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NO. 95945-5

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

REPLY TO ANSWER TO APPELLANTS/PETITIONERS/ MOTION
FOR STAY OF MANDAMUS PROCEEDING UNDER FRANKLIN
COUNTY CAUSE NO. 18-2-50285-1

and

REPLY TO ANSWER TO STATEMENT OF GROUNDS FOR DIRECT
REVIEW, MOTION FOR DISCRETIONARY REVIEW (contingent),
MOTION TO ESTABLISH APPEALABILITY, MOTION TO CONFIRM
IDENTITY OF RESPONDENT

and

ANSWER TO MOTION FOR AWARD OF ATTORNEY'S FEES AND
COSTS FOR FRIVOLOUS AND IMPROPER APPEAL

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I. IDENTITY OF REPLYING/ANSWERING PARTIES

The Appellants/Petitioners, Franklin County Prosecuting Attorney Shawn P. Sant and Franklin County (collectively “the county”), by and through their attorney, Pamela B. Loginsky, Franklin County Special Deputy Prosecuting Attorney, ask this Court for the relief designated in Part II of this motion.

II. STATEMENT OF RELIEF SOUGHT

The county respectfully requests that this Court:

1. Accept direct review of the Order of Appointment pursuant to RAP 2.2(a)(1), RAP 2.3(b)(2) or RAP 2.3(b)(3); and
2. Declare that the proper respondent to this matter is W. Dale Kamerrer; and
3. Stay the Order of Appointment pending resolution of this matter on the merits; and
4. Stay all proceedings in *The Judges of the Benton and Franklin County 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 (hereinafter referred to as the “mandamus action”), until this Court resolves this matter on the merits;

5. Stay the Order of Appointment until this matter is resolved on the merits; and

6. Grant the county's RAP 9.11 motion so that this Court has a sufficient record for review.

III. COUNTERSTATEMENT OF ISSUES PRESENTED BY ANSWER TO MOTIONS AND MOTION FOR AWARD OF ATTORNEY'S FEES AND COSTS FOR FRIVOLOUS AND IMPROPER APPEAL

1. Whether a document signed by trial court judicial officers which states it is an order that was entered after the "matter came before the above-entitled Court" is a "trial court decision," RAP 1.1(a), arising from "judicial proceedings," RAP 2.3(b)(3), that is subject to review by this Court.

2. Whether the superior court clerk, who is the custodian of a public record, violates RCW 40.16.030 or commits a fraud upon this Court by placing a tracking number on a order issued by superior court judges so that the superior court clerk can fulfill the mandatory duty imposed upon the clerk by RAP 5.4(a)?

3. Whether judicial officers may appoint someone a deputy of a duly elected executive branch officer when the duly elected executive branch officer has terminated his appointment of the person?

4. Whether the instant appeal of the Order of Appointment is premature where the attorney appointed as a "Special Deputy Prosecuting Attorney" is performing duties pursuant to the order and is submitting

requests for payment at public expense for actions performed pursuant to the order?

5. Whether the stay of the mandamus action should be extended in order to preserve the fruits of this appeal.

6. Whether the respondent to Franklin County and Prosecutor Sant's notice of appeal and motions has established that no reasonable person would believe that the Order of Appointment is subject to review by this Court pursuant to RAP 2.2(a)(1) or RAP 2.3(b) such that sanctions should be imposed upon Franklin County, Prosecutor Sant, or their attorney pursuant to RAP 18.9(a).

7. Whether the respondent to Franklin County and Prosecutor Sant's notice of appeal and motions has established that no reasonable person would believe that the Order of Appointment is void or otherwise invalid because: (1) it was entered to personally benefit the judges who signed the order, (2) it appears that the request for appointment was brought by an attorney who currently represents the judge, (3) it was entered without prior notice to either Franklin County or the Franklin County Board of County Commissioners ("BOCC") that the judges were entertaining a request to appoint someone to serve at public expense as a "Special Deputy Prosecuting Attorney," (4) it was entered without hearing from either Prosecutor Sant or the BOCC on whether the request for an Order of Appointment should be granted, (5) it

appoints an attorney to serve as a “Special Deputy Prosecuting Attorney” pursuant to RCW 36.27.030 to provide legal services that Prosecutor Sant has no duty to provide, (6) it commits public funds to pay the “Special Deputy Prosecuting Attorney,” when the legislative branch has not appropriated funds for such purpose and a disinterested judicial officer has not found by clear, cogent, and convincing evidence that without funds to pay the “Special Deputy Prosecuting Attorney” the Franklin County Superior Court cannot perform its judicial functions, and (7) it was entered in a non-public setting, such that sanctions should be imposed upon Franklin County, Prosecutor Sant, or their attorney pursuant to RAP 18.9(a).

IV. SUPPLEMENTAL STATEMENT OF FACTS

The civil administrative file that is maintained by the Franklin County Clerk does not bear a cause number. The 2018 civil administrative file, when the Order of Appointment was added to the file, contained fourteen documents. Five of the documents are orders denying a motion filed in five separate and distinct cases. *See* Declaration of Ruby Ochoa ¶¶ 3-5 (Jun. 20, 2018);¹ Declaration of Pamela B. Loginsky ¶ 11.² The original Order of Appointment still resides in the civil administrative file, where it bears the

¹A copy of Franklin County Chief Deputy Clerk Ruby Ochoa may be found in appendix A.

²The Declaration of Pamela B. Loginsky may be found in appendix B.

administrative number 2018-0001-11. Declaration of Michael Killian ¶ 3.³

A notice of appeal from the Order of Appointment could not be processed by the clerk without a cause number. Declaration of Ruby Ochoa ¶ 8 (Jun. 20, 2018); Declaration of Pamela B. Loginsky ¶ 9. Upon advice of counsel, the clerk assigned a civil cause number to a copy of the Order of Appointment. *See* Declaration of Pamela B. Loginsky ¶ 11. The sole purpose of assigning this cause number was to enable the clerk to discharge his obligations under RAP 5.4(a) and to provide a way to track the appeal in the clerk's system. Declaration of Ruby Ochoa ¶ 8 (Jun. 20, 2018); Declaration of Pamela B. Loginsky ¶ 12. The Odyssey system requires a clerk to identify parties to an action before a cause number will issue. The identification of parties in the Odyssey system serves solely as a means for the clerk and the public to locate an action. Declaration of Michael Killian ¶ 5.

On May 22, 2018, the seven judges of the Benton and Franklin Counties Superior Court (collectively "judges") hand delivered a "Notice to the County Auditor of Franklin County, Washington" to the director of finance. A copy of the order the Order of Appointment was not submitted to the auditor's office until May 25, 2018. Declaration of Thomas Westerman

³Clerk Killian's declaration may be found in appendix C.

¶¶ 3-4.⁴ The Order of Appointment filed with the auditor bears the number 2018-0001-11.

On June 4, 2018, thirteen days after Prosecutor Sant revoked his RCW 36.27.040 special deputy appointment, Mr. Kamerrer submitted a billing statement. Declaration of Shawn P. Sant ¶ 3 (Jun. 25, 2018).⁵ The billing statement reveals that Mr. Kamerrer prepared the appointment order and the notice to auditor. *See* May 14, 2018, entry. The billing statement also indicates that Mr. Kamerrer prepared an engagement letter to accompany the Order of Appointment. *See* May 16, 2018, entry. Presumably this engagement letter, a copy of which has not been provided to this Court is the “separate agreement” referenced in Judge Bruce Spanner’s declaration in paragraph 18.

