21-25; ACP 105, ll. 18-25; ACP 106, ll. 1-11; ACP 113, ll. 23-25; ACP 114, ll. 1-5; and ACP 115, 1-24. The Prosecutor explained that the Clerk "...would provide the judges with paper copies upon request." ACP 134, ¶15.

Following the May 8, 2018, meeting, the Prosecutor concluded that the Clerk's "concession" meant that no dispute remained between the Clerk and the judges. This was done without consulting the judges, either directly or through their attorney. ACP 134, ¶15; ACP 197.

When the judges learned of the Prosecutor's statement, they directed their attorney to explain their disagreement with the Clerk's purported concession. A letter to that effect was emailed to the Board of County Commissioners and Prosecutor on May 21, 2018. ACP 192-95. The Prosecutor acknowledged receiving the letter. ACP 134, ¶18. On the following day, the Prosecutor issued a letter declaring the dispute between the Superior Court and the Clerk resolved, and he terminated his earlier special deputy appointment of the judges' attorney. ACP 197.

The judges instructed their attorney to prepare an alternative Order of Appointment of the same attorney, pursuant to RCW 36.27.030. ACP 199-201. That Order was executed by all seven of the Benton and Franklin Counties' Superior Court Judges on May 21, 2018. The Order was filed in the Court's administrative file, without being assigned a cause number. *See* Appendix A, p. 2, and Exhibit A thereto. The Order of Appointment was not a civil action, and it was not entered against any litigants, most particularly any person identifiable as adverse to the Superior Court. The Mandamus action continued, and a motion for summary judgment was filed on behalf of the Court as plaintiff and scheduled for hearing on July 2, 2018.⁵

⁵ That motion was stayed until being lifted by the Court. It is now scheduled for hearing on December 7, 2018.

After the unnumbered Order of Appointment was filed in the Court's Administrative File, the Clerk took a copy of it and stamped it with a unique civil action case number: 18-2-50522-11. He then filed that altered instrument in the Clerk's file for civil actions on May 24, 2018, without changing the date/time stamp (May 22, 2018 at 3:32 p.m.), which had been placed on the Order when it was filed in the Administrative File (an alteration by omission). Judge Spanner declaration, Appendix A, p. 2, and Exhibit B thereto. Within the Odyssey system, the Clerk designated the Superior Courts' attorney as the "plaintiff," and the Franklin County Prosecutor, Shawn Sant, as the "defendant." Neither of those designations was accurate. *See* Appendix A, at pp. 2-3, ¶3, ¶¶4-7, and ¶¶5-7, and Appendix B, Declaration of Patricia Austin, Court Administrator, Benton & Franklin Counties Superior Court, dated June 15, 2018, both of which were filed with the Supreme Court on June 18, 2018. The false instrument in Case No. 18-2-50522-11, is claimed by the petitioners to be the basis for this appellate proceeding.

The Prosecuting Attorney, through his special deputy for this appeal, advised the Clerk to follow the procedure described above. *See* Appendix C, Declaration of Pamela Loginsky, at pp. 5-6, ¶¶11 & 12 (originally filed as Appendix B to petitioners' 6/25/18 Reply filing to the Supreme Court).

The Prosecutor continues to fund the Clerk's outside attorney in the Mandamus action. *See* Appendix D, Declaration of Shawn P. Sant, 6/25/18, at p. 2, ¶7 (originally filed as Appendix E to petitioners' 6/25/18 Reply filing to the Supreme Court).

Although the Supreme Court granted petitioners' motion for discretionary review, the Court has not ruled that the procedure employed by the Clerk created an appealable case or controversy based upon the Order of Appointment. The respondents contend that it was not such and reiterate the facts against its validity, set forth in Appendices A and B.

IV. ARGUMENT

The petitioners ask the Court to focus on the trees and ignore the forest. "The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury." *Marbury v. Madison*, 5 U.S. 137, 163, 1 Cranch 137, 2 L.Ed. 60 (1803). Petitioners' misdirected focus and complete overlooking of the disqualifying effect of the Prosecutor's ethical conflict and accompanying disability would, if upheld, deprive the Superior Court of the protection of the laws which apply to the defiance of their subordinate clerk. While they cite authorities that may apply in the most common situations involving prosecutors, clerks and superior courts, they do not provide authorities that apply to the unique facts of this case.

A. If Reviewable, an Abuse of Discretion Standard Applies to the Order of Appointment.

The petitioners do not furnish the Court with an applicable standard of review. However, although the respondents argue below that this action was improperly undertaken (see below at p. 38, subpart F), if review of the Order of Appointment is conducted, an abuse of discretion standard applies.

An abuse of discretion standard is appropriate when (1) the trial court is generally in a better position than the appellate court to make a given determination; (2) a determination is fact intensive and involves numerous factors to be weighed on a case-by-case basis; (3) the trial court has more experience making a given type of determination and a greater understanding of the issues involved; (4) the determination is one for which “no rule of general applicability could be effectively construed,”; and/or (5) there is a strong interest in finality and avoiding appeals. *State v. Sisouvanh*, 175 Wn.2d 607, 621-22, 290 P.3d 942 (2012) (internal citations omitted) (quoting *In re Parentage of Jannot*, 149 Wn.2d 123, 127, 65 P.3d 664 (2003) (applying an abuse of discretion standard in reviewing a trial court’s determination of whether a competency evaluation had been conducted in a qualified manner).) “Where the decision or order of the trial court is a matter of discretion, it will not be

disturbed on review except on a clear showing of abuse of discretion.” *In re T.W.J.*, 193 Wn. App. 1, at 6, 367 P.3d 607 (2016) (quoting *State ex rel. Carroll*, 79 Wn.2d at 26, 482 P.2d 775 (1971)).

Given that this was a unique and local case, the judges of the Benton and Franklin Counties Superior Court were in the best position to decide whether the Order of Appointment was necessary. The judges of the Court knew the history of the development of the Odyssey system, its local shortcomings, the uncooperativeness of the Superior Court Clerk, and the Prosecutor’s commitment to oppose funding for the Court’s Mandamus action. (See Appendix A, Declaration and Exhibits of Judge Bruce A. Spanner, dated June 15, 2018, and record citations above.) These facts had a strong bearing on the decision to adopt the Order of Appointment. The Superior Court had greater experience than the Supreme Court with these matters. No general rule, other than the rules of RPC 1.7 and RCW 36.27.030, could be applicable to this unusual situation. And for matters of this sort, local resolution at the lowest judicial level possible would best serve governmental parties’ interests.

The factors supporting application of an abuse of discretion standard apply here, and, under it, the Superior Court’s Order of Appointment was not an abuse of discretion because the Court acted pursuant to statute to re-appoint an attorney who had already been

determined by the Prosecutor to be suitable for service as a special deputy, under circumstances where the Prosecutor was clearly disabled from representing the Superior Court.

B. A Lawful Local Court Rule Directs the Clerk to Maintain Paper Files.

It is undisputed that the Benton and Franklin Counties Superior Court issued Local General Rule, LGR 3, and an order directing the Superior Court Clerk to maintain paper files of court records pending the Court's agreement to fully transition to an electronic record keeping and management system. It is undisputed that the Clerk refused to comply with the rule and order. Brief of Petitioner at 5. The Superior Court Judges adopted LGR 3 in order to assure that the long-standing and effective means of maintaining court records and transmitting court orders would not be dispensed with prematurely. Appendix A, Declaration of Judge Spanner at 8-11, and 12-13.

The legality of LGR 3 is not challenged in this action. No argument is made that it conflicts with the Washington Constitution, a State court rule or statute. *See* Art. IV, Sec. 24, Wash. Const.; Civil Rules for Superior Court, CR 83; *Perez v. Garcia*, 148 Wn. App. 131, 140, 198 P.3d 539 (2009). Nothing in the rule-making authority of the superior courts requires notice or comment before such a rule can be adopted. *See*

Art. IV, Sec. 24, Wash. Const. (empowering judges of the superior courts to establish uniform rules for the government of the superior courts); and CR 83 (superior court may make rules not inconsistent with the Rules for Superior Court).

The Clerk does not have a property interest in either his elected position or in freedom from rules adopted by the Superior Court that affect his duties. *Taylor v. Beckham*, 178 U.S. 548, 600 (1900); *see also Snowden v. Hughes*, 321 U.S. 1, 7 (1944) (political office carries no property interest); *Wilson v. North Carolina*, 169 U.S. 586, 595 (1898) (suspension of an elected official does not violate due process because no property right is implicated); *and see Danielson v. City of Seattle*, 108 Wn.2d 788, 795, 742 P.2d 717 (1987) (plaintiff's due process claim is dependent upon him having a property right in continued employment with the police department).⁶ Petitioners' due process arguments are unsupported and lack merit.

The duties of elected county clerks, such as the Franklin County Clerk are defined by statute, not by the Constitution or any source of 'inherent authority.'⁷ The statutes clearly make the Clerk subordinate to

⁶ Nor does the Prosecutor have a property interest in avoiding disqualification based upon an ethical conflict or in freedom from appointment of a special prosecutor pursuant to RCW 36.27.030.

⁷ County clerks are mentioned in Wash. Const. Art. IV, Sec. 26, and Art. VI, Sec. 6, but their duties are defined solely by statute. *See, e.g.*, RCW 2.32.050.

the Superior Court, particularly with respect to the Court's records.

Regarding the Clerk's duties, RCW 2.32.050 provides:

The ...clerk of a superior court, has power to take and certify the proof and acknowledgment of a conveyance of real property, or any other written instrument authorized or required to be proved or acknowledged, ...; and it is the duty of ...each county clerk for each of the courts for which he or she is clerk:

...

(3) To keep the records, files, and other books and papers appertaining to the court;

(4) To file all papers delivered to him or her for that purpose in any action or proceeding in the court as directed by court rule or statute;

...

(6) To keep the minutes of the proceedings of the court, and, under the direction of the court, to enter its orders, judgments, and decrees;

(7) To authenticate by certificate or transcript, as may be required, the records, files, or proceedings of the court, or any other paper appertaining thereto and filed with him or her;

...

(9) In the performance of his or her duties to conform to the direction of the court;

(10) To publish notice of the procedures for inspection of the public records of the court.

(Emphasis added.)⁸ And see RCW 36.23.030(4) "...the court shall have full control of all entries in the record at any time during the session in which they were made." There is no constitutional source or other source for "inherent powers" of superior court clerks.

⁸ The obligation of the clerk to "...conform to the direction of the court", has been a duty owed since the first legislative session following statehood, where the issue of the clerk's duties was addressed. ACP 164, Chapter LVII, Sec. 8(9), p. 98, Laws of 1891.

Superior courts' control clerks' performance of court-related functions RCW 2.28.010 provides that

Every court of justice has power (1) To preserve and enforce order in its immediate presence. (2) To enforce order in the proceedings before it, or before a person or body empowered to conduct a judicial investigation under its authority. (3) To provide for the orderly conduct of proceedings before it or its officers. (4) To compel obedience to its judgments, decrees, orders and process, and to the orders of a judge out of court, in an action, suit or proceeding pending therein. (5) To control, in furtherance of justice, the conduct of its ministerial officers, and of all other persons in any manner connected with a judicial proceeding before it, in every matter appertaining thereto. (6) To compel the attendance of persons to testify in an action, suit or proceeding therein, in the cases and manner provided by law. (7) To administer oaths in an action, suit or proceeding pending therein, and in all other cases where it may be necessary in the exercise of its powers or the performance of its duties.

(Emphasis added.)

The obligation of the clerk to "...conform to the direction of the court" (RCW 2.32.050(9)), has been an express statutory duty since the first legislative session following statehood, where the issue of the clerk's duties was addressed in Chapter LVII, Sec. 8(9), p. 98, Laws of 1891.

(Appendix D.) Prior to statehood, clerks served at the pleasure of the court they served without legislative definition of their duties. *See e.g.*, Laws of Washington Territory, 1879, Section 6, p. 71 (Appendix E), which established the district court of Walla Walla County (authorized

judge shall appoint clerk who shall hold office during the pleasure of said judge).⁹

County clerks are not essential county officers. They may be dispensed with through the Home Rule Charter process without offending the Constitution. Art. X, Section 4, provides, in pertinent part:

Any home rule charter proposed as herein provided, may provide for such county officers as may be deemed necessary to carry out and perform all county functions as provided by charter or by general law, and for their compensation, but shall not affect the election of the prosecuting attorney, the county superintendent of schools the judges of the superior court, and the justices of the peace, or the jurisdiction of the courts.

Indeed, the King County home rule charter eliminates elected County Clerks and substitutes an office named the Department of Judicial Administration, within which the Clerk is appointed and governed by the superior court judges. *See* King County Charter Section 350.20.20. Similarly, the Pierce County Charter dispenses with an elected Clerk and makes the Clerk of the Superior Court an executive appointive position. Pierce County Charter Section 2.06.010.

In contrast to clerks, the Superior Court is the fundamental and essential court of general jurisdiction in the constitutionally-established

⁹ In anticipation of Franklin County being created out of Whitman County, the territorial assembly adopted the following language: "The county of Franklin is hereby attached to Walla Walla for judicial purposes." Laws of Washington Territory, 1881, Section 8, p. 88. Thus, provisions concerning the clerk of Walla Walla County applied to judicial matters in Franklin County at statehood. (Appendix F.)

judicial branch of Washington government, with statutory authority to direct the Clerk in the performance of his court-related duties, and inherent authority to enforce its rules and orders against a disobedient Clerk. *See* Wash. Const. Art. IV, particularly Sections 1, 5, 6, 7, 11, 24, and 26; ch. 2.08 RCW; RCW 2.28.010, *supra*; and RCW 2.32.050, *supra*; and *see Allen v. Am. Land Research*, 95 Wn.2d 841, 852, 631 P.2d 930 (1981) (“The superior court's inherent authority to enforce orders and fashion judgments is not dependent on the statutory grant.”).

Every decision by the Washington Supreme Court which has touched on the relationship between the Superior Court and its clerk has come down on the side of the Court's control of its records and processes. These decisions culminate in the recent decision of *Matter of Recall of Riddle*, 189 Wn.2d 565, 403 P.2d 849 (2017). The *Riddle* case is remarkably similar to the present controversy. There, a newly elected county clerk refused to perform various tasks in support of the superior court. The court adopted a local rule which mandated the responsibilities of the clerk based upon existing practices. *Id. at* 579-80. Upon the clerk asserting that the local rule-based functions would not be performed, a recall petition was filed against the clerk. *Id. at* 580.

In ruling that the recall charges were factually and legally sufficient, the *Riddle* court thoroughly explained county clerks' subordinate position to the superior court:

While Riddle is correct that she retains authority over the clerk's office, she fails to recognize that she is, "by virtue of [her] office, clerk of the superior court." Const. art. IV, § 26. As we have explained,

[t]he duties of a county clerk as clerk of the superior court are defined both *by statute and court rules*. Generally speaking, a clerk of court is an officer of a court of justice, who attends to the clerical portion of its business, and who has custody of its records and files and of its seal. Such an office is essentially *ministerial* in its nature, and the clerk is neither the court nor a judicial officer.

Swanson v. Olympic Peninsula Motor Coach Co., 190 Wash. 35, 38, 66 P.2d 842 (1937) (emphasis added). The superior court "has power ... [t]o control, in furtherance of justice, the conduct of its ministerial officers," such as county clerks. RCW 2.28.010(5). Therefore, when acting as the clerk of the superior court, the county clerk has always been required "[i]n the performance of his or her duties to conform to the direction of the court." RCW 2.32.050(9); *see* Laws of 1891, ch. 57, § 3(9). The clerk's general powers and duties as clerk of the superior court are set forth in RCW 2.32.050 and, for Yakima County specifically, LAR 3 and 7 through 10.

Riddle contends that LAR 3, which addresses in-court duties, is void because the court has no authority to "dictate the personnel functions of a different County department." Br. of Appellant at 28. However, as the preceding paragraph explains, a court *does* have the authority to direct the functions of the clerk when he or she is acting in his or her capacity as clerk of the superior court. *Cf.* SAR 16(f) (powers and duties of the Clerk of the Supreme Court). Moreover, the attorney general has opined that a court's rule-

making authority in regard to court clerks is subject to the same restrictions as any other rules: “[T]o the extent that the court rule relates to practice and procedure rather than to the creation of substantive law, the rule is within the authority of the court.” 2001 Op. Att’y Gen. No. 6, at 3. LAR 3 is within the scope of the court’s rule-making authority, and Riddle has no legally justifiable excuse for refusing to follow it.

Matter of Recall of Riddle, 189 Wn.2d at 583–84, (as amended Oct. 26, 2017) (emphasis added); *see also Nast v. Michaels*, 107 Wn.2d 300, 306, 730 P.2d 54 (1986) (“court case files are within the province of the judiciary ... and we find that they are not within the realm of the (Public Disclosure Act)”); *Cowles Pub. Co. v. Murphy*, 96 Wn.2d 584, 588, 637 P.2d 966 (1981) (“[c]ourts have the inherent authority to control their records and proceedings”).

The Superior Court Clerk is required to comply with the directions of the Superior Court (RCW 2.32.050(6) & (9)), including as provided in LGR 3 (ACP 179), and its accompanying order (ACP 182), and the Supreme Court should so hold.

C. The Prosecutor Recognized his Ethical Conflict and Provided Special Prosecutors to Represent the Involved Parties.

When the Franklin County Prosecuting Attorney recognized that a dispute existed between the Superior Court and its Clerk, he also recognized that he had a duty to advise and represent both of those parties in normal circumstances, consistent with *State ex rel. Edelstein v. Foley*, 6

Wn.2d 444, 448, 107 P.2d 901 (1940). The Prosecutor also recognized that he had a professional conflict of interest which prevented him from advising or representing those parties in their dispute. The Prosecutor was correct. RPC 1.7, requires attorneys to decline to represent parties with conflicting interests. Prosecuting attorneys are subject to the Rules of Professional Conduct. *See e.g., State v. Stenger*, 111 Wn.2d 516, 760 P.2d 357 (1988); *In re Discipline of Bonet*, 144 Wn.2d 502, 514, 29 P.3d 1242 (2001), *as amended* (Sept. 21, 2001); *Westerman v. Cary, supra*; and *State v. Schmitt*, 124 Wn. App. 662, 667, 102 P.3d 856 (2004).

In some cases where an attorney has the type of ethical conflict recognized by the Prosecutor here, there are alternatives to the appointment of outside attorneys to represent parties such as the Court and Clerk. *See Wash. Med. Disciplinary Bd. v. Johnston*, 99 Wn.2d 466, 480, 663 P.2d 457 (1983) (designation of separate assistant attorneys general to represent conflicting agencies); and RCW 36.27.040 (appointment of special deputy prosecuting attorneys to represent conflicting entities). Under RPC 1.7(b), an attorney may represent a client if the provisions of that rule are met, including obtaining the consent of the client. However, under RPC 1.7(b)(3), the Prosecutor here had a non-consentable conflict because the Clerk and Court were aligned directly against each other in a proceeding before a tribunal. Moreover, the institutional interests in

vigorous development of each party's position preclude consent to representation by the attorney with the conflict. *See* Comment 17 to RPC 1.7.

No alternative to recusal and appointment of outside counsel existed for the Prosecutor. And, it is beyond question that he did appoint outside counsel and did not pursue alternatives.

D. Having Expressly Authorized the Appointed Special Prosecutor to Engage in Litigation, the Prosecutor Irreversibly Disqualified Himself from Representing the Superior Court.

After the Prosecutor recognized his professional conflict and appointed conflict counsel, authorizing that attorney to represent the Superior Court to engage in litigation, nothing in the applicable Rules of Professional Conduct permitted the Prosecutor to reverse his disability. Instead, the Prosecutor removed himself entirely from his usual role of advising and representing the involved officials.

The Prosecutor also recognized that a prosecuting attorney could elect to undertake litigation on behalf of a county officer, and he expressly entertained that possibility. ACP 37, ll. 17-22; ACP 39, ll. 8-17; ACP 184 (“[i]f the plaintiffs desire to retain you as their own counsel and fund accordingly, I would sign off on that appointment and engagement letter

as special counsel to avoid any further delays.”¹⁰ Necessarily, the appointed special prosecutor, who was contractually authorized to represent the Court in litigation, could do what the Prosecutor could do.¹¹ The appointed attorney stood in the Prosecutor’s shoes and was subject to direction by his clients, the judges of the Superior Court, who were exclusively able to decide whether litigation was necessary.

When the Prosecutor later sought to revoke his appointment of the Superior Court’s attorney, he lacked the authority to do so because he was disqualified from representing the Court or taking control of the Mandamus action to countermand the Judges’ directions to their attorney.

The Superior Court was also authorized by RCW 36.27.030, to step in and appoint (or reappoint) a special prosecuting attorney because the Prosecutor’s disability had not been removed. A conflict of interest is an “other cause” warranting appointment of a substitute attorney under RCW 36.27.030. *Doyle v. Lee*, 166 Wn. App. 397, 403, 272 P.3d 256 (2012) (citing *State v. Stenger*, 111 Wn.2d 516, 521–22, 760 P.2d 357 (1988)).

An appointment under RCW 36.27.030 does not require the prosecutor’s approval, or approval by the County’s legislative body. Nor

¹⁰ This message was sent after the Superior Court’s Mandamus action was commenced.

¹¹ The Prosecutor asked the Attorney General to provide representation to the Court, but that office declined. ACP 5, ll. 1-3; 38, ll. 10-11.

does it require a budget extension to fund the authorized actions of the appointed attorney. In *State v. Tracer*, 173 Wn.2d 708, 717, n. 7, 272 P.3d 199 (2012), the Court rejected a “notice and opportunity to be heard” requirement (the essence of constitutional due process) before a special prosecutor appointment could be made under RCW 36.27.030.

Petitioners’ argument that such notice and hearing were required is without merit.

The petitioners also argue that Prosecutor’s authority over the appointment and conduct of his deputies allowed him unfettered discretion to dismiss the special deputy he appointed as conflict counsel, and that he, rather than the special deputy’s clients, could direct his conduct. Brief of Petitioners at 10 & 19. This is incorrect for two reasons. First, although a prosecutor has near complete control over the appointment and conduct of his deputies in the normal course, he is also an attorney, whose conduct is subject to the Rules of Professional Conduct, including RPC 1.7. The Prosecutor’s acknowledged conflict and application of that ethical rule here disabled him from acting to dismiss or control the special deputy he appointed. Instead, after appointment, that attorney was subject to control by his clients and the law. Second, RCW 36.27.030 says nothing about an elected prosecutor having control or influence over appointments under that statute. This statute has to be broad enough for application in

circumstances where a prosecutor may be physically unable to perform any decision-making functions. Accordingly, where a prosecutor has a disability, authority is transferred to “the court or judge (who) may appoint some qualified person to discharge the duties of such officer in court until the disability is removed.” RCW 36.27.030. No distinction is made between types of disabilities, and, as petitioners acknowledge, they include ethical disabilities. Petitioners’ Brief at 27, *citing Westerman v. Carey*, 125 Wn.2d 277, 892 P.2d 1067 (1995). Here, the Prosecutor had a conflict of interest-based disability that authorized the superior court to appoint an attorney to discharge the duties the Prosecutor had originally appointed conflict counsel to perform.¹²

When RCW 36.27.030 becomes operative due to a prosecutor’s disability, the court’s role in appointing some other “qualified person” to stand in the prosecutor’s shoes is not interference with a core function that defines a prosecuting attorney. *See Matter of Ware*, 420 P.3d 1083, at 1090, *citing State v. Rice*, 174 Wn.2d 884, 279 P.3d 849 (2012). It is rather the performance of a statutorily authorized duty due to the lack of a

¹² Although petitioners do not recognize the import of RCW 36.27.030 in this case, it is notable that counsel for the petitioners has recognized in another case that RCW 36.27.030 stands as an exception to a prosecutor’s usual authority where the prosecutor has a disability concerning that authority. *See* 2017 WL 6883800, at 21 (Brief of Respondent to the Washington Court of Appeals, Div. 2, in *In re Petition to Convene Grand Jury*), subsequently reported as *Matter of Ware*, __ Wn. App. __, 420 P.3d 1083 (2018.)

prosecuting attorney who can fulfill a core function, *i.e.*, acting as attorney for a county office. The separation of powers doctrine is not offended by performance of this statutorily authorized function where the prosecutor is disabled.

Nor were the Judges deciding their own personal “case or controversy,” or granting themselves individual benefits, by issuing the Order of Appointment.¹³ They were acting administratively on behalf of the Superior Court to continue what the Prosecutor had begun and improperly sought to revoke. They commenced a lawful Mandamus action rather than hold the Clerk in contempt for refusing to comply with a court rule and associated order. ACP 179-183. The judges followed RCW 36.27.030, which expressly authorizes the court to appoint a special prosecutor when the Prosecutor has a disability, including an ethical conflict. The separate Mandamus action, pending before a Kittitas County Superior Court Judge, was not influenced by the Order of Appointment.

In *Westerman v. Cary*, *supra*, 125 Wn.2d 277, a county district court judge adopted an order that restricted persons arrested on domestic

¹³ The petitioners’ references to the Code of Judicial Conduct are ironic in light of the Prosecutor’s specific ethical disqualification, unauthorized revocation of special counsel, and petitioners’ improper actions associated with the commencement of this review action. Moreover, since the judges have no property interest in their elected positions, their administrative acts are not performed in their personal interest. See *Taylor v. Beckham*, 178 U.S. 548 (1900); *Snowden v. Hughes*, 321 U.S. 1 (1944); *Wilson v. North Carolina*, 169 U.S. 586 (1898); and *Danielson v. City of Seattle*, 108 Wn.2d 788 (1987), cited *infra*, at 13.

violence charges from posting bail based upon a written bail schedule. *Id.* at 281. The public defender sued the District Court to challenge that order. *Id.* at 282. The Spokane County Prosecuting Attorney disagreed with the District Court's order and took the position that he would not defend it despite his statutory duty to represent county officials. *Id.* He also advised the Sheriff not to follow the District Court's order. *Id.* The County Executive Committee hired counsel independent of the Prosecutor's office to represent the District Court. *Id.* This Court upheld the validity of the District Court's Order, and upheld the appointment and payment of outside counsel for the District Court. *Id.* at 291-92.

The *Westerman* Court addressed the validity of the appointment of the outside attorney which the superior court ratified by denying a motion by the Prosecutor (Mr. Brockett) to intervene in the action challenging the District Court order and by ordering the County to pay the fees of the outside attorney.¹⁴ *Id.* at 283-84. This Court said:

Given Brockett's actions both prior to and at trial, we believe Brockett had a conflict of interest that disabled him from representing the District Court in this case. In light of Brockett's position, the Superior Court was left with no other option but to appoint a special prosecutor to defend the District Court in its official action. RCW 36.27.030 provides the authority for expenditure of funds in a case such as this where the prosecutor is disabled as a result of conflict.

¹⁴ In *Westerman*, there was no distinct Order of Appointment as is the case here.

Westerman v. Cary, 125 Wn.2d at 301 (emphasis added).

Pertinent to the Prosecutor's duties here, the Court recognized:

A superior court judge is both a state and a county officer. *State ex rel. Edelstein v. Foley*, 6 Wn.2d 444, 448, 107 P.2d 901 (1940). Under this statute (RCW 36.27.020), the prosecutor has a "duty to appear for and represent the state and county in all proceedings in which they may be parties."

...

The question which Brockett raises is the form such representation must take. Brockett claims that he sets the objectives of representation for any county official or entity which is sued. He argues further that he is not required to "defend" a county or state official or entity when he disagrees with the actions of either. Contrary to Brockett's position, RCW 36.27.020 does not except from the duty to defend those matters in which the prosecutor disagrees with his county or state client. Moreover, once representation is undertaken, the prosecutor is bound to act in accordance with the ethical rules governing representation which are "uniformly applied to all lawyers, regardless of the nature of their professional activities". Rules of Professional Conduct (RPC) Preliminary Statement. Under RPC 1.7(b) and RPC 1.15 an attorney is required to withdraw if representation of a client "may be materially limited by the lawyer's responsibilities to another client or to a third person, or by the lawyer's own interests" unless the lawyer reasonably believes that the representation will not be adversely affected and the client is fully informed and consents in writing. Where representation of two different public bodies requires the prosecutor to take directly adversary positions in the same case, a conflict exists. See Washington State Bar Ass'n Ethics Opinions, No. 59 (1959) ("Obviously in situations which involve actual controversy (legal or factual) between the two public bodies, it would be the duty of the [prosecuting] attorney to withdraw from one representation."); see also *Heaton*, 21 Wash. at 62, 56 P. 843 ("[the prosecutor's] discretion in the exercise of his [or her] duties should not be in any wise controlled by legal

consequences unpleasant or unfavorable to himself [or herself]”).¹⁵

Westerman v. Cary, 125 Wn.2d at 299–300 (emphasis added).

Here, too, the Prosecutor was required by RPC 1.7 to remove himself from advising or representing the Superior Court. Accordingly, his disability prevented him from taking any action affecting the Superior Court’s appointed attorney. *See State v. Tracer, supra*, 173 Wn.2d at 720–21, n. 10 (statutory disqualification due to conflict prohibits attorney from representing State in criminal proceeding). This includes supervising that attorney, revoking his appointment, or interfering with the Superior Court’s reappointment of the attorney pursuant to RCW 36.27.030.

The Court in *Westerman* also distinguished *Hoppe v. King Cy.*, 95 Wn.2d 332, 622 P.2d 845 (1980), a case on which the petitioners rely. The Court pointed out that in *Hoppe*, the King County Prosecutor refused to commence an action on behalf of a County official, and denied that he had a duty to represent the County official in question. *Id.* 95 Wn.2d at 300. But in *Westerman*, the prosecutor appeared for the District Court which was defending its order, and the prosecutor took a position contrary to that court’s interests. *Id.* This was conduct similar to what the Prosecutor did here by first appointing a special deputy to represent the

¹⁵ Ethics Opinion No. 59 has been withdrawn.

Superior Court and authorizing that representation to include litigation, and then, while the litigation was underway, declaring that the dispute between the Court and the Clerk was resolved. This was followed by the Prosecutor revoking the appointment of the Court's attorney, yet offering to remain available to advise the judges. ACP 197.

In *Westerman*, the prosecutor failed to recognize his disability. This Court ruled that the disability gave rise to the authority of RCW 36.27.030 for appointment of outside counsel and for the expenditure of funds to pay that attorney. *Id. at* 301. Here, the Prosecutor recognized his disability and appointed outside counsel, including authorizing that attorney to represent the Superior Court in litigation. In so doing, the Prosecutor did what the Court in *Westerman* recognized was permissible, that is, appoint a special prosecutor and authorize him to engage in litigation on behalf of the Superior Court.

Only later did the Prosecutor backtrack and attempt to remove the attorney he had appointed to represent the Superior Court. He did so by ignoring his still-existing conflict, and with the assumption that he could represent both the Court and the Clerk in declaring their dispute about court records resolved. However, "an attorney is without authority to surrender a substantial right of a client unless special authority from his client has been granted him to do so." *Graves v. P. J. Taggares Co.*, 94

Wn.2d 298, 303, 616 P.2d 1223 (1980), *citing e.g., Barton v. Tombari*, 120 Wash. 331, 207 P. 239 (1922); *Morgan v. Burks*, 17 Wn. App. 193, 563 P.2d 1260 (1977); *In re Coggins*, 13 Wn. App. 736, 537 P.2d 287 (1975); *Grossman v. Will*, 10 Wn. App. 141, 516 P.2d 1063 (1973); and *In Re Houts*, 7 Wn. App. 476, 499 P.2d 276 (1972)). The Prosecutor had no such authority.

Nothing in *Hoppe* or in the Rules of Professional Conduct permits a self-determined cure where a prosecutor has a disability. Instead, the Prosecutor's disability, coupled with his attempt to reverse his appointment of the special prosecutor, put him in a position of direct opposition to the interests of the Superior Court. This was a further reason for the Prosecutor's disqualification. *See In re Marriage of Wixom & Wixom*, 182 Wn. App. 881, 900, 332 P.3d 1063 (2014) (attorney jointly liable with his client for a court-ordered sanction is disqualified when he argues that client alone should be liable for the sanction). The Prosecutor's actions clearly triggered RCW 36.27.030, authorizing the Superior Court to appoint counsel to represent it in the existing Mandamus litigation. *Westerman v. Cary*, 125 Wn.2d at 301.

In *Commonwealth v. Breighner*, 453 Pa. Super. 477, 684 A.2d 143 (1996), Pennsylvania's intermediate appellate court ruled on the effect of a prosecutor's ethical conflict arising from the fact that he was a member of

a law firm that was suing in a civil action the defendant in a criminal case he was prosecuting based upon the same incident. 453 Pa. Super. at 481. Although the prosecutor disqualified himself from the prosecution and appointed another county's prosecutor to handle the criminal case, he consulted with that substitute prosecutor on matters related to the case. The Court relied on *Commonwealth v. Eskridge*, 529 Pa. 387, 604 A.2d 700 (1992), and held that the disqualification and appointment did not cure the conflict. "We hold that once a conflict arises, it is improper for the conflicted district attorney to engage in any decision-making in the case, including choosing who will handle the prosecution." *Id.*, at 485; *accord*, *Com. v. Wisor*, 2006 PA Super 157, ¶ 7, 902 A.2d 1245, 1247 (Pa. Super. Ct. 2006) (once conflict of interest arises in district attorney's office, it is improper for the conflicted attorney to engage in any decision-making in the case) (*citing Breighner* and *Eskridge*); *see also In re Indiantown Realty Partners, Ltd. P'ship*, 270 B.R. 532, 540 (Bankr. S.D. Fla. 2001) (once a conflict arises attorney is no longer able to represent either party in connection with the legal dispute) (*citing* Model Rules of Professional Conduct Rule 2.2 cmt. 4 (1983)).

While the rights of a criminal defendant are not at issue here, the persuasive logic of *Breighner* and the additionally cited cases, applies. Having appointed a special deputy, the Prosecutor could not engage in

decision-making affecting the Mandamus action that his appointee commenced on behalf of his clients.

A reasonable analogy also exists in *Cotton v. Kronenberg*, 111 Wn. App. 258, 44 P.3d 878 (2002). There, an attorney was found to have engaged in professional misconduct in negotiating a fee agreement with a client. Despite being ordered to disgorge the improper fee, the attorney sought to retain a portion of it based upon *quantum meruit*. The Court of Appeals affirmed the trial court's ruling that complete disgorgement of the fee was required. *Id.* at 275. This holding supports a conclusion that an ethical conflict is not reversible.

The petitioners rely on foreign authorities for the proposition that a disagreement between county officers does not create a disqualifying conflict of interest for a prosecuting attorney. Petitioners Brief at 21-22. However, their argument is overridden by the Washington authorities cited herein which hold that a prosecuting attorney is subject to the Rules of Professional Conduct, and disqualified from acting on behalf of a client where a conflict exists. Petitioners also ignore that the Prosecutor here did in fact conclude that he had an ethical conflict necessitating appointment of outside counsel to separately represent the Superior Court and the Clerk. *See infra* at p. 6. The Prosecutor was wholly disqualified from

representing or acting in any way to interfere with the Superior Court's Mandamus action.

E. The Prosecutor's Disqualification Left his Appointment of a Special Deputy in Place, or, Alternatively, Authorized the Superior Court's Order of Appointment.

After the Mandamus action was instituted, the Prosecutor took the position that he did not have sufficient funds budgeted to continue paying the Superior Court's attorney. He then presented that budgetary inadequacy to the Board of County Commissioners, but did not urge the board to extend sufficient funds to him. *See infra* at p. 7; ACP 105, ll. 11-12; ACP 116, ll. 19-20; and ACP 117, ll. 2-4. However, the Prosecutor continues to fund the Clerk's outside attorney in the Mandamus action. *See* Appendix D, Declaration of Shawn P. Sant, 6/25/18, at p. 2, ¶7. Accordingly, after disqualifying himself, the Prosecutor became and has remained opposed to the Superior Court's interest in obtaining enforcement of LGR 3, and he has allied himself with the Clerk's opposition to complying with that local court rule. This is a violation of the Rules of Professional Conduct.