The billing statement requests that the county compensate him for 10.3 hours of work performed between May 23 and May 31. Declaration of Shawn P. Sant ¶ 3 (Jun. 25, 2018). The description of the work performed during the 10.3 hours all relates to the mandamus action. The entries contain numerous references communications with the clerk’s attorney, Heather Yakely.

Since May 22, 2018, the clerk’s attorney performed 15.9 hours of

⁴A copy of Mr. Westerman’s declaration may be found in appendix D.

⁵A copy of Prosecutor Sant’s June 25, 2018, declaration may be found in appendix E.

legal work to be paid by the county. This legal work has been performed in relation to the mandamus action. Declaration of Shawn P. Sant ¶ 7 (Jun. 25, 2018). Since the mandamus action is stayed by this Court, Ms. Yakely has not yet prepared or charged the County for a response to the judges' motion for summary judgment. *Id.*

V. GROUNDS FOR RELIEF AND ARGUMENT

This matter deals solely with an order entered by the judges, without any hearing or notice to affected entities, that commits public funds to the payment of a private attorney who the judges appointed as a “special deputy prosecuting attorney” to represent the judges in a lawsuit against the Franklin County Clerk. The county filed a number of motions in this matter to secure review of the Order of Appointment by this Court and to preserve the fruits of the appeal. The respondent filed a single answer to all of the various motions. The answer is accompanied by a request for attorney’s fees and costs.

To prevent duplication of arguments, the county files one reply as to all of the pending motions. This single reply also contains the county’s answer to the motion for attorney’s fees.

A. The Order of Appointment is a “Trial Court Decision” Arising from a “Judicial Proceeding.”

The respondent contends that the Order of Appointment is not a “trial court decision” as that term is used in RAP 1.1(a), and is thus not subject to

review by either a notice of appeal or a notice of discretionary review. Answer at 7. The respondent, however, does not support his contention with any legal argument or legal citation.

The phrase “trial court decision” is not defined by the Rules of Appellate Procedure nor by any statute. The Washington Constitution, however, assigns original jurisdiction over matters in which a party has a right to a jury trial to the superior court. *See* Const. art. IV, § 6. Various court rules and statutes identify the procedures applicable to superior court trials. *See, e.g.*, CR 38 to 53.4; CrR Title 6; RCW 4.44.380 (“In all trials by juries of six in the superior court . . .”); Chapter 10.46 RCW— Superior Court Trial. Appellate decisions establish that the superior court is a trial court. *See, e.g., State v. Whelchel*, 97 Wn. App. 813, 823, 988 P.2d 20, 26 (1999) (“the superior court acts as a trial court not a review court”).

The plain and ordinary meaning of the word “decision” is broad enough to encompass the Order of Appointment.⁶ One definition of “decision” is “a determination arrived at after consideration.” Webster's Third New International Dictionary 585 (2002). Under this definition, the judges' approval of a request to appoint Mr. Kamerrer as a special deputy prosecuting attorney is a “decision.”

⁶*State v. Taylor*, 150 Wn.2d 599, 602, 80 P.3d 605 (2003) (“Definitions included in the RAPs are controlling, but in the absence of a provided definition, this court will give a term its plain and ordinary meaning ascertained from a standard dictionary.”).

The physical characteristics of the Order of Appointment reinforces the linguistic conclusion that the order is a “trial court decision.” The Order of Appointment indicates that it was issued by “the Superior Court of Washington for Franklin County” following “consideration” by the Court. *See* Order of Appointment at 1 (“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 Order of Appointment, moreover, is signed by seven superior court judges and was submitted to the clerk of the trial court for filing. Since the respondent does not provide any other argument in response to the county’s motion to establish appealability he concedes that an appeal as of right is proper pursuant to RAP 2.2(a)(1). *See In re Cross*, 99 Wn.2d 373, 379, 662 P.2d 828 (1983) (“Indeed, by failing to argue this point, respondents appear to concede it.”); *State v. Ward*, 125 Wn. App. 138, 144, 104 P.3d 61 (2005) (“The State does not respond and thus, concedes this point.”).

The respondent also claims that the Order of Appointment did “not arise from ‘judicial proceedings,’ as that term is used in RAP 2.3(b)(3).” Answer at 7. Instead, the respondent claims that the Order of Appointment is an “administrative order,” Answer at 8, that may only be challenged in an

action filed with a superior court clerk.⁷ Answer at 8. The respondent, however, does not provide any legal authority to support his position.

Because neither the phrase “judicial proceedings” nor its component words are defined by the Rules of Appellate Procedure the meaning of the phrase must be found elsewhere. This Court collected numerous definitions of the term “judicial” in *State v. Sullivan*, 143 Wn.2d 162, 176, 19 P.3d 1012 (2001). One definition of “judicial” is “of relating to, or by the court.” Black’s Law Dictionary 850 (7th ed. 1999). Another definition is “of, relating to, or concerned with a judgment, the function of judging, the administration of justice, or the judiciary; ordered or enforced by a court or other legal tribunal.” Webster’s Third New International Dictionary 1223 (3d ed. 1971). The Order of Appointment is a document issued by the court.

“Proceedings” are not limited to meetings or hearings. *See Cornu-Labat v. Hosp. Dist. No. 2 of Grant County*, 177 Wn.2d 221, 237-38, 298 P.3d 741 (2013). A definition of the term “proceedings” is “an official record or account (as in a book of minutes) of things said or done.” Webster’s Third New International Dictionary 1807 (2002). The Order of Appointment is an

⁷The respondent is in error to the extent he believes the superior court may review the propriety of an administrative order issued by the superior court. The statutes governing writs of review, mandamus and prohibition only authorize a superior court to rule upon an action of an inferior tribunal. *See* RCW 7.16.040; RCW 7.16.160; RCW 7.16.300. Review of a non-judicial decision of a superior court may only be obtained in the Washington Supreme Court through an original action against a state officer. *See* RAP 2.1(b). Because an original action must be initiated within the time authorized for filing an appeal, the county filed a contingent Petition Against State Officers on June 18, 2018.

official record of the action taken by the judges upon the request for the appointment of a special deputy prosecuting attorney. The Order of Appointment, therefore, is a “judicial proceeding” for which discretionary review is proper pursuant to RAP 2.3(b)(3).

In addition to seeking discretionary review of the Order of Appointment under RAP 2.3(b)(3), the county also requested review on the grounds that “the superior court has committed probable error and the decision of the superior court substantially alters the status quo or substantially limits the freedom of a party to act.” See RAP 2.3(b) Motion for Discretionary Review (contingent) (hereinafter “Discretionary Review Motion”), at 9 and 17 (quoting or citing to RAP 2.3(b)(2)). The respondent’s failure to tender an argument on this point constitutes a concession that discretionary review is proper under RAP 2.3(b)(2). *Cross*, 99 Wn.2d at 379; *Ward*, 125 Wn. App. at 144.

B. The Custodian of a Public Record May Lawfully Place a Number Upon an Order Filed With the Custodian’s Office When a Number is Required for the Custodian to Fulfill a Mandatory Duty Placed Upon the Custodian By a Rule of this Court.

The respondent contends that this matter is unlawfully before this Court because the Franklin County Clerk stamped a civil cause number on the Order of Appointment so that the clerk could comply with his mandatory duties under RAP 5.4(a). The respondent claims that the clerk’s actions

violated RCW 40.16.030. Boiled down to its essence, the respondent's argument is that because judges instructed the clerk to place the Order of Appointment in an unnumbered miscellaneous file, the order is unreviewable by this Court.