The *dicta* in *Osborn v. Grant County*, 130 Wn.2d 615, at 626, 926 P.2d 911 (1996), to the effect that the prosecutor there was not authorized to bring a civil action on behalf of a county officer against the County and its board of commissioners, to which the prosecutor has a "degree of

allegiance” (*id.*), is inapposite because the Prosecutor here had a conflict and did authorize the attorney he appointed to represent the Superior Court in litigation, and he initially separated himself from the disagreeing parties in order to preserve his ability to advise the county commission. ACP 187. *Osborn* does not prohibit a special prosecutor who, as here, is empowered to engage in litigation on behalf of a government client from suing a county officer who has interfered with the legal rights of that client.¹⁶

Similarly, *State ex rel. Banks v. Drummond*, 187 Wn.2d 157, 385 P.3d 769 (2016), *as amended* (Feb. 8, 2017), *reconsideration denied* (Feb. 9, 2017), does not support the petitioners’ position. In *Drummond*, a Board of County Commissioners hired an outside attorney to provide legal services over the objection of the elected Prosecuting Attorney. The Commissioners relied on RCW 36.32.200 (a statute that is not implicated in this case) to validate the outside attorney’s hiring. The Prosecutor did not have a conflict of interest associated with the issues that led the Commissioners to hire the outside attorney, and the prosecutor stood ready to provide the legal services needed by the County. *Id.* at 168. This Court

¹⁶ Moreover, in an original Petition Against State Officers under Supreme Court Case Number 95959-5, the Yakima County Clerk who was at the center of the *Matter of the Recall of Riddle* case, *supra* at 19, subsequently commenced a Writ of Prohibition action against the judges of the Yakima County Superior Court on June 14, 2018. The separate attorneys for the Clerk and the Judges were appointed by the Yakima County Prosecutor. No issue has been raised in that action about whether it is legal for the Clerk to sue the Judges and be represented by counsel appointed by the Prosecutor.

ruled that the hiring was invalid as a usurpation of the statutorily-designated role of the prosecutor. *Drummond* has no bearing on this case.

Additionally, the Superior Court's litigation is not against Franklin County. The Mandamus action is solely against the Superior Court Clerk to compel performance by him of a legal duty owed by the Clerk, based upon LGR 3, and the Clerk's duty "to conform to the direction of the court". RCW 2.32.050(9); *and see Grant County Prosecuting Attorney v. Jasman*, 183 Wn.2d 633, 646-47, 354 P.3d 846 (2015) (*quo warranto* action against county officer disqualified from office by criminal conviction was not a case where the county was the real party in interest).

The "real party in interest" doctrine is one that applies to plaintiffs, not defendants. *Geschwind v. Flanagan*, 65 Wn. App. 207, 211-12, 828 P.2d 603 (1992), *rev'd on other grounds*, 121 Wn.2d 833, 854 P.2d 1061 (1993). A defendant is never a "real party in interest." Nor is Franklin County in the Mandamus action. "The real party in interest is the person who possesses the right sought to be enforced." *Peyton Bldg., LLC v. Niko's Gourmet, Inc.*, 180 Wn. App. 674, 680, 323 P.3d 629 (2014); *see also* CR 17(a). "Usually, the real party in interest is 'the person who, if successful, will be entitled to the fruits of the action.'" *N.W. Indep. Forest Mfrs. v. Dep't of Labor & Indus.*, 78 Wn. App. 707, 716, 899 P.2d 6

(1995) (quoting 3A Lewis H. Orland, et al., *Wash. Practice*: CR 17, at 420 (1992)).

The Superior Court is the “real party in interest” in the Mandamus action, and the Superior Court Clerk is the person against whom judgment is sought. The right sought to be enforced is embodied in LGR 3, a rule specifically applicable to the Clerk who had interfered with the Court’s right to direct his performance with respect to the Court’s records. RCW 2.32.050(3) & (9). The Judgment sought will be solely against the Clerk. That judgment will not compel Franklin County to do anything. The legal rights and duties of Franklin County are not at issue.

The fact that Franklin County may ultimately have financial exposure due to an award of attorney’s fees does not make it a real party in interest, in the same manner as an insurance company that may have an indemnification obligation is not a real party in interest. *Weber v. Biddle*, 72 Wn.2d 22, 28, 431 P.2d 705 (1967).

F. The Petitioners Used Improper Procedures to Commence this Action.

The filing of the Order of Appointment in the Administrative File on behalf of the Superior Court on May 22, 2018, was not the commencement of a civil action under CR 3. To commence a civil action, a summons or complaint must be filed. CR 3. The absence of either a

summons or complaint means that no civil action was commenced by filing the Order of Appointment. *Id.* Moreover, no case number was affixed to the Order submitted to the Administrative File. The Order simply provided notice of the Superior Court's action, and authority for the appointed attorney to proceed with the Court's representation in the Mandamus action, with the future possibility of receiving compensation for such services from Franklin County.

The Clerk's improper alteration of the Order of Appointment and its filing under Cause No. 18-2-50522-11, also did not commence a civil action. No complaint or summons was issued or filed under that cause number. No filing fee was paid. No person was served. That filing was entirely improper, as is the petitioners' reliance on it. (Spanner declaration, at 3-4, ¶¶3-4, and at 14, ¶19.)

Given the illegitimate form into which the Superior Court's original, administrative Order of Appointment was converted by the Clerk, the form of the Order for which review was sought was not a "trial court decision," as that term is used in RAP 1.1(a), describing the scope of proceedings governed by the Rules of Appellate Procedure. Nor was it a decision of the superior court described in RAP 2.2, defining decisions of the court which may be appealed. It is also not a decision of the superior court contemplated by RAP 2.3 (discretionary review) because it does not

arise from “judicial proceedings,” as that term is used in RAP 2.3(b)(3) or RAP 2.3(d)(4).

The Clerk and the petitioners utilized the unauthorized, altered and misfiled Order of Appointment under Cause No. 18-2-50522-11, to create the current Appeal/Petition for Review.

RCW 40.16.030 provides:

Every person who shall knowingly procure or offer any false or forged instrument to be filed, registered, or recorded in any public office, which instrument, if genuine, might be filed, registered or recorded in such office under any law of this state or of the United States, is guilty of a class C felony and shall be punished by imprisonment in a state correctional facility for not more than five years, or by a fine of not more than five thousand dollars, or by both.

This statute criminalizes the filing of a false instrument where a government office would justifiably rely on the submission. *State v. Hampton*, 143 Wn.2d 789, 798, 24 P.3d 1035 (2001). Obviously, the Supreme Court has relied on the false instrument created and filed by the Franklin County Clerk, because this matter has advanced to the granting of review, briefing and proceedings that will lead to a decision affecting the entire state.

Moreover, although a genuine complaint or petition challenging an administrative order might have been filed with a Superior Court in this state, the Order of Appointment under Cause No. 18-2-50522-11, is not such a complaint or petition. Petitioners’ deviation from proper procedure

was unwarranted. *See Robinson v. City of Seattle*, 102 Wn. App. 795, 826, n. 114, 10 P.3d 452 (2000) (administrative convenience does not justify deprivation of a constitutional right). This deviation should produce rejection of the petitioners' request for relief and granting of the respondents' requested relief.

The manipulation of the ethical disqualification of the Prosecutor, as described above, and the manner in which this review proceeding was undertaken demonstrate that this action is aimed at thwarting the Superior Court's separate Mandamus action (Franklin County Cause Number 18-2-50285-11), which seeks to Compel the Clerk to abide by LGR 3, requiring the Clerk to "keep and maintain paper files for all cases and file types..." (Appendix A, Spanner declaration, at 7-8, ¶9, Exhibit E, Local General Rule LGR 3.)

G. The Respondents Should be Awarded Attorney's Fees and Costs.

The Prosecutor's original appointment of a special deputy prosecutor pursuant to RCW 36.27.040, and the accompanying agreement to pay the attorney's fees and costs incurred in connection with the representation, including litigation, was a contract. A party is entitled to an award of attorney fees if a contract, statute, or recognized ground of equity permits recovery of attorney fees and the party is the substantially prevailing party. *Hwang v. McMahon*, 103 Wn. App. 945, 954, 15 P.3d

172 (2000). Since the appointment was not properly revoked, it continued in force and should apply to these proceedings before the Supreme Court. Attorney's fees should be awarded based upon contract.

Alternatively, the May 21, 2018, Order of Appointment based on the statute, RCW 36.27.030, validly renewed the obligation of Franklin County to pay the attorney's fees and costs incurred in connection with that appointment including in this appellate process.

Moreover, the Superior Court is the defending party in this action commenced originally in the Supreme Court. The Superior Court is defending against the relief sought in this action, through its attorney. In that case, Franklin County owes the Court a defense. RCW 36.37.020(4). The Prosecutor recognized his duty to represent a county officer who is being sued, and he is providing a continuing defense to the Clerk in the Mandamus action. *See* ACP 37, ll. 17-19 (prosecutor is obligated to defend county elected officials); *and* Appendix D, Declaration of Shawn Sant, p. 2, ¶7. The Superior Court now stands in the same position as the Clerk whose defense continues to be funded by the County. Attorney's fees should be awarded based upon statute.

Also, RCW 4.84.185 authorizes the trial court to award the prevailing party reasonable expenses, including attorney fees, incurred in opposing a frivolous action. *Bldg. Indus. Ass'n of Washington v.*

McCarthy, 152 Wn. App. 720, 745, 218 P.3d 196 (2009). Such an award is available when the action as a whole, can be deemed frivolous. *McCarthy*, 152 Wn. App. at 746. A lawsuit is frivolous if, when considering the action in its entirety, it cannot be supported by any rational argument based in fact or law. *Curhan v. Chelan County*, 156 Wn. App. 30, 37, 230 P.3d 1083 (2010); *see also Loc Thien Truong v. Allstate Prop. and Cas. Ins. Co.*, 151 Wn. App. 195, 207–08, 211 P.3d 430 (2009) (award of fees under RCW 4.84.185 may be made when the action, viewed in its entirety, cannot be supported by any rational argument on the law or facts); *Goldmark v. McKenna*, 172 Wn.2d 568, 582, 259 P.3d 1095 (2011) (same).

Petitioners do not furnish a rational basis for having ignored the Prosecutor's appointment of a special prosecutor, authorizing him to engage in litigation on behalf of the Superior Court. Moreover, petitioners have not supplied legal justification for the Prosecutor's attempt to reverse and terminate the special prosecutor's appointment in light of the Prosecutor's disability due to his ethical conflict. Nor have the petitioners recognized that the Clerk is the subordinate of the Superior Court who was obligated to follow LGR 3. This action is founded on the mistaken belief that the Clerk could ignore the local general rule, that the Prosecutor's revocation of his appointment was valid, and the Superior Court's

response of appointing a special prosecutor to continue the representation that the Prosecutor had authorized was invalid. All of these suppositions are erroneous and unsupported.

Courts may award attorneys' fees for a frivolous or improper appeal. *Skilcraft Fiberglass v. Boeing Co.*, 72 Wn. App. 40, 48, 863 P.2d 573 (1993) (abrogated on other grounds by *Morin v. Burris*, 160 Wn.2d 745, 756, 161 P.3d 956 (2007)).

“An appeal is frivolous if, considering the entire record, the court is convinced that the appeal presents no debatable issues upon which reasonable minds might differ and that it is so devoid of merit that there is no possibility of reversal.”

Kinney v. Cook, 150 Wn. App. 187, 195, 208 P.3d 1 (2009) (quoting *Lutz Tile, Inc. v. Krech*, 136 Wn. App. 899, 906, 151 P.3d 219 (2007)).

RAP 18.1 authorizes awards of attorney's fees and expenses, when authorized by law and procedurally proper. Here, the contract between the Prosecutor and his special deputy supports an award of fees and costs, as do the challenged Order of Appointment and RCW 4.84.185.

RAP 18.9(a) authorizes sanctions, including attorneys' fees and costs, against parties who use the Rules of Appellate Procedure,

...for the purpose of delay, files a frivolous appeal, or fails to comply with these rules to pay terms or compensatory damages to any other party who has been harmed by the delay or the failure to comply or to pay sanctions to the court. The appellate court may condition a party's right to participate further in the review on compliance with terms

of an order or ruling including payment of an award which is ordered paid by the party....

This appellate procedure is frivolous and improper because it is not based upon an appealable or reviewable decision of a lower court, and because it is based upon a false instrument that has been presented to the Court by the petitioners and relied on by this Court to its and the Superior Court's detriment and expense. This proceeding has been pursued for an improper purpose because its objective is to impair the Superior Court's separate Mandamus action. The Court should sanction the petitioners and order them to pay the fees and costs incurred by the Superior Court in responding to this proceeding. It would also be well within the discretion of the Court to impose a fine on the petitioners for their misconduct pursuant to RAP 18.9(a).

Counsel is prepared to submit proof of the fees and costs incurred in this proceeding, in compliance with RAP 18.1(d).¹⁷

V. CONCLUSION

The Prosecutor had an ethical conflict that compelled him to appoint special deputies to represent two of his disagreeing county clients. He did so pursuant to RCW 36.27.040, and agreed that the attorney who would represent the Superior Court could engage in litigation as part of the

¹⁷ The specially-appointed Superior Court Judge should separately determine any award of fees and costs in the Mandamus proceeding.

appointment. The Prosecutor could not revoke that appointment without the agreement of the Court, which he did not seek or receive. When the Prosecutor did attempt to revoke the special deputy appointment, his action triggered RCW 36.27.030, because his disability had not been removed. The Superior Court validly issued an administrative Order of Appointment to retain the attorney whom the Prosecutor had appointed. Alternatively, the attempted revocation of appointment was invalid, and the Prosecutor's original appointment remained in force. In either case, the Superior Court is entitled to representation by the appointed special prosecutor.

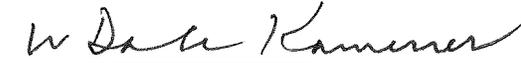
Respondents request that the Supreme Court rule as follows:

1. That the petitioners' requested relief is denied; and
2. That LGR 3 of the Benton and Franklin Counties Superior Court is a valid rule which the Franklin County Superior Court Clerk was required to follow; and
3. That the Franklin County Prosecutor's ethical conflict under RPC 1.7, prevented him from representing the Superior Court in its disagreement with the Clerk in any manner, including to revoke his appointment of a special deputy prosecutor to represent the respondents in the Mandamus action; or, alternatively

4. That the attempted revocation authorized the Superior Court to reappoint its attorney to represent the Court in that action; and
5. That respondents are awarded their attorney's fees and costs incurred in defending this action based upon contract, statute; or, alternatively
6. That respondents are awarded their attorney's fees and costs because this appellate action was instituted through an improper procedure and for an improper purpose.

Respectfully submitted this 26th day of November 2018.

LAW, LYMAN, DANIEL,
KAMERRER & BOGDANOVICH, P.S.



W. Dale Kamerrer, WSBA № 8218
Attorney for Respondents

CERTIFICATE OF SERVICE

I hereby certify that on November 26, 2018, I served the foregoing with the Clerk of the Court for the Washington State Supreme Court using the appellate CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Signature:

/s/ Marry Marze
Legal Assistant to W. Dale Kamerrer

APPENDIX A

FILED
SUPREME COURT
STATE OF WASHINGTON
6/18/2018 12:29 PM
BY SUSAN L. CARLSON
CLERK

No. 95945-5

Franklin County Superior Court Cause No. 18-2-50522-11
IN THE SUPREME COURT OF THE STATE OF WASHINGTON

IN RE THE APPOINTMENT OF A SPECIAL DEPUTY
PROSECUTING ATTORNEY, SHAWN P. SANT AND FRANKLIN
COUNTY,

Appellants/Petitioners

DECLARATION AND EXHIBITS OF JUDGE BRUCE A. SPANNER
IN RESPONSE TO PETITION/MOTIONS FOR SUPREME COURT
REVIEW INCLUDING MOTION TO STAY AND MOTION FOR
ACCELERATED CONSIDERATION OF STAY

W. Dale Kamerrer, WSBA No. 8218
Attorney for the Judges of the Benton
and Franklin Counties Superior Court

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PURSUANT TO RCW 9A.72.085, BENTON AND FRANKLIN
COUNTIES SUPERIOR COURT JUDGE, BRUCE A. SPANNER,
declares as follows:

1. I am competent to testify in all respects, and I make this declaration from my personal knowledge.
2. I am an elected and serving Judge of the Benton and Franklin Counties Superior Court, a joint judicial district of the State of Washington. I am one of the plaintiffs in the action entitled The Judges of the Benton and Franklin Counties Superior Court: Judge Joe Burrowes, Judge Alex Ekstrom, Judge Cameron Mitchell, Judge Carrie Runge, Judge Jacqueline Shea-Brown, Judge Bruce Spanner and Judge Sam Swanberg, Plaintiffs, vs. Michael Killian, Franklin County Clerk and Clerk of the Superior Court, Defendants, Franklin County Superior Court Cause Number 18-2-50285-11, which will also be referred to herein as “the Mandamus action.”
3. I was told recently by one of my colleagues that Mike Killian may have altered a court document in this matter. I had no idea. I looked into it, and the results of my investigation are set forth in paragraphs 3 through 7 of this Declaration. Attached hereto as exhibits are true and correct

copies of the following documents, which are further explained in the text that follows:

Exhibit A: Order of Appointment adopted by the entire bench of the Benton and Franklin Counties Superior Court on May 22, 2018, and submitted to the Franklin County Superior Court Clerk (“Clerk”) by the Superior Court Administrator for filing in the Administrative File of the Court on that day at 3:22 p.m. As submitted, the Order of Appointment was unnumbered, and such administrative matters are typically not assigned a case number by the Clerk. No filing fee was paid for the filing of the Order of Appointment.

Exhibit B: This is a duplicate copy of Exhibit A but with Cause No. 18-2-50522-11 stamped on it (the third number is not set off from the following seven numbers by a dash, but the format set forth above is how the record is numbered in the Odyssey Portal online case search system). This is not the civil action filing number assigned to the case described in paragraph 2 as the Mandamus action. In order to create the appearance that the Order of Appointment was a regular civil action, the number 18-2-50522-11 was placed on a copy of the Order of Appointment by the Clerk, Michael Killian, without notice to the Court or Court Administrator at an unknown date and time. Even though the same date/time stamp was

maintained on this copy, purportedly showing that it was filed on the same day and time as the original filing of Exhibit A in the Administrative File, it is obvious that a new date/time stamp was not placed on it at the time the number 18-2-50522-11 was assigned and stamped by the Clerk. It is highly unlikely that the date/time stamp could have been placed in the exact location, at the exact angle and with the initial "RO" in exactly the same location on both documents. I examined the Odyssey case data for Cause No. 18-2-50522-11. The information under the "Parties" tab in Odyssey shows Dale Kamerrer as the plaintiff and Shawn Sant as the defendant. Those designations are false. Mr. Kamerrer did nothing to initiate a case under the 18-2-50522-11 cause number. He did not designate Mr. Sant as the defendant in any action. The Judges did not initiate the case. No one filed a complaint or petition to initiate the case, as required for a civil action by CR 3(a).