Any aggrieved party may seek review by an appellate court. RAP 3.1. To obtain review, the aggrieved party must file a notice of appeal or a notice of discretionary review with the clerk of the trial court. RAP 5.1(a); RAP 5.2(a) and (b). The clerk is required by statute to accept the notice of appeal or notice of discretionary review. *See generally* RCW 2.32.050(4) ("it is the duty of . . . each county clerk for each of the courts for which he or she is clerk: . . . (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"). Within 14 days of the filing of a notice of appeal or notice for discretionary review the clerk is required to file the notice with the appellate court. *See* RAP 5.4(a). In order to comply with RAP 5.4(a), a cause number must be assigned to the notice of appeal and the order from which review is being sought. *See* Declaration of Ruby Ochoa ¶ 8 (June 20, 2018).

The Order of Appointment was entered in a unique action that the judges and/or the respondent entitled "*In re the Appointment of a Special Deputy Prosecuting Attorney.*" The entry of the order was not preceded by notice to either Franklin County or to Prosecutor Sant. No written motion

preceded the entry of the Order of Appointment. *In re the Appointment of a Special Deputy Prosecuting Attorney* did not appear on the superior court's docket on either the day the Order of Appointment was signed nor the day upon which the Order of Appointment was filed with the clerk. *See* Discretionary Review Motion, Exhibit E, Clerk's Declarations.

The Order of Appointment was submitted for filing to Chief Deputy Clerk Ochoa on May 22, 2018, at approximately 3:30 p.m. by the Superior Court Administrator, Patricia Austin. *See* Discretionary Review Motion, Exhibit E, Declaration of Ruby A Ochoa ¶ 6 (Jun. 5, 2018). Deputy Ochoa placed the Franklin County Clerk's file stamp upon the Order of Appointment at 3:32 p.m. and placed the document in the "civil administrative file." *Id.*

A "civil administrative file" is created on an annual basis to file administrative orders of the court and other miscellaneous orders and documents that are not associated with an existing superior court cause. *Id.* On the date the Order of Appointment was placed in the civil administrative file, the folder contained 14 other documents. *See* Declaration of Ruby Ochoa ¶ 3 (Jun. 20, 2018). Seven of the 14 documents were caseload certifications from appointed counsel. *Id.* Two of the documents, an order closing the court due to inclement weather and an order adopting LGR 3, were not associated with a case. Three documents were orders denying the

issuance of a temporary protection or anti-harassment order in three discrete cases. The final two orders, both of which are reviewable by an appellate court, denied the waiver of civil fees and surcharges. *See Jafar v. Webb*, 177 Wn.2d 520, 524, 303 P.3d 1042 (2013) (granting discretionary review of the superior court's partial denial of a motion to waive filing fee and surcharges).

After being notified that a notice of appeal would be filed with the clerk related to the Order of Appointment, the clerk sought legal advice from the Franklin County Prosecuting Attorney regarding the need for a cause number in order to process the appeal. Upon advice of counsel, the clerk assigned a civil cause number to the Order of Appointment. *See Declaration of Pamela B. Loginsky* ¶¶ 9-11. A civil cause number was assigned because the administrative number placed on the order was insufficient to allow the clerk to process a notice of appeal. *Declaration of Michael Killian* ¶ 6.

The civil cause number, 18-2-50522-11, obtained by the clerk to facilitate the processing of the notice of appeal was stamped upon a copy of the Order of Appointment. This duplicate of the Order of Appointment was then placed in a unique civil case file. Other than stamping a civil cause number on the duplicate of the Order of Appointment, the clerk made no other alterations—the file stamp was not altered and the language of the order was not changed. The sole purpose of stamping cause number 18-2-50522-11 on the Order of Appointment was so that the clerk could track the

document on its route to this Court. The original Order of Appointment still resides in the civil administrative file. Declaration of Michael Killian ¶¶ 4-5.

As required by RAP 5.3(a), the county attached a copy of the signed order from which the appeal is taken. The copy of the Order of Appointment that is attached to the notice of appeal/notice of discretionary review does not bear any cause number. *See* Discretionary Review Motion Appendix F. The copies of the Order of Appointment that are attached to the county's various motions do not bear any cause number. *See* Discretionary Review Motion Appendix A; Motion to Establish Appealability attachment; Grounds for Direct Review attachment; Motion for Stay attachment; RAP 9.11 Motion attachment.

All of the county's submissions to this Court indicate that the 3-page Order of Appointment is the only document associated with *In re the Appointment of a Special Deputy Prosecuting Attorney*. *See, e.g.*, Motion to Establish Appealability at 1. None of the arguments contained within any of the county's submissions to this Court contend that *In re the Appointment of a Special Deputy Prosecuting Attorney* was initiated in accordance with the Superior Court Civil Rules.

The county has submitted the question of the identity of the proper parties to this matter to this Court. The county's argument on this point depends solely upon the four corners of the Order of Appointment. *See*

Motion to Confirm Identity of Respondent. The clerk's designation of parties in Odyssey in order to assign a cause number to the Order of Appointment is irrelevant to the merits of the county's motions or the ultimate merits of the county's appeal. The respondent, not the county, has injected the clerk's Odyssey designation of parties into this matter. The respondent's claim of fraud must, therefore, be rejected.

C. The Superior Court's Appointment of a Special Deputy Prosecuting Attorney Was Improper.

The Order of Appointment was entered in a matter entitled "*In re the Appointment of Special Deputy Prosecuting Attorney.*" Because the Order of Appointment identified RCW 36.27.030 as the authority for the appointment, the county assumed that the inclusion of the word "deputy" in the caption was an error. *See* Discretionary Review Motion at 2 n. 1. It appears, however, that the inclusion of the word "deputy" was intentional.

The Order of Appointment was filed with the Franklin County Auditor, an act that is required only for deputies appointed pursuant to RCW 36.27.040 and not for special prosecutors appointed pursuant to RCW 36.27.030. In addition, Mr. Kamerrer has submitted bills to Prosecutor Sant for work performed subsequent to Prosecutor Sant's termination of Mr. Kamerrer's special deputy appointment. *See* Declaration of Shawn P. Sant ¶ 4 (Jun. 25, 2018). The work performed subsequent to Prosecutor Sant's termination of Mr. Kamerrer's appointment, for which payment from public

funds is sought, all relate to the mandamus action that the BOCC refused to underwrite.

An elected county officer may employ deputies and other necessary employees with the consent of the BOCC. RCW 36.16.070. The selection of employees and deputies rest solely with the elected county officer. *See Osborn v. Grant County*, 130 Wn.2d 615, 926 P.2d 911 (1996) (BOCC had no authority to interfere with the clerk's hiring decision); 1955 Attorney General Opinion No. 48 (the BOCC may not participate in the selection or removal of deputy prosecuting attorneys). Once appointed the county officer may revoke a deputy appointment at pleasure. RCW 36.16.070; RCW 36.27.040. With respect to prosecuting attorneys, the prosecuting attorney, not another county official, has the sole discretion to determine whether legal services will be provided by the prosecuting attorney or by a deputy. *Cf. State ex rel. Banks v. Drummond*, 187 Wn.2d 157, 164-65, 182-83, 385 P.3d 769 (2016) (BOCC could not retain private attorney to provide legal advice due to its dissatisfaction with the deputy prosecuting attorney who was assigned the duty); *Herron v. McClanahan*, 28 Wn. App. 552, 561, 625 P.2d 707 (1981) (prosecuting attorney not subject to recall for appointing a deputy to advise the county planning commission).