4. On several occasions I have had discussions with Mr. Killian and his chief deputy, Ruby Ochoa, explaining that civil cases can only be initiated by the filing of a complaint or petition. These discussions were in the context of new filings by inmates in Department of Corrections facilities. My uniform instructions were to reject attempted case filings that did not include either a complaint or a petition. Mr. Kamerrer has been designated a plaintiff involuntarily and without authority. He is not

an attorney of record as he has not filed a notice of appearance. No one has been served with the altered Order of Appointment under Cause No. 18-2-50522-11. Odyssey also reflects that no filing fee was paid by or to the Clerk at the time Exhibit B was stamped with its cause number.

5. I know that Mr. Killian created the new electronic file under Cause No. 18-2-50522-1, as is explained following. In so doing, he falsely entered data in Odyssey purporting to show that the Order of Appointment was filed under that cause number on May 22, 2018.

Exhibit C is a series of printed screen shots from Odyssey. They show a number of things. The cases with Cause Nos. 18-2-50511-11 through 18-2-50521-11 (C-1 through C-11) were all filed on May 22 or 23, 2018. The date labeled "Filed" in the upper right-hand corner of each screen shot reflects that. That is a system-generated date. But, the screen shot for Cause No. 18-2-50522-11 (C-12) is different. It shows the system-generated "Filed" date for the purported "action" was May 24, 2018. But in the body of the screen shot page under "Most Recent Events & Hearings" it states that the first document filed, *i.e.*, the Order of Appointment, was filed on May 22, 2018. This is a date that is entered by the user, and is not a system-generated date. If one then looks closely at the box with the heading of "Case Assignment," under the "Details" tab

(C-13), it shows that the electronic file was “Created: 05/24/2018 12:50 PM Killian, Michael Judicial Officer manually assigned.” This was revealed when I hovered the mouse over that box to reveal details regarding creation of the file.

6. I know Odyssey. I was on the procurement team. I have been on the team that is tasked with configuring and customizing Odyssey since 2013. One of the features of Odyssey is that it captures data regarding the creation and modification of court records. The quoted language above clearly shows that Mr. Killian created Cause No. 18-2-50522-11 at 12:50 p.m. on 5/24/18. Further, the team decided that cause numbers should be assigned automatically in Odyssey. That means that Cause Numbers 18-2-50511-11 through 18-2-50521-11 (C-1 through C-11) were all created on May 22 or 23, 2018, which was before the record for Cause No. 18-2-50522-11 was created. Clearly, Mr. Killian falsely entered data in Odyssey to make it appear that the Order of Appointment was filed in Cause No, 18-2-50522-11 on May 22, 2018, the date corresponding to the date that Order without a cause number was actually filed solely in the Administrative File, and stamped with the “Filed” stamp at 3:32 p.m. That was two days before the Clerk actually created Cause No. 18-2-50522-11. It is safe to conclude that, given the fact that Mr. Killian created Cause No. 18-2-50522-11 in Odyssey, he also affixed that Cause

Number to the Order of Appointment, thereby falsely creating a court document. The clerk uses a file-number stamp that allows the digits to be changed. If one compares the stamp on the original Complaint filed in the Mandamus action, Cause No. 18-2-50285-11 (Exhibit D), with the stamp on Cause No. 18-2-50522-11 (Exhibit B), one can see that the numbers were created with the same stamp. Obviously, the Clerk created a new and unauthorized civil action by this alteration of the document, Exhibit A, which the Court Administrator had submitted for filing in the Court's Administrative File.

7. The Clerk then had his deputies attach the fraudulently altered Order of Appointment to their declarations (Appendix E to petitioners' Contingent RAP 2.3(b) Motion for Discretionary Review), wherein they all attest that the order was not entered during any court proceeding. This provides further proof that the Cause No. 18-2-50522-11 is a contrived case. The true, original Order of Appointment was not entered during a court proceeding, because it was not entered in any pending case, including the case under Cause Nos. 18-2-50285-11 (the Mandamus action) or 18-2-50522-11 (the contrived "case"). The Order of Appointment was adopted and filed as a stand-alone administrative order of the Court. I have also reviewed Odyssey for the case under Cause No.

18-2-50285-11. The Order of Appointment does not appear in that case.

It was never intended to be filed in that case.

8. The Order of Appointment, Exhibit A, was not part of the Mandamus action identified in Paragraph 2 above, although it related to that case by re-appointing the same attorney to serve as counsel for the plaintiffs as the Prosecuting Attorney had appointed on February 7, 2018, given that the Franklin County Prosecuting Attorney's disability continued to prevent him from advising or representing the Court or Clerk. That earlier appointment of the Judges' attorney expressly included authority to analyze and advise, negotiate and represent the Court in legal proceedings if necessary.

9. Attached hereto as an additional exhibit are true and correct copies of the following documents, which are further explained in the text following:

Exhibit E: Order adopted by the entire bench of the Benton and Franklin Counties Superior Court on January 16, 2018, and filed in the Administrative File of the Franklin County Superior Court, maintained by the Clerk, Michael Killian. This filed document was not assigned a number by the Clerk at the time of filing on January 16, 2018, as is typical for administrative orders. No filing fee was paid for filing Exhibit E. As

explained above, this Administrative File exists for the filing and preservation of records of administrative acts of the Court, and its contents are not documents in a particular proceeding. This Order and its accompanying Local General Rule 3: Files and "Paperless Court," and Benton & Franklin Counties Superior Court Judicial Resolution No. 18-001 Adoption of Local General Rule 3 (also part of Exhibit E), were adopted after the Clerk had refused to delay implementation of fully paperless processes and had undertaken discontinuation of paper versions of Court files. The Clerk unilaterally sought to impose on the Court a paperless file-keeping process which members of the Court determined was not organized and operated in a manner that would assure a comparable degree of completeness, accuracy and utility as the paper files that had been used since inception of the courts.

10. The documents in Exhibit E apply to the Superior Court Clerks of both Benton and Franklin Counties, although it is only the Franklin County Clerk who has refused to maintain paper Court files.

11. The judges, court commissioners and staff of the Benton and Franklin Counties Superior Court are committed to working in a paperless environment. However, paperless processes must be reliable and fully accessible on the user end, where the records are relied on for decision-

making that affects the rights of litigants and other citizens. Full access includes the ability to retrieve and use court records wherever and whenever judicial officers and staff need access to those records. Notably, since November 2015 until December 31, 2017, paper files have been maintained and utilized in varying frequency and various ways by members of the bench.

12. Among the issues with achieving a paperless environment for court records is the management of work flow and work queue processes, including having the ability for filers and courts to affix electronic signatures to documents. "Work flows" are the electronic movement of documents within the Odyssey system that will replace the physical movement of documents within the Clerk's office, including between the Court to the Clerk and between the Clerk's office and other parties such as jails, police agencies, attorneys, probation offices and many others. Odyssey can be configured so that every document created or scanned into it can have its own unique work flow that occurs automatically. "Work queues" are electronic document repositories where documents are held until some action, such as the affixing of an electronic signature or other approval happens. Many work flows include work queues. The content and mapping of work flows and work queues are essential to effective working in a paperless environment. The work to establish these work

flows and work queues requires collaboration between the Clerk and the Court. In 2017, the judges of the Superior Court authorized me to work with the Clerk to develop work flows and work queues as a precursor to the pending paperless environment. It is notable that, although Odyssey was implemented in November 2015, the Clerk had declined to create work flows, except a very few. A plethora of work flows will be needed in Franklin County before transition to a fully electronic environment can occur successfully.

13. The paperless project of 2017 was delayed and could not be completed by the end of the year. The other judges and I believed the Clerk understood that we wanted him to maintain and provide paper files to the Court until such time as work flows and work queues could be agreed to and implemented.

14. However, in late December of 2017, the Clerk informed us that he would end the maintenance of paper files effective at the beginning of 2018, and, thereafter, judicial officers and court personnel would only have access to records through the electronic system. We informed Mr. Killian that this would not be acceptable, and directed him to continue maintaining and providing paper files. He expressly refused to do so in

conversation with me. Accordingly, the Superior Court Judges adopted the order, resolution, and local court rule in Exhibit E.

15. The Clerk has refused to abide by these measures, specifically, LGR 3, and has taken the position that since he is an independently elected official of the County he alone may dictate how court records and files are maintained and made accessible to judicial officers and staff of the Superior Court. He has repeated his refusal to comply with LGR 3 in an open public meeting held by the Board of County Commissioners of Franklin County. Accordingly, the Court's lawsuit under Cause Number 18-2-50285-11 became necessary, and we directed the attorney appointed to represent the Court by the Prosecuting Attorney on February 7, 2018, to prepare and file the pleadings, motions and other papers necessary to that lawsuit. We specifically sought a Writ of Mandamus directed to the Clerk only, in order to assure the Board of County Commissioners and the public that our use of that method of obtaining the Clerk's compliance with LGR 3 was solely intended to bring about compliance, not to punish the Clerk or cause the County to incur damages or even statutory costs of suit. We also requested that the State Administrator of the Courts appoint another Superior Court Judge to preside over the case, and the Chief Judge of the Supreme Court appointed Judge Scott Sparks of the Kittitas County Superior Court to do so. However, despite his earlier appointment of our

attorney for purposes of representation in litigation, the Prosecuting Attorney claimed that he did not have a budget to support such counsel, and, following a meeting held with the Board of County Commissioners on May 8, 2018, which was attended by the Clerk and his attorney, but which no member of the Court or our attorney attended, it was announced that the Clerk would “print” paper copies of files “needed for the court” Although this was publicly announced to be a “concession” by the Clerk, it obviously falls well short of a commitment to comply with LGR 3, which is what the Court’s Mandamus action sought from the outset.

16. The Court must have the assurance that complete and accurate files are available for all processes and for every hearing at every place where hearings are held, including places where electronic access is not yet available. (I recently read the transcript of the Commissioners’ meeting of May 8, 2018, and found that Mr. Killian and his attorney misrepresented certain facts, but I will not address those in this declaration, as they do not directly impact the issues on appeal.) After the May 8, 2018 County Commission meeting, and even though the Prosecutor conceded that he had a professional conflict in representing the Judges of the Superior Court as well as the Clerk, he unilaterally informed our attorney that “...the dispute (with the Clerk) is resolved, ...” and purported to terminate that attorney’s appointment. This message was issued on May 22, 2018,

the day after the Order of Appointment attached as Exhibit A was adopted. The Prosecutor did not confer with the Court or its attorney, nor give us any advance notice of this decision. This action by the Prosecutor appears to be aimed at depriving the Court of the opportunity to secure a remedy for the Clerk's violation of the Court's clear legal right to direct the Clerk in the manner of maintaining and providing Court records. *See* RCW 2.28.050(9) (clerks are required "to conform to the direction of the court.") The Prosecutor has failed to properly recuse himself, to the continuing detriment of the substantive and procedural rights of the parties. He clearly has a conflict of interest in any matter involving a dispute between elected officials in Franklin County.

17. By unilaterally declaring that the disagreement which led to our lawsuit had been resolved and purporting to withdraw his original appointment of our attorney, he is clearly injecting himself into a case in which he has a conflict of interest. His actions may also be *ultra vires* and invalid. We have directed our attorney to proceed with our Mandamus action in the most efficient manner possible. He has filed a motion for summary judgment to attempt to bring the issue of Mandamus to the presiding judge as soon as possible, and a hearing on that matter is scheduled for July 13, 2018.

18. Representation of the Court in Cause No. 18-2-50285-11 (the Mandamus action), does not depend on the Order of Appointment (Exhibit A). The Judges of the Benton and Franklin Counties Superior Court have a separate agreement with Mr. Kamerrer for his services in that action. While Mr. Kamerrer should be compensated by the County for his services, that compensation is subject to the approval of his charges by the Superior Court. But no action on petitioners' request for direct review by the Supreme Court should alter his representation of the Court in number 18-2-50285-11.

19. As of the date and time that I have signed this declaration, neither I nor any other Judge of the Benton and Franklin Counties Superior Court, to my knowledge, have been served with a summons, complaint, petition, any motion, or related documents purporting to be in Cause No. 18-2-50522-11.

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

DATED at Kearney, Washington, this 15 day of June 2018.



JUDGE BRUCE A. SPANNER (a copy of my signature may be accepted as the original)

Exhibit A
to
Spanner Declaration

FILED
FRANKLIN CO CLERK
2018 MAY 22 PM 3:32
MICHAEL J. KILLIAN
BY *JK* DEPUTY

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IN THE SUPERIOR COURT OF WASHINGTON FOR FRANKLIN COUNTY

**IN RE THE APPOINTMENT OF A
SPECIAL DEPUTY PROSECUTING
ATTORNEY**

ORDER OF APPOINTMENT

This matter came before the above-entitled Court for consideration of the appointment of a Special Deputy Prosecuting Attorney for Franklin County, pursuant to RCW 36.27.030. The Court makes the following Findings of Fact related thereto:

1. In relation to the action entitled *The Judges of the Benton and Franklin Counties Superior Court: Judge Joe Burrowes, Judge Alex Ekstrom, Judge Cameron Mitchell, Judge Carrie Runge, Judge Jacqueline Shea-brown, Judge Bruce Spanner and Judge Sam Swanberg, Plaintiffs, vs. Michael Killian, Franklin County Clerk and Clerk of the Superior Court, Defendants*, Franklin County Superior Court No. 18-2-50285-11, as contemplated by RCW 36.27.030, the Prosecuting Attorney of Franklin County is unable to discharge the duties of his office due to a disability arising from the requirements and limitations of Rules of Professional Conduct, Rule 1.7; and

2. The Attorney General of the State of Washington has declined to represent the plaintiffs in the action referred to above; and

3. W. Dale Kamerrer, WSBA #8218, is a duly admitted and practicing attorney-at-law and resident of the State of Washington, and is qualified to discharge the duties of the Prosecuting Attorney of Franklin County in relation to the above-referenced action, and has been performing the duties of the attorney for the plaintiffs in said action pursuant to

ORDER OF APPOINTMENT - 1

LAW, LYMAN, DANIEL,
KAMERRER & BOGDANOVICH, P.S.
ATTORNEYS AT LAW
2674 RW JOHNSON BLVD SW, TUMWATER, WA 98512
PO BOX 11880, OLYMPIA, WA 98508-2880
(360) 754-3480 FAX: (360) 337-3511

1 appointment by the Franklin County Prosecuting Attorney to serve as a Special Deputy
2 Prosecutor; and

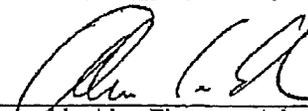
3 4. Mr. Kamerrer shall receive such reasonable compensation for the professional
4 services he renders to the plaintiffs as may be fixed and ordered by the court to be paid by
5 Franklin County.

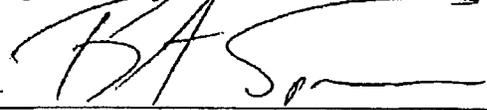
6 Based upon the foregoing Findings of Fact, it is now hereby Ordered:

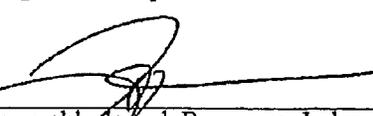
7 1. W. Dale Kamerrer is hereby Appointed as a Special Deputy Prosecuting Attorney
8 to represent the plaintiffs in the action identified above.

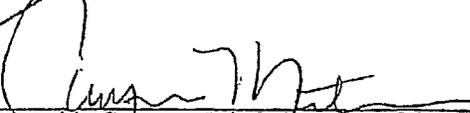
9 2. Payment of compensation for the professional services rendered shall be subject
10 to further order of the court.

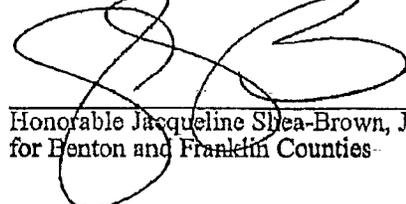
11 Dated this 21st day of May 2018.

12 
13 _____
14 Honorable Alex Ekstrom, Administrative Presiding Judge,
Judge of the Superior Court for Benton and Franklin Counties

15 
16 _____
17 Honorable Bruce Spanner, Assistant Administrative Presiding Judge,
Judge of the Superior Court for Benton and Franklin Counties

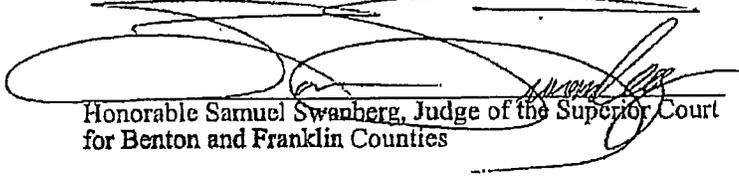
18 
19 _____
20 Honorable Joseph Burrowes, Judge of the Superior Court
for Benton and Franklin Counties

21 
22 _____
23 Honorable Cameron Mitchell, Judge of the Superior Court
for Benton and Franklin Counties

24 
25 _____
26 Honorable Jacqueline Shea-Brown, Judge of the Superior Court
for Benton and Franklin Counties

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Carrie Runge
Honorable Carrie Runge, Judge of the Superior Court
for Benton and Franklin Counties


Honorable Samuel Swenberg, Judge of the Superior Court
for Benton and Franklin Counties

ORDER OF APPOINTMENT - 3

LAW, LYMAN, DANIEL,
KAMERRER & BOGDANOVICH, P.S.
ATTORNEYS AT LAW
2674 HW JOHNSON BLVD SW, TUMWATER, WA 98512
PO BOX 11880, OLYMPIA, WA 98508-1880
(360) 754-3480 FAX: (360) 757-3511

Exhibit B
to
Spanner Declaration

FILED
FRANKLIN CO CLERK
2018 MAY 22 PM 3:32
MICHAEL J. KILLIAN
BY *JK* DEPUTY

IN THE SUPERIOR COURT OF WASHINGTON FOR FRANKLIN COUNTY

IN RE THE APPOINTMENT OF A
SPECIAL DEPUTY PROSECUTING
ATTORNEY

18 250522 11
ORDER OF APPOINTMENT

This matter came before the above-entitled Court for consideration of the appointment of a Special Deputy Prosecuting Attorney for Franklin County, pursuant to RCW 36.27.030. The Court makes the following Findings of Fact related thereto:

1. In relation to the action entitled *The Judges of the Benton and Franklin Counties Superior Court: Judge Joe Burrowes, Judge Alex Ekstrom, Judge Cameron Mitchell, Judge Carrie Runge, Judge Jacqueline Shea-brown, Judge Bruce Spanner and Judge Sam Swanberg, Plaintiffs, vs. Michael Killian, Franklin County Clerk and Clerk of the Superior Court, Defendants*, Franklin County Superior Court No. 18-2-50285-11, as contemplated by RCW 36.27.030, the Prosecuting Attorney of Franklin County is unable to discharge the duties of his office due to a disability arising from the requirements and limitations of Rules of Professional Conduct, Rule 1.7; and

2. The Attorney General of the State of Washington has declined to represent the plaintiffs in the action referred to above; and

3. W. Dale Kamerrer, WSBA #8218, is a duly admitted and practicing attorney-at-law and resident of the State of Washington, and is qualified to discharge the duties of the Prosecuting Attorney of Franklin County in relation to the above-referenced action, and has been performing the duties of the attorney for the plaintiffs in said action pursuant to

ORDER OF APPOINTMENT - 1

LAW, LYMAN, DANIEL,
KAMERRER & BOGDANOVICH, P.S.
ATTORNEYS AT LAW
2674 R.W. JOHNSON BLVD SW, TUMWATER, WA 98512
PO BOX 11880, OLYMPIA, WA 98508-1880
(360) 724-9480 FAX: (360) 337-4311

SCANNED

Exhibit B

1 appointment by the Franklin County Prosecuting Attorney to serve as a Special Deputy
2 Prosecutor; and

3 4. Mr. Kamerrer shall receive such reasonable compensation for the professional
4 services he renders to the plaintiffs as may be fixed and ordered by the court to be paid by
5 Franklin County.