A prosecuting attorney may appoint a lawyer to serve as a special deputy prosecuting attorney to assist with the work of the office. *See* RCW

36.27.040. A prosecutor is not required to have a disqualifying conflict of interest or otherwise be unable to perform the duties of the office in order to appoint a lawyer to serve as a special deputy prosecuting attorney. Appointments are made when specialized knowledge or experience is needed, when there is an unusual increase in the workload, when the prosecuting attorney wishes to provide a county officer with a second opinion on a legal question, or when bringing in an outside attorney may defuse an intra-client dispute. *See* Declaration of Pamela B. Loginsky ¶ 4. When a prosecuting attorney appoints someone to serve as a special deputy in a conflict case, the order of appointment so specifies. *See* Declaration of Pamela B. Loginsky, ¶ 5. In non-conflict cases the prosecuting attorney is the final decision maker as to what legal services the special deputy prosecuting attorney will provide. *See* RCW 36.27.040.

In the instant case, W. Dale Kamerrer was appointed as a special deputy prosecuting attorney in the belief that if the judges had an outside attorney they might be more willing to reach an agreement with the clerk with respect to electronic records. *See* Declaration of Sant ¶ 11 (Jun. 5, 2018).⁸ No conflict of interest required Prosecutor Sant to make such an appointment and Prosecutor Sant has never declared that he had a conflict that prevents him from providing legal advice to the judges with respect to LGR 3.

⁸This declaration may be found in appendix D to the Discretionary Review Motion.

Superior court judges may appoint some qualified person to perform the duties of the prosecuting attorney when the prosecutor is temporarily unable to discharge the duties of the office. RCW 36.27.030. The superior court is not, however, authorized to designate the person appointed a deputy of the prosecuting attorney. An appointment pursuant to RCW 36.27.030 requires two conditions to be met: (1) the prosecutor must have the authority and the duty to represent that party in the given matter; and (2) some disability must prevent the prosecutor from fulfilling the duty. If the prosecutor has no duty or authority to represent a party, the trial court cannot appoint special counsel. *Osborn*, 130 Wn.2d at 624-25.

In its motion for discretionary review, the county established that this Court's precedent does not require the prosecuting attorney to initiate a lawsuit at the request of a county official. *See* Motion for Discretionary Review at 13-16, citing *Hoppe v. King County*, 95 Wn.2d 332, 339-40, 622 P.2d 845 (1980) ("nothing in the duties of the prosecuting attorney (RCW 36.27.020) requires that officer to bring an action simply because a request is made by another county officer or to provide legal representation"). The respondent's answer contains no argument that a prosecuting attorney must maintain a mandamus action against a county official at the request of another county official. *See* Answer at 9-11. This Court may assume that this is because, after a diligent search, the respondent could locate no case or

statute that would support such a petition. *See, e.g., State v. Arredonodo*, 188 Wn.2d 244, 262, 394 P.3d 348 (2017).

While the respondent claims that “the Franklin County Prosecuting Attorney has an acknowledged ‘disability’ arising from the Rules on Professional Conduct, RPC 1.7(a)” that prevents him from providing legal advice “to any combination of the Clerk, the County and the Superior Court Judges, given their conflicting positions and interests”, Answer at 10, his claim is neither factually nor legally accurate.

With respect to the disagreement over electronic court records, Prosecutor Sant has one client -- Franklin County.⁹ Prosecutor Sant does not have a separate attorney-client relationship with the judges and the clerk; his relationship to the judges and clerk is analogous to the representation afforded officers of a corporation by corporate counsel. *Ward v. Superior Court*, 138 Cal. Rptr. 532, 537, 70 Cal. App. 3d 23 (1977). A disagreement between the judges and the clerk on a point of law does not disqualify Prosecutor Sant from providing legal advice on the disputed question to both the judges and the clerk. If Prosecutor Sant’s advice is disagreeable to the judges, the clerk, or to both, this does not create a disqualifying conflict of

⁹The legislature, by statute, has assigned other discrete clients to the prosecuting attorney. *See, e.g.,* RCW 41.14.170 (the civil service commission for sheriff’s office shall be represented in “all civil suits which may be necessary for the proper enforcement of [chapter 41.14] and rules of the commission. . . by the prosecuting attorney of the county”). None of these statutes, however, are relevant to this matter.

interest. *See Drummond*, 187 Wn.2d at 177 n: 7 (a disagreement between a prosecuting attorney and the BOCC on a question of law does not create a disability under RCW 36.27.030); *Hoppe*, 95 Wn.2d at 340 (a disagreement on the law between the prosecuting attorney and a county officer does not constitute a disability under RCW 36.27.030).

Prosecutor Sant has always accurately identified his client in this matter. *See, e.g.*, Declaration of Shawn P. Sant ¶ 9 (Jun. 5, 2018). In none of his communications with Mr. Kamerrer or the judges has Prosecutor Sant claimed that he was disqualified from providing legal advice to the judges regarding electronic court records. *See* Declaration of Shawn P. Sant, Exhibits E, G, and I (Jun. 5, 2018). As Prosecutor Sant states in his June 5, 2018, declaration “I was at all times and continue to be able to discharge my mandatory duties under RCW 36.27.020(2) and continue to provide both the Clerk and the Judge with legal advice.” Declaration of Shawn P. Sant ¶ 11 (Jun. 5, 2018).

D. This Appeal is Not Premature.

The respondent contends that this appeal should be dismissed because the Order of Appointment imposes no immediate cost on Franklin County. Answer at 9. He further argues that this appeal is premature as the facts, arguments and authorities which apply to the Order of Appointment have not been fully developed. *Id.* The respondent suggests that the county be forced

to delay its appeal until after compensation is sought and the county expends resources litigating the reasonableness of the compensation. *Id.*

The respondent's argument ignores the fact that he has already submitted a bill for work performed pursuant to the Order of Appointment. *See* Declaration of Shawn P. Sant ¶ 3 (Jun. 25, 2018). The respondent's argument also disregards the fact that the Franklin County Prosecutor is currently aggrieved by the Order of Appointment's diminishment of his office.

The absence of a trial court record in which the facts and legal arguments are fully developed is directly attributable to the procedure by which the respondent obtained the Order of Appointment. The invited error doctrine and fundamental fairness prohibit rewarding the respondent for his failure to provide Franklin County and Prosecutor Sant with notice of and an opportunity to be heard with respect to the Order of Appointment and his failure to obtain the Order of Appointment in open court. *See, e.g., City of Seattle v. Patu*, 147 Wn.2d 717, 720, 58 P.3d 273 (2002) (the invited error doctrine prohibits a party from setting up an error in the trial court and then complaining of it on appeal, and the doctrine has been applied even in cases where the error results from neither negligence nor bad faith).