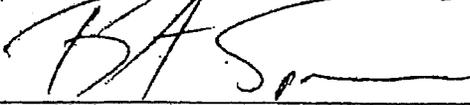
6 Based upon the foregoing Findings of Fact, it is now hereby Ordered:

7 1. W. Dale Kamerrer is hereby Appointed as a Special Deputy Prosecuting Attorney
8 to represent the plaintiffs in the action identified above.

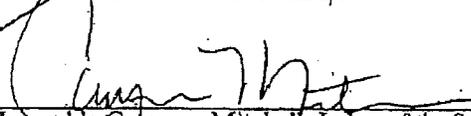
9 2. Payment of compensation for the professional services rendered shall be subject
10 to further order of the court.

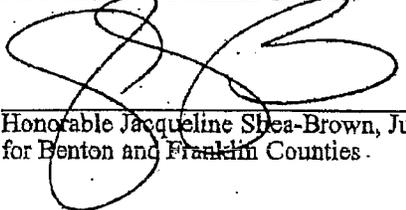
11 Dated this 21st day of May 2018.

12 
13 _____
14 Honorable Alex Ekstrom, Administrative Presiding Judge,
15 Judge of the Superior Court for Benton and Franklin Counties

16 
17 _____
18 Honorable Bruce Spanner, Assistant Administrative Presiding Judge,
19 Judge of the Superior Court for Benton and Franklin Counties

20 
21 _____
22 Honorable Joseph Burrowes, Judge of the Superior Court
23 for Benton and Franklin Counties

24 
25 _____
26 Honorable Cameron Mitchell, Judge of the Superior Court
for Benton and Franklin Counties



Honorable Jacqueline Shea-Brown, Judge of the Superior Court
for Benton and Franklin Counties.

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Carrie Runge

Honorable Carrie Runge, Judge of the Superior Court
for Benton and Franklin Counties

[Signature]

Honorable Samuel Swanberg, Judge of the Superior Court
for Benton and Franklin Counties

Exhibit C
to
Spanner Declaration
Odyssey Screen Shots



Case Manager Home

myOdyssey

Searches

Find a Case

Find a Party

Find a Hearing

Find a Group

Protection Orders

Find a Protection Order

Court Administration

View Calendar

View Resource Schedule

Find Available Sessions

Judgment Proofing

Fees & Finances

Find an Account

Find a Receipt

Find a Disbursement

Garnishment Processing

Find Suspense Account

Bonds

Find a Bond

Warrants

Find a Warrant

18-2-50511-11

Summary Detail Parties Events Service Hearings Conditions Causes Disposition Time Subs Financial Prot. Orders Warrants Bonds Exhibits Documents Appeals Save Exit

OTIS LAMAR JACKSON vs RICHARD JARRELL JACKSON

Status Completed/Re-Completed

Filed 05/22/2018

Type DVP Domestic Violence

County Franklin

Judicial Officer

Financial Balance 0.00

statistical closure

06/04/2018

Judgment/Order/Decree Filed

case cross reference

USISCOMIS Case Number

18-2-50511-1

flags & actions due

Domestic Violence

Most Recent Events & Hearings

06/04/2018 Case Resolution Closed by Court Order After a Hearing

06/04/2018 Order Denying Motion Petition (Judicial Officer: Michel, Cameron)

06/04/2018 Motion Hearing (Judicial Officer: Michel, Cameron)

06/04/2018 Protection Order (Judicial Officer: Michel, Cameron)

1:30 PM Location: Courtroom 1

Result: Failure to Appear

Events: 05/22/2018 Temporary Order for Protection

05/31/2018 Affidavit Declaration Certificate Confirmation of Service

Party: Respondent (Vip) JACKSON, RICHARD JARRELL

05/30/2018 Sheriff's Return on Service

Party: Respondent (Vip) JACKSON, RICHARD JARRELL

05/22/2018 Transmittal Letter Copy Filed

TO PPT

05/22/2018 Transmittal Letter Copy Filed

TO PCSO

05/22/2018 Ex Parte Action With Order (Judicial Officer: Shea-Brown, Jacqueline)

View more events



- Case Manager Home
- myOdyssey
- Searches
- Find a Case
- Find a Party
- Find a Hearing
- Find a Group
- Protection Orders
- Find a Protection Order
- Court Administration
- View Calendar
- View Resource Schedule
- Find Available Sessions
- Judgment Proofing
- Fees & Finances
- Find an Account
- Find a Receipt
- Find a Disbursement
- Garnishment Processing
- Find Suspense Account
- Bonds
- Find a Bond
- Warrants
- Find a Warrant
- List Manager
- Workflow
- Queues
- Reports
- Local Reports
- Run a Local Report
- Enterprise Custom Rep
- Run an Enterprise Custom
- Configure
- User Preferences
- Customize Navigation Bar
- Address Type

18-2-50512-11

Summary Detail Parties Events Service Hearings Conditions Causes Disposition Time Stds Financial Prct Orders Warrants Bonds Exhibits Documents Appeals Save

SHERWIN-WILLIAMS COMPANY vs BLUE SKY PAINTING AND GARAGE DOORS INC. et al

Status Active
 Filed 05/23/2018
 Type COI Collection
 County Franklin
 Judicial Officer
 Financial Balance 0.00

Case cross reference
 JIS/COMIS Case Number
 18-2-50512-0

flags & actions due

Most Recent Events & Hearings

- 05/23/2018: Complaint
- 05/23/2018: Summons



Case Manager Home

myOdyssey

Searches

Find a Case

Find a Party

Find a Hearing

Find a Group

Protection Orders

Find a Protection Order

Court Administration

View Calendar

View Resource Schedule

Find Available Sessions

Judgment Proofing

Fees & Finances

Find an Account

Find a Receipt

Find a Disbursement

Garnishment Processing

Find Suspense Account

Bonds

Find a Bond

Warrants

Find a Warrant

List Manager

Workflow

Queues

Reports

Local Reports

Run a Local Report

Enterprise Custom Rep

Run an Enterprise Custom

Configure

User Preferences

Customize Navigation Bar

Address Type

Forms Printer

Image Printer

Spelling Checker

18-2-50513-11
Summary Detail Parities Events Service Hearings Conditions Causes Disposition Time Subj Financial Prob Orders Warrants Bonds Exhibits Firms Save Ext
Click to save any changes Inform

THE SHERWIN-WILLIAMS COMPANY vs SANDRA MONICA GONZALEZ et al

Status Active
Filed 05/23/2018
Type COL Collection
County Franklin
Judicial Officer
Financial Balance 0.00

Case CROSS reference
JIS/COMIS Case Number
18-2-50513-8

Flags & actions due

Exhibit C-3



Case Manager Home

myOdyssey

Searches

Find a Case

Find a Party

Find a Hearing

Find a Group

Protection Orders

Find a Protection Order

Court Administration

View Calendar

View Resource Schedule

Find Available Sessions

Judgment Proofing

Fees & Finances

Find an Account

Find a Receipt

Find a Disbursement

Garnishment Processing

Find Suspense Account

Bonds

Find a Bond

Warrants

Find a Warrant

List Manager

Workflow

Queues

Reports

Local Reports

Run a Local Report

Enterprise Custom Rep

Run an Enterprise Custom

Configure

User Preferences

Customize Navigation Bar

Address Type

Forms Printer

Image Printer

Spelling Checker

18-2-50514-11
 Summary Detail Parties Events Service Hearings Conditions Causes Discussion Time Slots Financial Prot Orders Warrants Bonds Exhibits Documents Appeals Save Exit

CAVALRY SPV I, LLC vs MOLLIE PRUITT et al

Status Active
 Filed 05/23/2018
 Type COM Commercial
 County Franklin
 Judicial Officer
 Financial Balance 0.00

Case CROSS REFERENCE
 JIS/COMIS Case Number
 18-2-50514-6

Flags & actions due

- 05/23/2018 Order Setting Case Schedule (Judicial Officer: Mitchell, Cameron)
- 05/23/2018 Affidavit Declaration Certificate Confirmation of Service
Party: Defendant PRUITT, MOLLIE
- 05/23/2018 Notice
TO SERVICE MEMBERS AND THEIR DEPENDENTS
- 05/23/2018 Complaint
- 05/23/2018 Summons



Case Manager Home

myOdyssey

- Searches
- Find a Case
- Find a Party
- Find a Hearing
- Find a Group

- Protection Orders
- Find a Protection Order

- Court Administration
- View Calendar
- View Resource Schedule
- Find Available Sessions
- Judgment Proofing

- Fees & Finances
- Find an Account
- Find a Receipt
- Find a Disbursement
- Garnishment Processing
- Find Suspense Account

- Bonds
- Find a Bond
- Warrants
- Find a Warrant

- List Manager
- Workflow
- Queues
- Reports
- Local Reports
- Run a Local Report

- Enterprise Custom Rep
- Run an Enterprise Custom Configure
- User Preferences
- Customize Navigation Bar
- Address Type
- Forms Printer
- Image Printer
- Spelling Checker

18-2-50515-11

Summary Detail Parties Events Service Hearings Conditions Causes Disposition Time Subs Financial Prot. Orders Warrants Bonds Exhibits Documents Appeals Save

CAVALRY SPV I, LLC vs ELIDO GARZA et al

Status Active
 Filed: 05/23/2018
 Type COM Commercial
 County Franklin
 Judicial Officer
 Financial Balance 0.00

Case Number	Date	Description
18-2-50515-4	05/23/2018	Order Settling Case Schedule. (Judicial Officer: Michael, Cameron)
18-2-50515-4	05/23/2018	Affidavit Declaration Certificate Confirmation of Service Party: Defendant GARZA, ELIDO
18-2-50515-4	05/23/2018	Notice
18-2-50515-4	05/23/2018	TO SERVICE MEMBERS AND THEIR DEPENDENTS
18-2-50515-4	05/23/2018	Complaint
18-2-50515-4	05/23/2018	Summons

Case CROSS reference
 JISCOMIS Case Number
 18-2-50515-4

flags & actions due



Case Manager Home

myOdyssey

Searches

Find a Case

Find a Party

Find a Hearing

Find a Group

Protection Orders

Find a Protection Order

Court Administration

View Calendar

View Resource Schedule

Find Available Sessions

Judgment Proofing

Fees & Finances

Find an Account

Find a Receipt

Find a Disbursement

Garnishment Processing

Find Suspense Account

Bonds

Find a Bond

Warrants

Find a Warrant

List Manager

Workflow

Queues

Reports

Local Reports

Run a Local Report

Enterprise Custom Rep

Run an Enterprise Custom

Configure

User Preferences

Customize Navigation Bar

Address Type

Forms Printer

Image Printer

Spelling Checker

18-2-50516-11
Summary Detail Periods Events Service Hearings Conditions Case Sub Disposition Time Subs Financial Mot. Orders Warrants Bonds Exhibits Documents Appeals Save

STEVEN M. WILSON et al vs TIMOTHY C. ERICKSON et al

Status Active
Filed 05/23/2018
Type TMV Tort - Motor Vehicle
County Franklin
Judicial Officer
Financial Balance 0.00

Case CROSS reference
JIS/SCOMIS Case Number
18-2-50516-2

flags & actions due

- 05/23/2018 Order Setting Case Schedule (Judicial Officer: Michele, Cameron)
- 05/23/2018 Complaint
- 05/23/2018 Summons



Case Manager Home

myOdyssey

- Searches
- Find a Case
- Find a Party
- Find a Hearing
- Find a Group

Protection Orders

Find a Protection Order

Court Administration

- View Calendar
- View Resource Schedule
- Find Available Sessions
- Judgment Proofing

Fees & Finances

- Find an Account
- Find a Receipt
- Find a Disbursement
- Garnishment Processing
- Find Suspense Account

Bonds

Find a Bond

Warrants

Find a Warrant

List Manager

- Workflow
- Queues

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Local Reports

Run a Local Report

Enterprise Custom Rep

- Run an Enterprise Custom
- Configure

User Preferences

- Customize Navigation Bar
- Address Type
- Forms Printer
- Image Printer
- Spelling Checker

18-2-50517-11

Summary Detail Parties Events Service Hearings Conditions Causes Disposition Time Stds Financial Prot Orders Warrants Bonds Exhibits Documents Appeals

ESigs Forms Save Exit

CAVALRY SPV I, LLC vs ERNIE FLOWERS et al

Status Completed/Re-Completed

Filed 05/23/2018

Type COM Commercial

County Franklin

Judicial Officer

Financial Balance 0.00

[statistical closure](#)

05/23/2018

Judgment/Order/Decree Filed

[Case cross reference](#)

JIS/SCOMIS Case Number

18-2-50517-1

SCOMIS Judgment Number

18-9-00649-8

[flags & actions due](#)

05/23/2018	Case Resolution Default Judgment
05/23/2018	General Recovery (Judicial Officer: Shea-Brown, Jacqueline)
05/23/2018	Ex Parte Action With Order (Judicial Officer: Shea-Brown, Jacqueline)
05/23/2018	Order of Default AND DEFAULT JUDGMENT
05/23/2018	Declaration Affidavit
05/23/2018	IN SUPPORT OF JUDGMENT RE WASHINGTON STATE COLLECTION LICENSE
05/23/2018	Motion for Default AND DEFAULT JUDGMENT
05/23/2018	Affidavit Declaration Confirmation of Service Party: Defendant FLOWERS, ERNIE; Defendant FLOWERS, DOE
05/23/2018	Notice TO SERVICE MEMBERS AND THEIR DEPENDENTS
05/23/2018	Complaint

[View more events](#)



Case Manager Home

myOdyssey

Searches

Find a Case

Find a Party

Find a Hearing

Find a Group

Protection Orders

Find a Protection Order

Court Administration

View Calendar

View Resource Schedule

Find Available Sessions

Judgment Proofing

Fees & Finances

Find an Account

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Find a Disbursement

Garnishment Processing

Find Suspense Account

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List Manager

Workflow

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Reports

Local Reports

Run a Local Report

Enterprise Custom Rep

Run an Enterprise Custom

Configure

User Preferences

Customize Navigation Bar

18-2-50518-11

Summary Detail Parties Events Service Hearings Conditions Causes Disposition Time Subs Financial Prof Orders Warrants Bonds Exhibits Documents Appeals Save

CAVALRY SPV I, LLC vs DARIN L. TRUAX et al

Status Completed/Re-Completed

Filed 05/23/2018

Type COM Commercial

County Franklin

Judicial Officer

Financial Balance 0.00

statistical closure

06/23/2018

Judgment/Order/Decree Filed

Case CROSS reference

JIS/SCOMIS Case Number

18-2-50518-9

SCOMIS Judgment Number

18-9-00647-1

flags & actions due

Most Recent Events

05/23/2018	Case Resolution Default Judgment
05/23/2018	General Recovery (Judicial Officer: Shea-Brown, Jacqueline)
05/23/2018	Ex Parte Action With Order (Judicial Officer: Shea-Brown, Jacqueline)
05/23/2018	Order of Default AND DEFAULT JUDGMENT
05/23/2018	Declaration Affidavit IN SUPPORT OF JUDGMENT RE WASHINGTON STATE COLLECTION LICENSE
05/23/2018	Motion for Default AND DEFAULT JUDGMENT
05/23/2018	Affidavit Declaration Certificate Confirmation of Service Party: Defendant TRUAX, DARIN L.; Defendant TRUAX, DOE TO SERVICE MEMBERS AND THEIR DEPENDENTS
05/23/2018	Complaint View more events



Case Manager Home

myOdyssey

Searches

- Find a Case
- Find a Party
- Find a Hearing
- Find a Group

Protection Orders

Find a Protection Order

Court Administration

View Calendar

View Resource Schedule

Find Available Sessions

Judgment Proofing

Fees & Finances

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Local Reports

Run a Local Report

Enterprise Custom Rep

Run an Enterprise Custom

Configure

User Preferences

Customize Navigation Bar

Address Type

Forms Printer

Image Printer

Spelling Checker

18-2-50519-11

Summary Detail Parties Events Service Hearings Conditions Causes Disposition Time Stats Financial Prot Orders Warrants Bonds Exhibits Documents Appeals Save Ext

LVNV FUNDING LLC vs MARCO FLORES

Status **Completed/Re-Completed**
 Filed 05/23/2018
 Type COW Commercial
 County Franklin
 Judicial Officer
 Financial Balance 0.00

statistical closure
 05/23/2018 Judgment/Order/Decree Filed

Case CROSS reference
 JIS/SCOMIS Case Number 18-2-50519-7
 SCOMIS Judgment Number 18-9-00644-7

Most Recent Events & Sessions

05/23/2018	Case Resolution Default Judgment
05/23/2018	General Recovery (Judicial Officer: Shea-Brown, Jacqueline)
05/23/2018	Ex Parte Action With Order (Judicial Officer: Shea-Brown, Jacqueline)
05/23/2018	Order of Default AND JUDGMENT
05/23/2018	Motion for Default AND JUDGMENT DECLARATION OF DEFAULT AND MILITARY MEMBERSHIP
05/23/2018	Affidavit Declaration Certificate Confirmation of Service Party: Defendant FLORES, MARCO
05/23/2018	Complaint
05/23/2018	Summons

flags & actions due



- Case Manager Home
- myOdyssey
- Searches
- Find a Case
- Find a Party
- Find a Hearing
- Find a Group
- Protection Orders
- Find a Protection Order
- Court Administration
- View Calendar
- View Resource Schedule
- Find Available Sessions
- Judgment Proofing
- Fees & Finances
- Find an Account
- Find a Receipt
- Find a Disbursement
- Garnishment Processing
- Find Suspense Account
- Bonds
- Find a Bond
- Warrants
- Find a Warrant
- List Manager
- Workflow
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- Reports
- Local Reports
- Run a Local Report
- Enterprise Custom Rep
- Run an Enterprise Custom Configure
- User Preferences
- Customize Navigation Bar
- Address Type
- Print