In addition, while the respondent and the county dispute the legal significance of the facts, there is no dispute as to what the facts are. The

essential undisputed facts are:

1. The judges and the clerk disagree about the validity of LGR 3. *See* Declaration of Judge Bruce A. Spanner ¶¶ 8-15; Declaration of Shawn P. Sant ¶ 11 (Jun. 5, 2018).
2. Prosecutor Sant appointed Mr. Kamerrer as a special deputy prosecuting attorney to provide legal advice to the judges regarding the clerk's transition to a paperless system. *See* Declaration of Judge Bruce A. Spanner ¶ 8; Declaration of Shawn P. Sant ¶¶ 11-12 (Jun. 5, 2018).
3. Mr. Kamerrer filed the mandamus action against the clerk without first obtaining Prosecutor Sant's approval. *See* Declaration of Judge Bruce A. Spanner ¶ 15; Mr. Kamerrer's Macy 21, 2018, 3:30 p.m. e-mail to Prosecutor Sant; March 22, 2018, 6:47 p.m. e-mail from Prosecutor Sant to Mr. Kamerrer; Declaration of Shawn P. Sant ¶ 13 (Jun. 5, 2018).
4. The BOCC refused to appropriate funds to maintain the mandamus action against the clerk. *See* May 8, 2018, BOCC Hearing at 46-48; May 22, 2018, BOCC Hearing at 2-3; Declaration of Shawn P. Sant ¶ 14 (Jun. 5, 2018); Mr. Kamerrer's May 21, 2018, letter to the BOCC.
5. Prosecutor Sant terminated Mr. Kamerrer's special deputy appointment on May 22, 2018. *See* Declaration of Judge Bruce A. Spanner ¶ 16; Declaration of Shawn P. Sant ¶ 17 and Exhibit I (Jun. 5, 2018); Declaration of Shawn P. Sant ¶ 4 (Jun. 25, 2018).
6. The judges signed an order appointing Mr. Kamerrer a special deputy prosecuting attorney on May 21, 2018, and provided public notice of the order when it was filed with the clerk on May 22, 2018. *See* Order of Appointment; Declaration of Judge Bruce A. Spanner ¶ 2; Declaration of Patricia Austin ¶ 3.
7. The Order of Appointment was prepared on Mr. Kamerrer's firm's pleading paper. *See* Order of Appointment.
8. Mr. Kamerrer represented the judges in the mandamus action

when the Order of Appointment was signed. *See* Order of Appointment; Declaration of Judge Bruce A. Spanner ¶ 11.

9. The Order of Appointment benefits the judges in the mandamus action. *See* Order of Appointment; Declaration of Judge Bruce A. Spanner ¶ 8.
10. The Order of Appointment provides that Mr. Kamerrer will be compensated from public funds in an amount to be determined later. *See* Order of Appointment, FOF 4.
11. The Order of Appointment was not entered in open court and neither Franklin County nor Prosecutor Sant were provided with notice of and an opportunity to be heard on the subject matter of the order. Declaration of Judge Bruce A. Spanner ¶¶ 7 and 9; Declarations of Declarations of Deputy Clerks Ruby Ochoa, Connie Rhoads, Diana Vera, Jill Gray, Joyce Ritter, Kay Morin, Maricela Elizondo, Melyssa Leavitt, Michael Killian, Nicole Cruz, Sara Gore, Sherise Roderick, Gail Johnston, and Amy Finke; Declaration of Shawn P. Sant ¶¶ 18-19 (Jun. 5, 2018).

The above undisputed facts when accompanied by legal argument from both the county and the respondent will allow this Court to render a reasoned decision on the merits. The respondent's suggestion that the county must first expend money providing a defense in the mandamus action and in litigating Mr. Kamerrer's compensation in the superior court squanders tax payer money and wastes limited judicial resources. The respondent's request to deny review of the Order of Appointment must be denied.

E. The Proper Respondent in this Matter is W. Dale Kamerrer and the Proper Court for this Matter is the Washington Supreme Court.

The county's motion to confirm that Mr. Kamerrer is the proper

respondent in this case has been conceded by the lack of any response.

Cross, 99 Wn.2d at 379; *Ward*, 125 Wn. App. at 144.

The county's arguments in the Grounds for Direct Review are also un rebutted. The respondent's concession that this case involves "a fundamental and urgent issue of public import which requires prompt and ultimate determination," RAP 4.2(a)(4), is well-supported by the county's filings.

F. A Continued Stay of the Mandamus Action is Required to Preserve the Fruits of this Appeal.

The judges argue that a stay of the mandamus action until this Court resolves the merits of the county's challenge to the Order of Appointment is not necessary to preserve the fruits of the appeal. The judges indicate that their separate agreement with Mr. Kamerrer for his services in the mandamus action renders the Order of Appointment superfluous. *See Answer at 11* ("representation by the appointed attorney is not dependent on the Order of Appointment"); Declaration of Judge Bruce A. Spanner ¶ 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.").

The judges claim that the Order of Appointment is irrelevant is belied by their continued expectation that Mr. Kamerrer will be compensated by the

county for the work he performs with respect to the mandamus action. *See* Declaration of Judge Bruce A. Spanner ¶ 18. That Mr. Kamerrer expects payment from the county pursuant to the Order of Appointment is established by his submission of a bill related to work performed under the Order of Appointment and for the preparation of the Order of Appointment.

The county's request for a stay of the mandamus action was not made to prevent the dispersal of public funds to Mr. Kamerrer. The county will not pay Mr. Kamerrer absent an appropriation by the BOCC for this purpose. Such an appropriation will not be approved while the merits of this appeal/discretionary review are before this Court. If Mr. Kamerrer chooses to perform services pursuant to the void Order of Appointment, he will not be entitled to payment under the doctrine of quantum meruit. *Callahan v. Jones*, 200 Wash. 241, 253-255, 93 P.3d 326 (1939) (a contract for legal services, which is against public policy, is void and unenforceable, and the attorney may not recover the value of the professional services provided on the basis of a quantum meruit). *See also State v. O'Connell*, 83 Wn.2d 797, 523 P.2d 872 (1974) (an attorney who renders valuable services to a municipal body may be paid under a theory of an implied contract, but only when the public body had the power to make the contract).

The county requested a stay of the mandamus action because, absent a stay, the county will incur legal expenses for the clerk's attorney and the

funds paid to Ms. Yakely cannot be recovered when the Order of Appointment is vacated by this Court. Just since May 22, 2018, Ms. Yakely has billed for 15.9 hours of work spent responding to actions taken by Mr. Kamerrer pursuant to the Order of Appointment. Declaration of Shawn P. Sant ¶ 7. Absent a stay, the county will incur more non-recoverable bills for the preparation of an answer to the judges' motion for summary judgment, the summary judgment hearing, and the prosecution or defense from the trial court's summary judgment order.

The judges answer to the stay motion is silent with respect to the diversion of tax payer funds to pay Ms. Yakely. Their failure to offer any way to preserve the fruits of this appeal absent a stay speaks volumes. The county respectfully request that this Court maintain the stay of the mandamus action until all proceedings in this Court are concluded.

G. The Issues Raised by the County Present Debatable Issues and Are Not So Devoid of Merit as to Render an Award of Sanctions Proper or Reasonable.

The respondent seeks an award of attorney's fees and costs incurred in responding to the county's notice of appeal/notice of discretionary review and motions and the imposition of a fine pursuant to RAP 18.9(a). Answer at 13-14. He contends that an award of fees and the imposition of a fine are proper because this appeal or review procedure is not based upon an appealable or reviewable decision, the superior court clerk placed a cause

number on the order to allow the clerk to perform the mandatory duties imposed by RAP 5.4(a), and will impair the judges' ability to maintain the mandamus action. Answer at 13-14. The county's pleadings in this Court do not support the respondent's request.

An award of sanctions for a frivolous appeal may only be made if, upon consideration of the entire record and resolving all doubts in favor of the appellant, the Court is convinced that the appeal presents no debatable issues upon which reasonable minds might differ and that the appeal is so devoid of merit that there is no possibility of reversal. *Boyles v. Department of Retirement Sys.*, 105 Wn.2d 499, 506-07, 716 P.2d 869 (1986). This test is not satisfied solely because the appellant does not prevail on the merits. *Halvorsen v. Ferguson*, 46 Wn. App. 708, 723, 735 P.2d 675 (1986). An award of sanctions requires something more, such as a failure to accept a prior ruling from the court in an action to which the appellant was a party. *Boyles*, 105 Wn.2d at 507.

Here, the county is faced with an Order of Appointment that was entered under highly atypical circumstances. The procedure for obtaining review of an order issued under the circumstances present here has not previously been decided in Washington. Nonetheless, the county has presented a cogent legal argument in support of review under either RAP 2.2(a)(1) or RAP 2.3(b)(2) and/or (3). An appeal that presents a question of

first impression will not be treated as frivolous. *See Hoglund v. Omak Wood Prods., Inc.*, 81 Wn. App. 501, 508, 914 P.2d 1197 (1996) (“The questions presented here have not been resolved in Washington. The appeal is not frivolous.”).

The respondent has, moreover, conceded many of the county’s legal arguments. He has not rebutted the county’s assertion that the prosecuting attorney has no duty to maintain a legal action on behalf of a county officer and that absent such a duty a lawyer may not be appointed a special prosecutor pursuant to RCW 36.27.030. *See Discretionary Review Motion* at 13-17. The respondent has not challenged that this Court’s precedent required the judges to prove by clear, cogent and convincing evidence that they would be unable to hear cases if funds for the mandamus action were not provided by the legislative branch or that the judges did not satisfy this burden prior to entering the Order of Appointment. *See Discretionary Review Motion* at 17-18. The respondent’s motion for sanctions must, therefore, be denied.

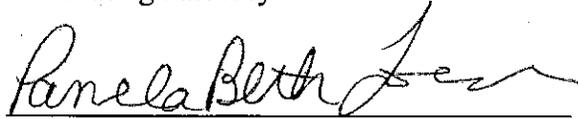
VI. CONCLUSION

Prosecutor Sant and Franklin County respectfully request that this Court find that the Order of Appointment is subject to an appeal or right or that this Court grant discretionary review to correct the egregious errors committed by the entry of the Order of Appointment without a public hearing

by judges with a personal interest in the proceedings. The county further requests that this Court maintain the stay of the mandamus action pending final resolution of this matter.

Respectfully submitted this 25th day of June, 2018.

SHAWN P. SANT
Prosecuting Attorney

A handwritten signature in cursive script, reading "Pamela Beth Loginsky". The signature is written in black ink and is positioned above a horizontal line.

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

FILED
SUPREME COURT
STATE OF WASHINGTON
6/25/2018 3:00 PM
BY SUSAN L. CARLSON
CLERK

APPENDIX A

Declaration of Ruby Ochoa (Jun. 20, 2018)

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No. 95945-5

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

In Re the Appointment of a Special Deputy
Prosecuting Attorney

}
} DECLARATION OF RUBY OCHOA
}
}

STATE OF WASHINGTON)

) ss.

County of Franklin)

I, Ruby Ochoa, declare as follows:

1. I am competent to testify in all respects, and make this declaration from my personal knowledge.
2. I am the Superior Court Chief Deputy Clerk for Franklin County.
3. Attached to this declaration is a screen print of the contents of the Franklin County Clerk's administrative file for 2018. It includes Certifications of Appointed Counsel, Orders denying motions or petitions in domestic matters, an Order re. Closure Due to [Inclement] Weather, an Order and Judicial Resolution No. 18-001 regarding LGR 3 – Files and "Paperless Court," and an Order of Appointment regarding a Special Deputy Prosecuting Attorney.
4. Certifications of Appointed Counsel are an administrative filing. For criminal and juvenile offender public defense cases, a signed Certificate of Compliance with Applicable Standards must be filed by any appointed attorney by separate written certification on a quarterly basis in each court in which the attorney has been appointed as counsel.
5. Orders denying motions or petitions are ex parte orders in matters where a case number was not assigned because of the denial.
6. I have also reviewed the 2014 through 2017 administrative files. In these years, the administrative files contained Certifications of Appointment of Counsel, orders denying motions or petitions and orders related to weather-related closures of the courthouse. I also found an occasional order related to Judicial

DECLARATION OF RUBY OCHOA
Page 1 of 2

SHAWN P. SANT
PROSECUTING ATTORNEY
FRANKLIN COUNTY
1016 NORTH 4TH AVENUE
PASCO, WA 99301
Phone (509) 545-3543

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Resolutions although not every Judicial Resolution is presented for filing. I did not find in these files orders appointing prosecutors.

7. As the Chief Deputy Clerk, I have personal knowledge regarding the handling of appeals from the superior court.

8. In order to process an appeal, the file must have a cause number (of the type that was assigned). Without a cause number, the matter cannot be tracked in our system.

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

6/20/18 Pasco, WA
Date and Place

Ruby A Ochoa
Ruby Ochoa

CIVIL ADMINISTRATIVE Type: ADM Administrative Inactive

Date	Type and Comment		
06/04/2018	Order Denying Motion Petition TEMPORARY DV ORDER - Juarrez v. Paredes Judicial Officer: Mitchell, Cameron	16	☺
05/22/2018	Order OF APPOINTMENT	15	☺
05/15/2018	Order Denying Motion Petition TEMPORARY DV ORDER - Hernandez v. Rivera Judicial Officer: Runge, Carrie L.	14	☺
05/01/2018	Order Denying Motion Petition TEMPORARY ANTIHARASSMENT ORDER - Allen v. Trinidad Judicial Officer: Swanberg, Samuel P.	13	☺
04/27/2018	Order Denying Motion Petition TEMPORARY DV ORDER - Capristo v. Pandon Judicial Officer: Spanner, Bruce A.	12	☺
04/27/2018	Order Denying Motion Petition WAIVER OF FILING FEES AND SURCHARGES - Ponce-Ramirez v. Ponce Judicial Officer: Spanner, Bruce A.	11	☺
04/20/2018	Certification OF APPOINTED COUNSEL - Karla Hudson	10	☺
04/19/2018	Certification OF APPOINTED COUNSEL - 2nd Quarter Danielle Purcell	9	☺
04/10/2018	Certification OF APPOINTED COUNSEL - 2nd Quarter Heather Villani	8	☺
04/09/2018	Certification OF APPOINTED COUNSEL - 2nd Quarter Peyman Younesi	7	☺
04/06/2018	Certification OF APPOINTED COUNSEL - 2nd Quarter Karyn Oldfield	6	☺
04/04/2018	Certification OF APPOINTED COUNSEL - 2nd Quarter Mitchell Trombley	5	☺
03/06/2018	Order Denying Motion Petition WAIVER OF CIVIL FEES AND SURCHARGES - Richardson v. Tanner Judicial Officer: Spanner, Bruce A.	4	☺
01/16/2018	Order AND JUDICIAL RESOLUTION NO. 18-001 REGARDING LGR 3 - FILES AND "PAPERLESS COURT"	3	☺
01/03/2018	Order REGARDING 12/29/2017 CLOSURE DUE TO INCLIMATE WEATHER Judicial Officer: Ekstrom, Alexander Carl	2	☺
01/02/2018	Certification OF APPOINTED COUNSEL - Michelle Trombley 1st Quarter	1	☺

APPENDIX B

Declaration of Pamela B. Loginsky (Jun. 25, 2018)

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.