18-2-50520-11

Summary | Detail | Petites | Events | Service | Hearings | Conditions | Causes | Disposition | Time Sds | Financial | Prot. Orders | Warrants | Bonds | Exhibits | Documents | Appeals | Save | Ex

CAPITAL ONE BANK vs JUAN M. CERVANTES

Status **Completed/Re-Completed**

Filed 05/23/2018

Type COM Commercial

County Franklin

Judicial Officer

Financial Balance 0.00

statistical closure

05/23/2018

Judgment/Order/Decree Filed

Case Cross reference

JIS/SCOMIS Case Number

18-2-50520-1

SCOMIS Judgment Number

18-9-00660-1

Flags & actions due

Case Summary
05/23/2018 : Case Resolution Default Judgment
05/23/2018 : General Recovery (Judicial Officer: Shea-Brown, Jacqueline)
05/23/2018 : Ex Parte Action With Order: (Judicial Officer: Shea-Brown, Jacqueline)
05/23/2018 : Order of Default
AND JUDGMENT
05/23/2018 : Motion for Default
AND JUDGMENT DECLARATION OF DEFAULT AND MILITARY MEMBERSHIP
05/23/2018 : Affidavit Declaration Certificate Confirmation of Service
Party: Defendant CERVANTES, JUAN M.
05/23/2018 : Complaint
05/23/2018 : Summons



Case Manager Home

myOdyssey

Searches

Find a Case

Find a Party

Find a Hearing

Find a Group

Protection Orders

Find a Protection Order

Court Administration

View Calendar

View Resource Schedule

Find Available Sessions

Judgment Proofing

Fees & Finances

Find an Account

Find a Receipt

Find a Disbursement

Garnishment Processing

Find Suspense Account

Bonds

Find a Bond

Warrants

Find a Warrant

List Manager

Workflow

Queries

Reports

Local Reports

Run a Local Report

Enterprise Custom Rep

Run an Enterprise Custom

Configure

User Preferences

Customize Navigation Bar

Address Type

Forms Printer

Image Printer

Spelling Checker

18-2-50521-11
 Summary Detail Parties Events Service Hearings Conditions Causes Disposition Time Steps Financial Prot Orders Warrants Bonds Exhibits Documents Appeals Save Exit

HUAN GUO vs KRISTY LOUZHAN

Status Active
 Filed 05/23/2018
 Type UND Residential Unlawful Detainer
 County Franklin
 Judicial Officer
 Financial Balance 0.00

Case CROSS Reference
 JIS/SCOMIS Case Number
 18-2-50521-9

Flags & actions due

Most Recent Events & Hearings

05/31/2018	Return of Service AFFIDAVIT 66-17 Party: Defendant LOUZHAN, KRISTY
05/31/2018	Ex Parte Action With Order: Judicial Officer: Eblom, Alexander Carl
05/31/2018	Order MOTION AND AFFIDAVIT FOR SERVICE BY POSTING AND MAILING
05/31/2018	Summons AMENDED EVICTION Party: Defendant LOUZHAN, KRISTY
05/31/2018	Statement PAYMENT OR SWORN REQUIREMENT (AMENDED)
05/23/2018	Statement PAYMENT OR SWORN REQUIREMENT
05/23/2018	Complaint
05/23/2018	Summons



- Case Manager Home
- myOdyssey
- Searches
 - Find a Case
 - Find a Party
 - Find a Hearing
 - Find a Group
- Protection Orders
 - Find a Protection Order
- Court Administration
 - View Calendar
 - View Resource Schedule
 - Find Available Sessions
 - Judgment Proofing
- Fees & Finances
 - Find an Account
 - Find a Receipt
 - Find a Disbursement
 - Garnishment Processing
 - Find Suspense Account
- Bonds
 - Find a Bond
- Warrants
 - Find a Warrant
- List Manager
- Workflow
 - Queues
 - Reports
- Local Reports
 - Run a Local Report
- Enterprise Custom Rep
 - Run an Enterprise Custom
 - infigure

18-2-50522-11

Summary Detail Parties Events Service Hearings Conditions Cases Disposition Time Subs Financial Prot. Orders Warrants Bonds Exhibits Documents Appeals Save Exit

IN RE THE APPOINTMENT OF A SPECIAL DEPUTY PROSECUTING ATTORNEY

Status **On Discretionary Review/Stay**
 Filed 05/24/2018
 Type **MSCZ Miscellaneous - Civil**
 County **Franklin**
 Judicial Officer

Financial Balance 0.00

case cross reference
 JISISCOMIS Case Number
 18-2-50522-7

flags & actions due

- 05/08/2018 - Transmittal Letter Copy Filed
- 06/08/2018 - Notice of Discretionary Review to Supreme Court
- 05/22/2018 - Order

OF APPOINTMENT - Executed by all Judges of the Benton and Franklin Counties Superior Court



Case Manager Home

myOdyssey

Searches

Find a Case

Find a Party

Find a Hearing

Find a Group

Protection Orders

Find a Protection Order

Court Administration

View Calendar

View Resource Schedule

Find Available Sessions

Judgment Proofing

Fees & Finances

Find an Account

Find a Receipt

18-2-50522-11

Summary Detail Parties Events Service Hearings Conditions Contests Disposition Time Stip Financial Prot. Orders Warrants Bonds Exhibits Documents Appeals

ESigs Forms Save Exit

IN RE THE APPOINTMENT OF A SPECIAL DEPUTY PROSECUTING ATTORNEY

Type: MSC2 Miscellaneous - Civil

Style: IN RE THE APPOINTMENT OF A SPECIAL DEPUTY PROSECUTING ATTORNEY

Type: MSC2 Miscellaneous - Civil

Subtype: _____

File Date: 08/24/2018

Security: _____

Lead Case

Case Assignment

Case Number: _____

Court: _____

Date Assigned: 08/24/2018

Judicial Officer: _____

Created: 08/24/2018 12:50 PM Killian, Michael
Judicial Officer manually assigned.

Case Cross Reference Number: _____

JISCOMIS Case Number: 18-2-50522-7

Case Status: _____

08/08/2018 On Discretionary Review/Stay

Related Cases

Case Files

Additional Barcodes



Case Manager Home

myOdyssey

Searches

Find a Case

Find a Party

Find a Hearing

Find a Group

Protection Orders

Find a Protection Order

Court Administration

View Calendar

View Resource Schedule

Find Available Sessions

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Find a Receipt

Find a Disbursement

Garishment Processing

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Bonds

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Warrants

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Queues

Reports

Local Reports

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Enterprise Custom Rep

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User Preferences

Customize Navigation Bar

Address Type

Forms Printer

Image Printer

Spelling Checker

18-2-50523-11

Summary Detail Parties Events Service Hearings Conditions Causes Disposition Time Stab Financial Prot. Orders Warrants Bonds Exhibits Documents Appeals Save Ex

STARVISTA, LLC vs EDWARD A. CAICEDO OBREGON et al

Status Active
Filed 05/24/2018
Type UND Residential Unlawful Detainer
County Franklin
Judicial Officer
Financial Balance 0.00

Case CROSS REFERENCE
JISISCOMIS Case Number
18-2-50523-5

Flags & actions due

05/31/2018	Order	EX Parte Action With Order (Judicial Officer: Elstrom, Alexander Cst)
05/31/2018	Summons	MOTION AND AFFIDAVIT FOR SERVICE BY POSTING AND MAILING
05/31/2018	Statement	AMENDED EVICTION Party: Defendant CAICEDO OBREGON, EDWARD A.; Defendant AGUIRE, YOLIMA
05/31/2018	Return of Service	AMENDED PAYMENT OR SWORN REQUIREMENT Party: Attorney CELSKI, JASON ALLAN
05/24/2018	Complaint	PAYMENT AND SWORN REQUIREMENT Party: Attorney CELSKI, JASON ALLAN
05/24/2018	Summons	

Exhibit D
to
Spanner Declaration

FILED
FRANKLIN CO CLERK

2018 MAR 21 PM 1:01

MICHAEL J. KILLIAN

BY Xu DEPUTY

1 18-2-50285-11
2 CMP 2
3 Complaint
4 2790712



6 IN THE SUPERIOR COURT OF WASHINGTON FOR FRANKLIN COUNTY

7
8 THE JUDGES OF THE BENTON AND
9 FRANKLIN COUNTIES SUPERIOR
10 COURT: JUDGE JOE BURROWES, JUDGE
11 ALEX EKSTROM, JUDGE CAMERON
12 MITCHELL, JUDGE CARRIE RUNGE,
13 JUDGE JACQUELINE SHEA-BROWN,
14 JUDGE BRUCE SPANNER AND JUDGE
15 SAM SWANBERG,

12 Plaintiffs,

13 vs.

14 MICHAEL J. KILLIAN, FRANKLIN
15 COUNTY CLERK AND CLERK OF THE
16 SUPERIOR COURT,

16 Defendant.

NO. 18 250285 11

COMPLAINT FOR WRIT OF
MANDAMUS

17 I. PARTIES & JURISDICTION

18
19 1.1 Plaintiffs are the Washington Constitution Article IV, Section 6, Judges of the Benton &
20 Franklin Counties Superior Court. They are empowered by Wash. Const. Art. IV, Sec. 24 to establish
21 uniform rules for the government of the superior courts, and they are authorized by the Rules of General
22 Application, GR 7(a), 7(e)(2), and Civil Rules for Superior Court, CR 83 of the Washington Court
23 Rules, to make and enforce local rules and emergency rules of the superior court.

24
25 1.2 Defendant is Michael J. Killian, the Franklin County Clerk, a resident of Franklin
26 County, who, by virtue of his office, is the clerk of the superior court for Franklin County.

COMPLAINT FOR WRIT OF MANDAMUS - 1
Cause No.:

LAW, LYMAN, DANIEL,
KAMERRER & BOGDANOVICH, P.S.
ATTORNEYS AT LAW
2674 R.W. JOHNSON RD. TUMWATER, WA 98512
P.O. BOX 11880 OLYMPIA, WASHINGTON 98508-1880
(360) 754-3480 FAX (360) 357-3511

Exhibit D

1 1.3 Jurisdiction over the claims herein exists by virtue of Wash. Const. Art. IV, Sec. 6, and
2 RCW 7.16.160.

3 1.4 Jurisdiction over the defendant exists pursuant to RCW §§ 4.12.020 and 4.12.025.

4 1.5 Venue in the Franklin County Superior Court is proper.
5

6 II. STATEMENT OF FACTS

7 2.1 Michael J. Killian announced in December of 2017, that he would operate a "paperless"
8 office and would no longer maintain paper files of Franklin County Superior Court cases and files.

9 2.2 Plaintiffs adopted a local rule of court (Local General Rule 3), requiring the Benton and
10 Franklin Counties clerks to keep and maintain paper files for all cases and file types, by forthwith filing
11 all pleadings and papers in paper files, except as may be otherwise authorized in writing by the Superior
12 Court. Copies of LGR 3 and its supporting Judicial Resolution (No. 18-001), and related Order, are
13 provided as Exhibits A, B & C to the Declaration of Judge Bruce Spanner, filed with plaintiffs'
14 contemporaneous Motion for Order to Show Cause, and the same are incorporated herein as if fully set
15 forth.
16

17 2.3 The plaintiffs directed the defendants to continue keeping and maintaining paper files
18 until such time as the Court can assure that a paperless system will allow it to effectively serve the Court
19 and the community. Michael J. Killian has refused the plaintiffs' direction.
20

21 III. CAUSE OF ACTION AND RELIEF REQUESTED

22 3.1 The superior court clerk is required to file all papers delivered to him for that purpose in
23 any action or proceeding in the court as directed by court rule or statute, pursuant to RCW 2.32.050(4);
24 and in the performance of his duties, to conform to the direction of the court, pursuant to RCW
25 2.32.050(9).
26

Exhibit E
to
Spanner Declaration

ORIGINAL FILED

20 JAN 16 2018

MICHAEL J. KILLIAN
FRANKLIN COUNTY CLERK

**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR BENTON AND FRANKLIN COUNTIES**

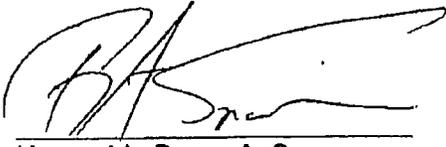
IN THE MATTER OF ADOPTING)
EMERGENCY LOCAL COURT RULE)
)
)
_____)

ORDER

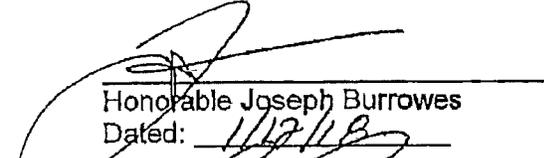
Pursuant to General Rule 7 (a) (1) and 7 (e) (2), the Superior Court of the State of Washington in and for Benton and Franklin Counties hereby orders that the Local Rule of Court, LGR 3, attached hereto and incorporated by herein, is adopted and an emergency and permanent local rule effective on the date it is hereafter filed with the Washington Administrative Office of the Court.



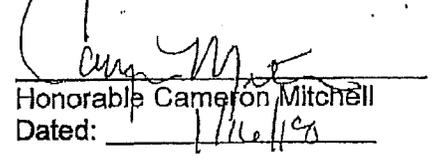
Honorable Alexander C. Ekstrom
Presiding Judge
Dated: 1/12/2018



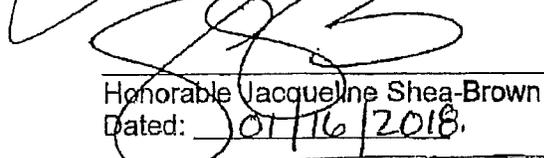
Honorable Bruce A. Spanner
Assistant Presiding Judge
Dated: 1/16/18



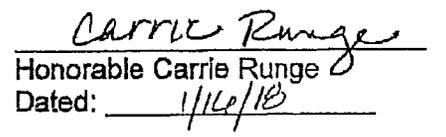
Honorable Joseph Burrowes
Dated: 1/12/18



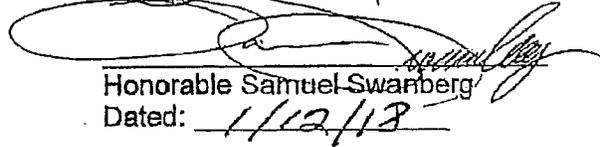
Honorable Cameron Mitchell
Dated: 1/16/18



Honorable Jacqueline Shea-Brown
Dated: 01/16/2018



Honorable Carrie Runge
Dated: 1/16/18



Honorable Samuel Swanberg
Dated: 1/12/18

SCANNED

Local General Rule 3
FILES AND "PAPERLESS COURT"

- (a) The clerks of Benton and Franklin Counties shall keep and maintain paper files for all cases and file types, by forthwith filing all pleadings and papers in paper files, except as may be otherwise authorized in writing by the Court.
- (b) The clerks of Benton and Franklin Counties shall make up-to-date paper files for all cases and case types available to the Court, as directed by its judicial officers.
- (c) While paperless courts are preferable, they should only be implemented after careful consideration of the impacts upon the Court, the legal community and the public, and only after case management systems have been configured so all of their capabilities are realized. Accordingly, neither clerk shall attempt or purport to operate with "paperless" processes unless and until the same has been approved in writing by the court. Permission will not be granted unless the Court is satisfied that appropriate workflows and work queues have been implemented, that equipment and processes have been acquired and developed to facilitate electronic signatures, and that the paperless processes do not adversely affect the Court's ability to conduct court proceedings and other court functions. As directed by the Court, the Clerks shall work diligently, collaboratively and harmoniously with the Court to satisfy all of the conditions precedent to "paperless" court, as set forth above. In so doing, the clerks shall conform to the direction of the Court.
- (d) Pursuant to GR7(e) this rule shall become effective immediately upon filing the same with the Washington Administrative Office of the Courts.

[Adopted Effective January 16, 2018]

JAN 16 2018

MICHAEL J. KILLIAN
FRANKLIN COUNTY CLERK

**BENTON & FRANKLIN COUNTIES SUPERIOR COURT
JUDICIAL RESOLUTION NO. 18-001
ADOPTION OF LOCAL GENERAL RULE 3**

The Judges of the Superior Court in and for Benton and Franklin Counties, find that:

1. The Franklin County Clerk informed the Court in December 2017 that beginning January 2, 2018, he would operate a "paperless" office and no longer maintain paper files;
2. The Court directed the Clerk to continue making and maintaining paper files until such time it can ensure a paperless system will allow it to effectively serve the community, but the Clerk refused;
3. While the Court agrees paperless courts are preferable, they should only be implemented after careful consideration of the impacts upon the Court, the legal community and the public;
4. Addressing these impacts on the Court requires implementation of work flow and work queue functionality of the case management system. Work flows and work queues are integral to, and facilitate paperless process, by, among other things, allowing electronic signatures to be affixed to documents;
5. Art. IV, Sec. 26, Wash. Const. provides that the "county clerk shall be by virtue of his office, clerk of the superior court";
6. Clerks have been delegated the task of keeping the records, files, and other books and papers appertaining to the court pursuant to RCW 2.32.050 (3) and RCW 36.23.030;
7. But, "[t]he superior court "has power ... [t]o control, in furtherance of justice, the conduct of its ministerial officers," such as county clerks. RCW 2.28.010(5). *Recall of Riddle*, 189 Wn.2d 565, 583 (2017). The Clerk's function is "ministerial". *Swanson v. Olympic Peninsula Motor Coach Co.*, 190 Wash. 35, 38, 66 P.2d 842 (1937)." Quoting further from the *Riddle* decision, "[t]herefore, when acting as the clerk of the superior court, the county clerk *has always been* required "[i]n the performance of his or her duties to conform to the direction of the court." (quoting RCW 2.32.050(9), emphasis added), *Recall of Riddle at 583*.