//

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

EXHIBIT A

Declaration of Matt Newberg, Garfield County Prosecuting Attorney

Declaration of David Alvarez, Jefferson County Deputy Prosecuting
Attorney

Declaration of Jacquelyn M. Aufderheide, Kitsap County Deputy
Prosecuting Attorney

Declaration of Randall K. Gaylord, San Juan County Prosecuting Attorney

Declaration of Richard A. Weyrich, Skagit County Prosecuting Attorney

Declaration of Mark Roe, Snohomish County Prosecuting Attorney

Declaration of Lawrence H. Haskell, Spokane County Prosecuting
Attorney

Declaration of James L. Nagle, Walla Walla County Prosecuting Attorney

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7 **IN THE SUPERIOR COURT FOR ISLAND COUNTY, WASHINGTON**

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

11 Plaintiff,

12 vs.

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

16 Defendants,

17 and

18 ISLAND COUNTY BOARD OF
19 COMMISSIONERS,

20 Intervenor/Defendant, and
21 Counterclaim Plaintiff.

NO. 15-2-00465-9

DECLARATION OF MATT NEWBERG

IN SUPPORT OF PLAINTIFF'S AMENDED
MOTION FOR SUMMARY JUDGMENT

22
23 I, MATT NEWBERG, declare that I have personal knowledge of the matters set forth
24 below and that I am competent to testify to the matters stated herein.

- 25
26
27 - I am the elected Prosecuting Attorney for Garfield County and have been since
28 January 1, 2007;
29 - Outside counsel has been hired to assist Garfield County in matters since my election
30 in 2007;

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

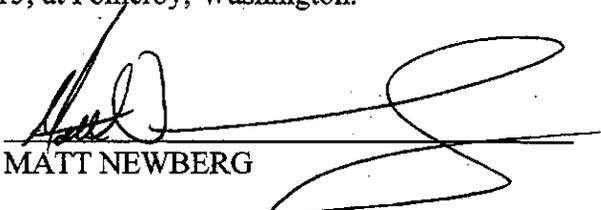
Page 1 of 2

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

- 1 - Outside counsel is used via the Washington Counties Risk Pool for defense of civil
2 claims, and has been done so with the consent and agreement of the Prosecuting
3 Attorney. Selection of the attorney was made by the Risk Pool with the consent of the
4 Prosecuting Attorney;
- 5 - Outside counsel has been used by Garfield County in matters of specialized
6 knowledge, specifically land use matters, again upon the consent and agreement of
7 the Prosecuting Attorney. Selection of the attorney was made through agreement of
8 the Board of Commissioners and the Prosecuting Attorney;
- 9 - In each instance, the outside counsel has reported directly to the Prosecuting
10 Attorney, and then to other County officials if necessary, through the prosecutor's
11 office.
- 12 - At times, civil defense has been tendered to the Washington State Attorney General's
13 Office, through consent and agreement of the Prosecuting Attorney through
14 appointment as special deputy prosecutor.
- 15 - Special deputy appointments have also been made by the Prosecuting Attorney for
16 deputy prosecutors of neighboring counties for the purposes of appearance in conflict
17 cases and/or the handling of appeals.
- 18 - At no time has the County hired outside counsel over the Prosecutor's objection,
19 and/or through consent of the Superior Court Judge.
- 20

21
22 I declare under the penalty of perjury of the laws of the State of Washington that the
23 foregoing is true and correct.

24
25 Signed this 8th day of December, 2015, at Pomeroy, Washington.

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

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IN THE SUPERIOR COURT FOR ISLAND COUNTY, WASHINGTON

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

Plaintiff,

vs.

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

Defendants,

and

ISLAND COUNTY BOARD OF
COMMISSIONERS,

Intervenor/Defendant, and
Counterclaim Plaintiff.

NO. 15-2-00465-9

DECLARATION OF DAVID ALVAREZ

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

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

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

DECLARATION OF DAVID ALVAREZ
Page 1

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

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

22 **DECLARATION OF DAVID ALVAREZ**

23 Page 2

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

1 12. This office will appoint outside counsel as special DPA to represent the State of
2 Washington in criminal matters where this office would have a conflict of interest.

3 13. No lawyer has been retained or paid to represent Jefferson County over the objection of
4 the Prosecutor's Office during my 16+ years of being the civil DPA for Jefferson County.

5 14. That fact is reflective of the close and excellent working relationship between the County
6 Commission and the Prosecuting Attorney's Office that has been in existence for the
7 entire time I have worked in this office.

8 15. I am not aware of any situation where the County Commissioners even threatened to use
9 RCW 36.32.200 to retain outside legal counsel but then did not do so. Instead, the
10 various processes laid out above describe how and when outside counsel has been
11 utilized.

12 16. I am aware of two occasions when the Jefferson County Commissioners utilized the tool
13 available to them through RCW 36.32.200.

14 17. One occasion arose when Recall Petitions were filed against two sitting County
15 Commissioners. Since this office is statutorily the counsel for the municipal corporation
16 and not for any individuals who serve as officials of that corporation, particularly those
17 who are alleged to have acted in an "ultra vires" manner, a conflict arose and this office
18 could not defend the individual elected officials against the recall petitions.

19 18. The second conflict occasion arose when there was a dispute between the prior elected
20 Prosecuting Attorney and the elected District Court Judge, both clients of this office.

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

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

24 

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

DECLARATION OF DAVID ALVAREZ
Page 3

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

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7 **IN THE SUPERIOR COURT FOR ISLAND COUNTY, WASHINGTON**

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

11 Plaintiff,

12 vs.

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

15 Defendants,

16 and
17

18 ISLAND COUNTY BOARD OF
19 COMMISSIONERS,

20 Intervenor/Defendant, and
21 Counterclaim Plaintiff.

NO. 15-2-00465-9

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

22 I, Jacquelyn M. Aufderheide, declare that I have personal knowledge of the matters set
23 forth below and that I am competent to testify to the matters stated herein.
24

25 1. I have been employed as a deputy prosecuting attorney by the Kitsap County
26 Prosecuting Attorney since September 1996. I served as Senior Deputy Prosecuting Attorney
27 from 1999 to 2006 when I was promoted to Chief of the Civil Division, the position I currently
28 hold. During my tenure with the Civil Division, I have become familiar with the process the
29
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DECLARATION
IN SUPPORT OF PLAINTIFF'S
AMENDED MOTION FOR
SUMMARY JUDGMENT

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

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

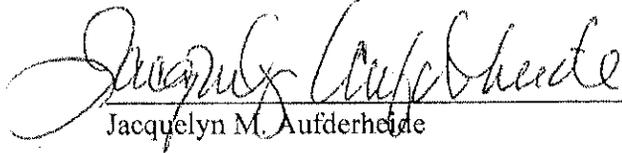
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12 3. In civil matters, selection of outside counsel is made by the Prosecuting
13 Attorney's Office except that when Kitsap County was a member of the Washington County's
14 Risk Pool, the Civil Division and Risk Pool would collaborate on who would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

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

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

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

3 Signed this 14th day of December, 2015, at Port Orchard, Washington.
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7 Jacquelyn M. Aufderheide
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DECLARATION
IN SUPPORT OF PLAINTIFF'S
AMENDED MOTION FOR
SUMMARY JUDGMENT

Page 3 of 3

PROSECUTING ATTORNEY
OF ISLAND COUNTY
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IN THE SUPERIOR COURT FOR ISLAND COUNTY, WASHINGTON

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

Plaintiff,

vs.

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

Defendants,

and

ISLAND COUNTY BOARD OF
COMMISSIONERS,

Intervenor/Defendant, and
Counterclaim Plaintiff.