8. Clerks are required to file all papers delivered to him or her for that purpose in any action or proceeding in the court, *as directed by court rule or statute*, pursuant to RCW 2.32.050 (4);
9. Clerks are required to enter the court's orders, judgments and decrees, *under the direction of the court* pursuant to RCW 2.32.050 (6);
10. Clerks are required to *conform to the direction of the court* in the performance of their duties pursuant to RCW 2.32.050 (9);
11. Art. IV, Sec. 24, Wash. Const. provides that "judges of the superior courts, shall from time to time, establish uniform rules for the government of the superior courts";
12. The constitutional authority of the superior courts to adopt local rules is codified in GR 7;
13. The Attorney General has opined that the superior courts may adopt a local rule directing the manner in which clerks file pleadings and documents in case files. Op.Atty.Gen.2001, No. 6, September 10, 2001; and
14. An emergency exists which requires this local rule as one that proscribes internal management of the court, and does not affect courtroom procedures. Accordingly, the time limitations set forth in GR 7(a) do not apply to this rule.
15. This rule is adopted a permanent rule, as authorized by GR 7(e).

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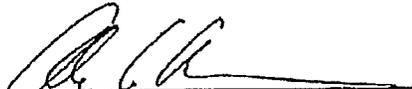
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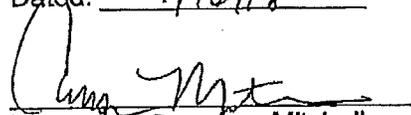
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The Superior Court of the State of Washington in and for Benton County **HEREBY ORDERS**, pursuant to General Rule 7(e), that Local General Rule 3, attached hereto and incorporated herein by reference, is adopted effective immediately upon filing with the Administrative Office of the Courts.


Honorable Alexander C. Ekstrom
Presiding Judge
Dated: 1/12/18

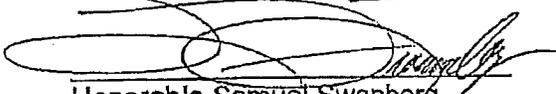

Honorable Bruce A. Spanner
Assistant Presiding Judge
Dated: 1/16/18


Honorable Joseph Burrowes
Dated: 1/12/18


Honorable Cameron Mitchell
Dated: 1/16/18


Honorable Jacqueline Shea-Brown
Dated: 1/16/2018

Carrie Runge
Honorable Carrie Runge
Dated: 1/16/18


Honorable Samuel Swanberg
Dated: 1/12/18

APPENDIX B

FILED
SUPREME COURT
STATE OF WASHINGTON
6/18/2018 12:29 PM
BY SUSAN L. CARLSON
CLERK

No. 95945-5

Franklin County Superior Court Cause No. 18-2-50522-11
IN THE SUPREME COURT OF THE STATE OF WASHINGTON

IN RE THE APPOINTMENT OF A SPECIAL DEPUTY
PROSECUTING ATTORNEY, SHAWN P. SANT AND FRANKLIN
COUNTY,

Appellants/Petitioners

DECLARATION OF PATRICIA AUSTIN, COURT
ADMINISTRATOR, BENTON & FRANKLIN COUNTIES
SUPERIOR COURT

W. Dale Kamerrer, WSBA No. 8218
Attorney for the Judges of the Benton
and Franklin Counties Superior Court

LAW LYMAN DANIEL KAMERRER &
BOGDANOVICH, P.S.
P.O. Box 11880
Olympia, WA 98508
Phone: (360) 754-3480
Email: dkamerrer@lldkb.com

PURSUANT TO RCW 9A.72.085, Patricia Austin declares as follows:

1. I am competent to testify in all respects, and I make this declaration from my personal knowledge.
2. I am the Court Administrator for the Benton & Franklin Counties Superior Court.
3. On May 22, 2018, at approximately 3:30 p.m., I took the Order of Appointment which is attached hereto as Exhibit A to the office of the Franklin County Clerk. I spoke to the Clerk, Michael Killian, and his Chief Deputy, Ruby Ochoa, and told them I had an administrative order for filing in the 2018 Civil Administrative file. Ms. Ochoa said she would take care of it. I had no more conversation with either Mr. Killian or Ms. Ochoa about the Order of Appointment.
4. On May 25, 2018, I checked the 2018 Civil Administrative file in the Odyssey system, and printed off a copy of the Order of Appointment filed on May 22, 2018. I did that so the Order could be filed with the County Auditor. The Order of Appointment had been correctly filed in the Civil Administrative file, and it did not have a case number on it.

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

DATED at Kennecook, Washington, this 15th day of June 2018.

Patricia Austin
PATRICIA AUSTIN (a copy of my signature may
be accepted as the original)

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IN THE SUPERIOR COURT OF WASHINGTON FOR FRANKLIN COUNTY

**IN RE THE APPOINTMENT OF A
SPECIAL DEPUTY PROSECUTING
ATTORNEY**

ORDER OF APPOINTMENT

This matter came before the above-entitled Court for consideration of the appointment of a Special Deputy Prosecuting Attorney for Franklin County, pursuant to RCW 36.27.030. The Court makes the following Findings of Fact related thereto:

1. In relation to the action entitled *The Judges of the Benton and Franklin Counties Superior Court: Judge Joe Burrowes, Judge Alex Ekstrom, Judge Cameron Mitchell, Judge Carrie Runge, Judge Jacqueline Shea-brown, Judge Bruce Spanner and Judge Sam Swanberg, Plaintiffs, vs. Michael Killian, Franklin County Clerk and Clerk of the Superior Court, Defendants*, Franklin County Superior Court No. 18-2-50285-11, as contemplated by RCW 36.27.030, the Prosecuting Attorney of Franklin County is unable to discharge the duties of his office due to a disability arising from the requirements and limitations of Rules of Professional Conduct, Rule 1.7; and

2. The Attorney General of the State of Washington has declined to represent the plaintiffs in the action referred to above; and

3. W. Dale Kamerrer, WSBA #8218, is a duly admitted and practicing attorney-at-law and resident of the State of Washington, and is qualified to discharge the duties of the Prosecuting Attorney of Franklin County in relation to the above-referenced action, and has been performing the duties of the attorney for the plaintiffs in said action pursuant to

1 appointment by the Franklin County Prosecuting Attorney to serve as a Special Deputy
2 Prosecutor; and

3 4. Mr. Kamerrer shall receive such reasonable compensation for the professional
4 services he renders to the plaintiffs as may be fixed and ordered by the court to be paid by
5 Franklin County.

6 Based upon the foregoing Findings of Fact, it is now hereby Ordered:

7 1. W. Dale Kamerrer is hereby Appointed as a Special Deputy Prosecuting Attorney
8 to represent the plaintiffs in the action identified above.

9 2. Payment of compensation for the professional services rendered shall be subject
10 to further order of the court.

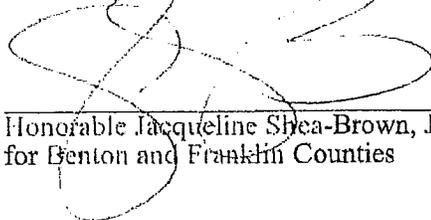
11 Dated this 21st day of May 2018.

12
13 
14 Honorable Alex Ekstrom, Administrative Presiding Judge,
15 Judge of the Superior Court for Benton and Franklin Counties

16 
17 Honorable Bruce Spanner, Assistant Administrative Presiding Judge,
18 Judge of the Superior Court for Benton and Franklin Counties

19 
20 Honorable Joseph Burrowes, Judge of the Superior Court
21 for Benton and Franklin Counties

22 
23 Honorable Cameron Mitchell, Judge of the Superior Court
24 for Benton and Franklin Counties

25 
26 Honorable Jacqueline Shea-Brown, Judge of the Superior Court
for Benton and Franklin Counties

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Carrie Runge
Honorable Carrie Runge, Judge of the Superior Court
for Benton and Franklin Counties

Samuel Swanberg
Honorable Samuel Swanberg, Judge of the Superior Court
for Benton and Franklin Counties

APPENDIX C

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

IN RE THE APPOINTMENT OF A
SPECIAL DEPUTY PROSECUTING
ATTORNEY

Shawn P. Sant and Franklin County,

Appellants/Petitioners.

NO. 95945-5

DECLARATION OF
PAMELA B. LOGINSKY

DECLARATION

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.

1. I am a duly appointed, qualified and acting Special Deputy Prosecuting Attorney in and for Franklin County, representing Franklin County Prosecuting Attorney Shawn P. Sant and Franklin County in this matter.

2. I was admitted to the practice of law in Washington in 1988. The vast majority of my legal career has been devoted to appellate practice. I served as a clerk to deceased Washington Court of Appeals Judge Robert Winsor, before joining the Kitsap County Prosecuting Attorney's Office. I spent eight of my ten years in the Kitsap County Prosecuting Attorney's Office as the appeals deputy prosecuting attorney. I have been employed by the Washington Association of Prosecuting

Attorneys (WAPA) as the Staff Attorney. My duties include serving as a special deputy prosecuting when a county needs appellate assistance, writing *amicus curiae* briefs, presenting training on a number of topics, including appellate practice, staffing the WAPA Appellate Committee, and coordinating the WAPA Appeals Resource Program.

3. I am a member of the Washington Appellate Lawyers Association. I am a member of the Association of Government Attorneys in Capital Litigation and was honored by the association with the Regional Vice President's Award for Outstanding Appellate Advocacy Award for District One (1998). Division Two of the Washington Court of Appeals requested my participation as an instructor in an appellate practice CLE in 1998.

4. In my 18-years of service as WAPA's staff attorney I have become familiar with when prosecuting attorneys appoint RCW 36.27.040 special deputy prosecuting attorneys. Prosecuting attorneys will frequently appoint someone with specialized knowledge, such as bond counsel, as a special deputy prosecuting attorney. Prosecuting attorneys will also appoint someone as a special deputy prosecuting attorney when their office's workload is unusually heavy, such as when there is a sudden increase in the number of appeals. Prosecuting attorneys may appoint someone as a special deputy prosecuting attorney to provide a second opinion when a public official disagrees with the prosecuting attorney's legal advice or when an outside attorney may increase the chances of resolving an intra-client dispute.

Attached to this declaration as exhibit A are true and correct copies of declarations prepared by current and former prosecuting attorneys or deputy prosecuting attorneys that describe their office's use of special deputy prosecuting attorneys.

5. A prosecuting attorney may also appoint someone as a special deputy prosecuting attorney when the prosecuting attorney, himself or herself alone, or the entire office has a disqualifying disability. In such cases, the fact of the conflict is included in the special deputy appointment. A true and correct copy of an appointment of special deputy in a conflict situation is attached to this declaration as exhibit B.

6. Over my career I have handled well over 200 appeals. These appeals include appeals as of a matter of right, discretionary reviews, personal restraint petitions, and original actions against state officers.

7. The Order of Appointment that is at issue in this case is similar to other court orders I have dealt with over my career in that it:

- A. Identifies the court from which it emanates: "In the Superior Court of Washington for Franklin County";
- B. Identifies the case or matter in which it is entered: "In re the Appointment of a Special Deputy Prosecuting Attorney";
- C. Identifies what the document is: "Order of Appointment";
- D. Carries the typical introductory paragraph: "This matter came before the above-entitled Court for consideration of the appointment of a Special Deputy Prosecuting Attorney for Franklin County, pursuant to RCW 36.27.030.";
- E. Contains findings of fact: "The Court makes the following Findings

of Fact related thereto”;

- F. Is dated and signed by a judicial officer;
- G. Appears on an attorney’s pleading paper: “Law, Lyman, Daniel, Kamerrer & Bogdanovich, P.S., Attorneys at Law.....”; and
- H. Was submitted to the Franklin County Clerk’s Office for filing.

8. The Order of Appointment that is at issue in this case is different from other court orders I have dealt with over my career in that it:

- A. Does not identify who brought the matter before the court;
- B. Does not identify what evidence was considered in making the Findings of Fact;
- C. Contains no conclusions of law;
- D. Carries the signature of multiple superior court judges;
- E. Does not identify who prepared the order; and
- F. Does not identify to whom the order was distributed.

9. I am aware that there are two ways in which to seek review from a superior court order: appeal and discretionary review. RAP 2.1. Both an appeal and discretionary review are initiated by filing a notice with the superior court clerk. See RAP 5.1. A superior court clerk who receives a notice is required to file a copy of the notice of appeal or notice for discretionary review with the appellate court designated in the notice. RAP 5.4(a). Before a superior court clerk can comply with RAP 5.4(a), a cause number must be assigned to the order from which review is being sought as the document cannot be tracked or easily transferred to the appellate

court without a superior court cause number.

10. I, acting through members of the Franklin County Prosecuting Attorney's Office, advised the clerk that a notice of appeal/notice of discretionary review (hereinafter "notice") would be filed with respect to the Order of Appointment. The clerk was asked for the cause number that was assigned to the order by the clerk in order to prepare the notice. I was informed that the Order of Appointment was currently in the civil administrative file. The civil administrative file was described to me as an unnumbered superior court file that contained documents such as certificates of compliance from appointed counsel, orders denying motions for waivers of fees, orders denying motions for temporary DV orders, orders adopting court rules or closing the courthouse due to inclement weather and other similar documents.

11. It appeared to me that assigning a cause number to the civil administrative file so that a notice of appeal could be processed was not an option because the civil administrative file, in addition to the Order of Appointment, contained orders denying motions in five other cases – *Hernandez v. Rivera*, *Allen v. Trinidad*, *Capristo v. Pandon*, *Ponce-Ramirez v. Ponce*, and *Richardson v. Tanner*. I, acting as legal advisor to the clerk, recommended that the Order of Appointment be assigned a discrete civil cause number to facilitate the processing of the notice. Aware that the clerk must designate parties when assigning a civil cause number, I recommended that the clerk designate W. Dale Kamerrer as the petitioner and that

the respondents be identified as Franklin County and Shawn Sant, the Franklin County Prosecuting Attorney. I made the recommendation regarding the identity of the plaintiff/petitioner because the Order of Appointment is on Mr. Kamerrer's pleading paper and Mr. Kamerrer is the beneficiary of the order. My recommendation as to the identity of the respondents/defendants was based upon the fact that the Order of Appointment adversely affected the rights of both Franklin County and Prosecutor Sant and that the notice would identify Franklin County and Prosecutor Sant as the appellants/petitioners.

12. The clerk, acting upon the legal advice from the Franklin County Prosecuting Attorney's Office, stamped a civil cause number on the Order of Appointment. The clerk made no other marks on the Order of Appointment. The clerk did not alter the file stamp on the Order of Appointment. The clerk did not alter any of the verbiage of the Order of Appointment.

13. Upon receiving a cause number from the superior court clerk, I prepared a Notice of Appeal/Notice of Discretionary Review for the Order of Appointment. I prepared the hybrid document because I could not locate any court case, court rule, or treatise that provided me guidance on whether the Order of Appointment was reviewable as of right or only via discretionary review. I also prepared and ultimately filed with the Washington Supreme Court a Motion to Establish Appealability and a contingent RAP 2.3(b) Motion for Discretionary Review.

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14. On June 18, 2018, Mr. Kamerrer filed an answer to the Motion to Establish Appealability, to the contingent RAP 2.3(b) Motion for Discretionary Review and to the other motions filed by Franklin County and Prosecutor Sant. The answer contends that the step the clerk took in assigning a cause number so that the notice of appeal/notice of discretionary review could be filed was improper and violated a criminal law. The answer further contends that the Order of Appointment is not a "trial court decision," RAP 1.1(a), and thus is not subject to an appeal or discretionary review. The answer further requests an award of attorney's fees and costs for a frivolous and improper appeal.

15. All actions taken in this case by myself, including the legal advice I provided to the clerk, are directed solely toward obtaining review by an appellate court of the Order of Appointment. If, as the judges' claim, the Order of Appointment is not a "trial court decision," RAP 1.1, review may only be obtained in the Washington Supreme Court through an original action pursuant to Washington Constitution, Article IV, section 4, RAP 16.1(b) and RAP 16.2, and RCW 7.16.290 and 7.16.030. I have, therefore, filed a contingent Petition Against State Officers.

16. I do not believe that I have filed a frivolous or improper appeal from the Order of Appointment. I carefully researched the proper manner of obtaining review from the Order of Appointment and whether the Order of Appointment is an "administrative" document. If my initial notice was deficient, I have sought to correct the problem by filing the contingent Petition Against State Officers. Any

errors I may have made procedurally were not malicious.

17. Review of the Order of Appointment has not been sought for an improper purpose. I carefully researched the law regarding appointment of special prosecutors, the procedures required by due process before an order may be entered by a court that impacts the rights of others, the showing a court must make before it may expend public funds without an appropriation by the legislative branch, and the requirement that the court conduct its business in the open. This research convinced me that the Order of Appointment is void. My clients merely desire to ensure that taxpayer funds are only expended in accordance with the Washington Constitution and the budgets set by the legislative branch. My clients further desire that the voters of Franklin County are not disenfranchised by a court appointing someone other than the person they chose to be the county's legal counsel to serve as a lawyer to the municipal corporation.

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

Signed this 25th day of June, 2018, at Olympia, Washington.



PAMELA B. LOGINSKY, WSBA NO. 18096
Special Deputy Prosecuting Attorney
206 10th Avenue SE
Olympia, WA 98501
Phone: 360-753-2175
E-mail: pamloginsky@waprosecutors.org

APPENDIX D

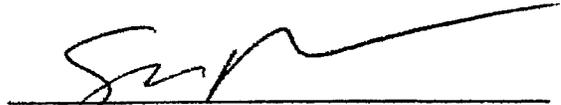
- 1 6. I have explicitly and repeatedly informed Mr. Kamerrer that his continued
2 representation of the judges in 18-2-50285-11 was not authorized and that the Writ
3 filed under that cause number was ultra vires. There can be no claim under the
4 doctrine of quantum meruit for ultra vires action. *Failor's Pharmacy v. Dep't of Soc.*
5 *& Health Servs.*, 125 Wn.2d 488, 499, 886 P.2d 147, 153 (1994). *See also H.S.*
6 *Turner Inv. Co. v. City of Seattle*, 70 Wash. 201, 207-08, 126 P. 426, 428 (1912);
7 *Criswell v. Bd. of Directors of Everett Sch. Dist. No. 24*, 34 Wash. 420, 431, 75 P.
8 984, 987 (1904) (a contractor cannot recover under quantum meruit for an ultra vires
9 action).
- 10 7. Since May 22, 2018, the Clerk's attorney Heather Yakely continues to respond to the
11 mandamus action in No. 18-2-50285-11. For the period of May 23 through June 13,
12 Ms. Yakely's billing summary shows 15.9 hours of legal work to be paid by the
13 County. While the mandamus matter is stayed by this Court, Ms. Yakely has not yet
14 prepared or charged the County for a response to the judges' Motion for Summary
15 Judgment.
- 16 8. Special Deputy Prosecutor Pam Loginsky has reached out to the Attorney General's
17 Office to inquire whether they would be willing to represent the Benton Franklin
18 Superior Court Judges for all purposes related to the contingent original action
19 against state officers. My office has provided Assistant Attorney General Jeff Even
20 with the Supreme Court filings while the Attorney General's Office considers the
21 request.
- 22 9. Because Mr. Kamerrer's Answer failed to address the Motion to Confirm Identity of
23 Respondent, and because Mr. Kamerrer's communications suggested that he may
24 argue that the appropriate cause of action was a Writ, the Contingent Petition
25 Against State Officers was filed in an abundance of caution. However, it is the
26 County's position that the proper Respondent is Mr. Kamerrer alone and that there is
27 a right of appeal.
- 28 10. I have full confidence that the Benton-Franklin Superior Court judges bear no ill will
toward me or my office based upon my resorts to this Court to address the validity of
the Order of Appointment. I believe the judges can fairly preside over cases where I
and my office represent a party in a case, including all criminal cases.

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

3 6/25/2018

Pasco, WA

4 Date and Place


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28 Shawn P. Sant, #35535

APPENDIX D

SESSION LAWS

OF THE

STATE OF WASHINGTON

SESSION OF 1891.

COMPILED IN CHAPTERS, WITH MARGINAL NOTES,
BY ALLEN WEIR, SECRETARY OF STATE.

PUBLISHED BY AUTHORITY.

OLYMPIA, WASH.:
O. C. WHITE, STATE PRINTER.
1891.

CHAPTER LVII.

[S. B. No. 109.]

POWERS AND DUTIES OF CLERKS OF COURTS.

AN ACT in relation to the powers and duties of clerks of courts.

Be it enacted by the Legislature of the State of Washington:

SECTION 1. The office of the clerk of the superior court shall be kept at the county seat of the county of which he is clerk.

Office hours.

SEC. 2. Each clerk of a superior court shall keep his office open for the transaction of business on every judicial day, from eight to twelve in the forenoon and from one to five in the afternoon.

Seal.

Record.

To authenticate records.

SEC. 3. The clerk of the supreme court, and each clerk of a superior court, has power to take and certify the proof and acknowledgment of a conveyance of real property, or any other written instrument authorized or required to be proved or acknowledged, and to administer oaths in every case when authorized by law; and it is the duty of the clerk of the supreme court and of each county clerk for each of the courts for which he is clerk—1. To keep the seal of the court and affix it in all cases where he is required by law. 2. To record the proceedings of the court. 3. To keep the records, files and other books and papers appertaining to the court. 4. To file all papers delivered to him for that purpose in any action or proceeding in the court. 5. To attend the court of which he is clerk, to administer oaths, and receive the verdict of a jury in any action or proceeding therein, in the presence and under the direction of the court. 6. To keep the journal of the proceedings of the court, and, under the direction of the court, to enter its orders, judgments and decrees. 7. To authenticate by certificate or transcript, as may be required, the records, files or proceedings of the court, or any other paper appertaining thereto and filed with him. 8. To exercise the powers and perform the duties conferred and imposed upon him elsewhere by statute. 9. In the performance of his duties to conform to the direction of the court.

SEC. 4. The clerk of the supreme court, and each clerk

of a superior court, may have one or more deputies, to be ^{Deputies.} appointed by such clerk in writing and to continue during his pleasure. Such deputies have the power to perform any act or duty relating to the clerk's office that their respective principals have, and their respective principals are responsible for their conduct.

SEC. 5. Each clerk of a court is prohibited during his continuance in office from acting, or having a partner who acts, as an attorney of the court of which he is clerk.

Approved February 26, 1891.

CHAPTER LVIII.

[S. B. No. 105.]

MANNER OF COMMENCING CIVIL ACTIONS.

AN ACT relating to the manner of commencing civil actions.

Be it enacted by the Legislature of the State of Washington:

SECTION 1. Civil actions in the superior courts shall be commenced by filing a complaint with the clerk of the court. The clerk shall, at the time the complaint is delivered to him to be filed, indorse thereon a certificate of the filing thereof, showing the date of such filing. ^{Filing complaint.}

SEC. 2. At any time after the complaint is filed, the clerk must, upon request of the plaintiff, issue a summons. ^{Summons} The summons shall run in the name of the State of Washington, shall be directed to the defendant, shall set forth the name of the court in which the action is commenced, and the name[s] of the parties, plaintiff and defendant, and shall require the defendant to appear in said court and answer the complaint, and contain a notice that unless the defendant appear and answer within the time prescribed by law, the plaintiff will apply to the court for the relief demanded in the complaint. It shall be signed by the clerk, and have the seal of the court affixed. It may be substantially in the following form:

APPENDIX E

L A W S

OF

WASHINGTON TERRITORY,

ENACTED BY THE

LEGISLATIVE ASSEMBLY

IN THE YEAR 1879.

=====
Published by Authority.
=====

OLYMPIA:

C. B. BAGLEY, PUBLIC PRINTER.

1879.

AN ACT

TO ESTABLISH DISTRICT COURTS IN THE FIRST AND SECOND JUDICIAL DISTRICTS AND PLACES FOR HOLDING THE SAME.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That there shall hereafter be held in the first and second judicial districts regular terms of district courts in each year at the times and places hereinafter designated.

SEC. 2. Such courts shall be held: At Vancouver on the second Monday in March and the third Monday in October, and hold three weeks, unless sooner adjourned. At Olympia on the first Monday in February, and the third Monday in September, and hold three weeks unless sooner adjourned. At Kalama on the first Monday in June, and the first Monday in December, and hold two weeks unless sooner adjourned. At the county seat of Pacific county on the second Monday in August, and hold two weeks unless sooner adjourned. At the county seat of Lewis county, on the second Monday in January, and hold three weeks unless sooner adjourned. At Walla Walla on the first Monday in May, and the second Monday in November, and hold three weeks unless sooner adjourned: *Provided,* That the next term of the court at Walla Walla shall be held on the third Monday in November, 1879. At Dayton on the third Monday in June, and the second Monday in January, and hold two weeks unless sooner adjourned. At Colfax on the first Monday in June, and the second Monday in December, and hold two weeks unless sooner adjourned. At Yakima city on the first Monday in April, and the second Monday in October, and hold two weeks unless sooner adjourned. At Spokane Falls, in the county of Spokane, on the fourth Monday in August, and hold two weeks unless sooner adjourned. At Goldendale on the second Monday in May, and the second Monday in November, and hold two weeks, unless sooner adjourned.

SEC. 3. The court held at Vancouver, shall be for the counties of Clarke and Skamania. The court held at Olympia, shall be for the counties of Thurston, Mason and Chehalis. The court held at Kalama, shall be for the counties of Cowlitz and Wahkiakum. The court held at the county seat of Pacific county shall be for the county of Pacific. The court held at the county seat of Lewis county, shall be for the county of Lewis. The court held at Goldendale, shall be for the county

of Klickitat, and the several courts mentioned in this section, shall be held by the Judge of the second judicial district.

SEC. 4. The court held at Walla Walla, shall be for the county of Walla Walla. The court held at Dayton, shall be for the county of Columbia. The court held at Colfax, shall be for the county of Whitman. The court held at Yakima city, shall be for the county of Yakima. The court held at Spokane Falls, shall be for the counties of Spokane and Stevens. The courts mentioned in this section, shall be held by the judge of the first judicial district.

SEC. 5. The courts, herein mentioned, are hereby established as district courts, and they shall have by mandamus, prohibition and certiorari, the supervision and control of all proceedings before probate courts, justices of the peace, and other inferior tribunals. They shall, except where it is otherwise provided, by law, have original and general jurisdiction of all matters at law, and of all cases in admiralty, and of all cases in equity, and of all cases for divorce, and also of all crimes and misdemeanors. They shall have appellate jurisdiction in all cases, civil or criminal, where an appeal or writ of certiorari shall be taken from the judgment or proceedings of a probate court, justice of the peace or other inferior tribunal. They shall also have jurisdiction of all other matters made cognizable therein by any statute. *Provided, however,* That the courts held at the county seat of Lewis county, and at the county seat of Pacific county, and at Goldendale, and at Dayton, and at Spokane Falls, shall not have jurisdiction of causes in which the United States is a party: *And, provided, further,* That the courts held at Vancouver, Olympia and Kalama, shall have jurisdiction in causes in which the United States is a party, arising in the second judicial district, and the courts held at Walla Walla, Colfax and Yakima city, shall have jurisdiction in cases in which the United States is a party, arising in the First Judicial District.

SEC. 6. The judge authorized to hold the courts herein provided for, shall appoint a clerk for each of said courts, and such clerk shall hold his office during the pleasure of said judge, and with the consent of said judge, he may appoint one or more deputies: *Provided, however,* That clerks or deputy clerks heretofore appointed and acting in district courts, held at any of the places designated in this act, shall remain in office until removed by said judge, and the bonds given by them, as such clerks or deputies, shall remain in force during their term of office.

SEC. 7. The clerks or deputy clerks of courts herein mentioned hereafter appointed, shall, before entering upon the duties of his office, take an oath to faithfully perform such duties, and, in

addition thereto, he shall give a bond, with sureties, to the territory, in such sum as the judge appointing him shall require, conditioned to faithfully account for and pay over to the person entitled thereto, all sums of money that may come into his hands by virtue of his office. Such bond must be approved by the judge appointing him. Any person aggrieved by the omission of such clerk or deputy, to fulfill the conditions of his bond, has a right of action in his own name against such clerk and his deputies, on their official bond, for any damages he may have sustained by reason of such omission.

SEC. 8. The offices of the clerks of the courts, established by this act, shall be at the places where said courts are held, and and they shall be kept open at all reasonable hours.

SEC. 9. Each of said courts shall be provided with a seal, if one is not already provided.

SEC. 10. Writs of error, bills of exceptions, and appeals, shall be allowed in all cases from the final decisions of any of the courts, established by this act, to the supreme court of the territory, under such regulations as may be prescribed by law.

SEC. 11. Crimes and misdemeanors, under the laws of the territory, shall be prosecuted and punished in the courts having jurisdiction in the county where the offense was committed, unless a change of venue is ordered.

SEC. 12. If any term of any of the courts, herein provided for, is about to end without dispatching all the business of such court, the judge thereof may by an order entered of record adjourn the holding of such court to any future day, on which he is not required by law to hold a court at some other place, and all causes on the docket of said court not otherwise disposed of, shall stand continued to such adjourned day, and if the terms of any of such courts have ended without dispatching all the business, or if there be a failure to hold any term, or if there is much business accumulating in such courts, the judge of the same may by a warrant directed to the clerk, appoint a special term of court. The clerk shall enter the warrant in the journal of said court. At such special or adjourned term, any civil cause may be tried by consent. Judgment for want of an answer, defaults, judgments by confession, and judgments on awards, may be entered, and any motion or demurrer cognizable by such court, may be heard and determined, whether it was pending at the regular term or not, and such special term, may be adjourned from time to time, during the intervals between the regular terms, as the judge may deem necessary for the dispatch of the business of the court: *Provided, however,* That no grand, or petit jury shall be summoned or required to at-

tend at such special or adjourned term. All judgments, orders, and decrees rendered, and made by such court, at any adjourned or special term, shall have the same force and effect in all respects as if made during a regular term.

SEC. 13. In designating the courts, herein provided for, it shall be sufficient to designate them as "the district court" holding terms at _____, filling the blank by the name of the place in which said court is held.

SEC. 14. That at the close or within a reasonable time thereafter of the terms of courts, the judges holding such courts shall make a certified statement of the expenses necessarily incurred by them, in traveling to and from their respective places of residence, to hold said courts, and, thereupon, the territorial auditor shall audit the same, and he shall draw a warrant on the treasury of the territory for the amount of said expenses and the same shall be paid out of any money in the territorial treasury not otherwise appropriated.

SEC. 15. Any law, on the subject matters of this act, so far as the same shall necessarily conflict with the provisions of this act is hereby repealed. This act also fixes the time of holding district courts in the first and second judicial districts, any law to the contrary notwithstanding: *Provided*, That the provisions of section 14, in relation to expenses of judges, shall not apply to courts having United States jurisdiction.

SEC. 16. This act shall take effect and be in force, from and after, its passage, and approval by the governor.

Approved, Nov. 6. 1879.

AN ACT

TO ESTABLISH DISTRICT COURTS IN THE THIRD JUDICIAL DISTRICT,
AND TO FIX THE TIME AND PLACES FOR HOLDING THE SAME.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That there shall hereafter be held in the third judicial district regular terms of district courts in each year at the times and places hereafter designated.

APPENDIX F

L A W S

OF

WASHINGTON TERRITORY,

ENACTED BY THE

LEGISLATIVE ASSEMBLY

IN THE YEAR 1881.

Published by Authority.

OLYMPIA:

C. B. BAGLEY, PUBLIC PRINTER.

1881.

L A W S
OF
WASHINGTON TERRITORY.

Enacted at the Eighth Biennial Session, which was begun and held at the City of Olympia, the Capital of said Territory, on Monday, October 3, 1881, and ended Thursday, December 1, and at the special session which was begun on Friday, December 2, 1881, and ended Wednesday, December 7, 1881.

WILLIAM A. NEWELL, GOVERNOR. H. F. STRATTON, President of the Council. GEORGE COMEGYS, Speaker of the House of Representatives.

AN ACT

TO AMEND AN ACT ENTITLED "AN ACT TO REGULATE THE PRACTICE AND PROCEEDINGS IN CIVIL ACTIONS," APPROVED NOVEMBER 8TH, 1877.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That section 174, chapter XII of an act, entitled "An act to regulate the practice and proceedings in civil actions," approved November 8th, 1877, be and the same is hereby amended so as to read as follows: "The plaintiff, at the time of issuing the summons, or at any time afterward, before judgment, may have the property of the defendant attached in the manner hereinafter prescribed, as a security for the satisfaction of such judgment as he may recover.

SEC. 2. That section 175 of said act be and the same is hereby amended so as to read as follows: "The writ of attach-

SEC. 10. This act to take effect and be in force on and after its approval by the governor.

Approved Nov. 28, 1883.

AN ACT

TO AMEND SECTION TWO THOUSAND SIX HUNDRED AND FIFTEEN, CHAPTER TWO HUNDRED AND FOUR OF THE CODE OF WASHINGTON.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington:* That section two thousand six hundred and fifteen of chapter two hundred and four of the code of Washington, relating to notaries public, be and the same is hereby amended so as to read:

"Section 2615. Every notary public shall be appointed for the territory in which he resides, and shall hold his office for four years, unless his appointment is sooner revoked; and all official acts heretofore done or performed by notaries public in any county in this territory, other than that in which they at that time resided, or for which their commissions issued, shall be valid and of full force and effect." |

SEC. 2. All acts and parts of acts in conflict with this act are hereby repealed.

SEC. 3. This act shall take effect and be in force from and after its passage and approval.

Approved November 28, 1883.

AN ACT

TO CREATE AND ORGANIZE THE COUNTY OF FRANKLIN.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington:* That Franklin county shall be and consist of all that territory of Whitman county bounded as follows, to-wit: Beginning at a point where the mid channel of the Snake river intersects that of the Columbia river and running thence up the Columbia river to a point where section line between sections 21 and 28, township 14 north, range 27 east, Willamette meridian, Washington Territory, strikes the main body of the Columbia river on the west side of the Island; thence east on said section line to township line between ranges 27 and 28 east; thence north on said range line to north boundary of township 14; thence east on said north boundary of township 14 to the Palouse river; thence down said river to the mid channel of Snake river; thence down said Snake river to place of beginning.

SEC. 2. That J. W. Schull, C. M. McBride and D. W. Owen are hereby appointed commissioners of said county of Franklin.

SEC. 3. That the county commissioners, above named, are hereby authorized within twenty (20) days after the approval of this act and upon ten days' notice, to qualify and enter upon the discharge of their duties, as such commissioners, and are hereby empowered to appoint all necessary county officers, necessary to perfect the organization of said county. And the county commissioners aforesaid, sheriff, auditor, and the other officers appointed shall hold their offices until the next general election, and until their successors are elected and qualified according to law.

SEC. 4. That the justices of the peace, constable, road supervisors and other precinct and school officers heretofore elected and qualified and now acting as such residing in that portion of Whitman county, which is, by the provisions of this act, included in the county of Franklin, are hereby continued as such officers in said county of Franklin until the next general election and until their successors are duly elected and qualified.

SEC. 5. That all taxes levied and collected for the year 1883, on the persons and property within the boundaries of Franklin county as herein described, shall be collected and paid to the treasury of Whitman county; the said county of Franklin to receive no part nor parcel thereof; nor shall the county of Franklin receive any part of the property of Whitman county: *Provided*, That nothing in this act shall deprive the county of Franklin of its just proportion of the school money.

SEC. 6. The county auditor of Franklin county is hereby authorized to take transcripts of all records, documents and other papers on file or of record in the office of the county auditor of Whitman county, which may be necessary to perfect the records of Franklin county. And for this purpose the auditor of Franklin county shall have free access to the records in the auditor's office of Whitman county, free of costs to the said county, and the certificates of the correctness of said records shall have the same legal effect as if made by the auditor of Whitman county.

SEC. 7. That all suits that have been commenced and are now pending in which Whitman county is a party, shall continue to be prosecuted or defended by said Whitman county; said Franklin county shall not be liable for any judgments or costs, nor receive any benefits or emoluments from any such suit or suits.

SEC. 8. The county of Franklin is hereby attached to Walla Walla for judicial purposes.

SEC. 9. The county of Franklin shall remain with Whitman county, for legislative purposes, unless otherwise provided for by a general apportionment bill.

SEC. 10. That the county seat of Franklin county is hereby located at the town of Ainsworth, until the next general election, when the question of county seat shall be submitted to the vote of the people, and the place receiving the largest number of votes shall be declared the permanent county seat of Franklin county.

From: [OFFICE RECEPTIONIST, CLERK](#)
To: ["Marry Marze"](#)
Subject: RE: In re the Appointment of a Special Deputy Prosecuting Attorney; Supreme Court Case Number: 95945-5
Date: Monday, November 26, 2018 4:13:18 PM

Received 11-26-18

From: Marry Marze [mailto:Marry@lldkb.com]
Sent: Monday, November 26, 2018 4:04 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Cc: Dale Kamerrer <dkamerrer@lldkb.com>
Subject: In re the Appointment of a Special Deputy Prosecuting Attorney; Supreme Court Case Number: 95945-5

Per my discussion with Shyanne, please find attached Brief of Respondents in the above matter.

Thank you,

Marry Marze
Legal Assistant to Dale Kamerrer
Law Lyman Daniel Kamerrer & Bogdanovich
(360) 754-3480