NO. 15-2-00465-9

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

Randall K. Gaylord states and declares:

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

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

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

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

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

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

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

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

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

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

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

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

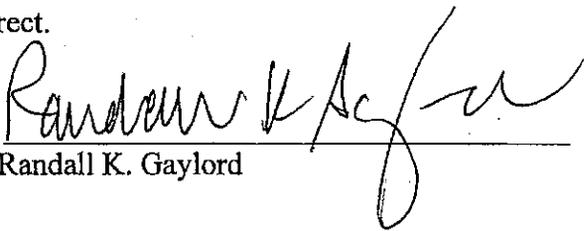
1 an attorney for San Juan County. I have not seen any files in San Juan County that show
2 that the process of RCW 36.32.200 was ever used.

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

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

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

13 Dated: 12/14/2010
14 Friday Harbor Washington


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Randall K. Gaylord

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IN THE SUPERIOR COURT FOR ISLAND COUNTY, WASHINGTON

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

Plaintiff,

vs.

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

Defendants,

and

ISLAND COUNTY BOARD OF
COMMISSIONERS,

Intervenor/Defendant, and
Counterclaim Plaintiff.

NO. 15-2-00465-9

DECLARATION OF

IN SUPPORT OF PLAINTIFF'S AMENDED
MOTION FOR SUMMARY JUDGMENT

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

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

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

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

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

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

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

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

Page 2 of 4

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

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

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

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

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

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

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

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

4 I declare under the penalty of perjury of the laws of the State of Washington that the
5 foregoing is true and correct.
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8 Signed this 11 day of December, 2015, at Mount Vernon, Washington.

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12 RICHARD A. WEYRICH

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IN THE SUPERIOR COURT FOR ISLAND COUNTY, WASHINGTON

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

NO. 15-2-00465-9

Plaintiff,

DECLARATION OF MARK ROE

vs.

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

Defendants,

and

ISLAND COUNTY BOARD OF
COMMISSIONERS,

Intervenor/Defendant, and
Counterclaim Plaintiff.

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

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

1 1. Beginning in 1992 I was the supervisor of either the Violent Crimes Unit, or Special
2 Assault Unit handling sex crimes and crimes against children.
3

4 2. I am very familiar with Snohomish County practices on the hiring of outside counsel, and
5 who makes the decision to do so. The elected prosecutor makes those decisions.
6

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

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

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

23 6. When we 'go outside', we generally enter into a contract with negotiated caps on expense,
24 which can be reassessed once those levels have been reached. We have a duty to be frugal with
25 the taxpayers' money. We represent not only the county entity, but in a general sense, the
26 taxpayers as well. Outside attorneys do not always appreciate the special duties of a prosecutor
27 because it isn't something they have to be aware of every day.
28
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1 7. No outside attorney has ever been appointed or contracted with over my objection. No one
2 has even tried to do that. Any suggestion that this routinely happens is certainly inaccurate as to
3 Snohomish County. It's never happened.
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6 SIGNED at Everett, Washington this 11th day of December 2015.

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8 MARK K. ROE
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7 **IN THE SUPERIOR COURT FOR ISLAND COUNTY, WASHINGTON**

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

12 Plaintiff,

13 vs.

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

16 Defendants,

17 and
18

19 ISLAND COUNTY BOARD OF
20 COMMISSIONERS,

21 Intervenor/Defendant, and
22 Counterclaim Plaintiff.
23

NO. 15-2-00465-9

**DECLARATION OF
LAWRENCE H. HASKELL**

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

24 I, Lawrence H. Haskell, declare that I have personal knowledge of the matters set
25 forth below and that I am competent to testify to the matters stated herein.
26

27 (1) I am the duly elected Prosecuting Attorney for Spokane County,
28 Washington. I took office on January 1, 2015. Prior to that date, I was a Deputy
29
30

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

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

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

4
5
6 (2) Spokane County uses legal counsel outside of the Prosecutor's Office under
7 circumstances where the Spokane County Prosecuting Attorney determines that the office
8 does not have unique legal expertise required to provide advice and representation to its
9 statutory clients or there are conflicts. Examples of instances where Spokane County has
10 used legal counsel outside the Prosecutor's Office include, but are not necessary limited
11 to:
12
13

- 14
- 15 a. Bond Counsel regarding the authorization, issuance, sale and delivery of
16 general obligation, revenue and utility local improvement district bonds,
17 road improvement district bonds and warrants, notes and other debt
18 instruments;
 - 19
20 b. Outside legal counsel to assist in contract negotiations regarding the design
21 and construction of a \$144 Million Spokane County Regional Water
22 Reclamation Facility;
 - 23
24 c. Outside legal counsel to assist in the update of Spokane County's Master
25 Shoreline Program;
 - 26
27 d. Outside legal counsel to assist in conjunction with interest arbitration
28 proceedings under chapter 41.56 RCW;
 - 29
30

- 1 e. Outside legal counsel for tort claims against Spokane County and/or its
2 elected officials under covered through the Washington Counties Risk
3 Pool; and
4
5
6 f. Outside legal counsel in instances where there is a conflict in the
7 Prosecuting Attorney's Office representing of one or more of its statutory
8 clients.
9

10 (3) The Spokane County Prosecuting Attorney's Office is directly involved in
11 all decisions regarding the use of legal counsel outside the Prosecuting Attorney's Office
12 to provide advice and representation to its statutory clients. Except with respect to
13 representation through the Washington Counties Risk Pool, the Chief Civil Deputy
14 Prosecuting Attorney discusses the need for outside legal counsel with the statutory
15 clients. In instances where the Chief Civil Deputy Prosecuting Attorney believes that the
16 Civil Department does not possess the unique legal expertise required, after consultation
17 with the Prosecuting Attorney, the Chief Civil Deputy Prosecuting Attorney compiles a
18 list of outside legal counsel having the required legal expertise. The Chief Civil Deputy
19 Prosecuting Attorney confers with the Prosecuting Attorney as to which outside legal
20 counsel is best suited to provide such advice. The Prosecuting Attorney through the
21 Chief Civil Deputy Prosecuting Attorney advises the respective statutory client of the
22 outside legal counsel's unique expertise who the Prosecuting Attorney is willing to
23 specially deputize or prepare a contract under RCW 36.32.200 for the Court's
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1 consideration. I am unaware of any circumstance in Spokane County where the Board of
2
3 County Commissioners or any elected official has employed outside legal counsel to
4 provide legal representation or advice to any statutory client without the approval of the
5 Prosecuting Attorney but for in the matter of *Westerman v. Cary*, 125 Wn. 2d 277, 892.
6 P. 2d 1067 (1994).
7

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

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

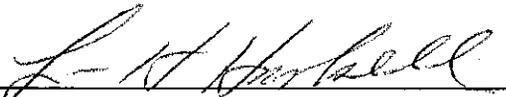
16 In circumstances where it is determined that the Prosecuting Attorney does not
17 want to be responsible on his/ her bond required under RCW 36.16.050 or there may be
18 potential risk of exceeding Spokane County's insurance coverage under the Washington
19 Counties Risk Pool, the Prosecuting Attorney's Office prepares and approves as to form
20 and content a contract to hire outside legal counsel for presentation to the Spokane
21 County Superior Court as provided for under RCW 36.32.200.
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25 (5) In all instances where the Spokane County Prosecuting Attorney specially
26 deputizes outside legal counsel to provide unique legal advice and representation or
27 where the Spokane County Prosecuting Attorney prepares and approves as to form and
28 content a contract to hire outside legal counsel to provide unique legal advice and
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1 representation, the compensation to be paid outside legal counsel is not included in the
2 Prosecuting Attorney's budget. Instead, compensation paid to outside legal counsel is
3 subject to review and approval by the Chief Civil Deputy Prosecuting Attorney and then
4 forwarded to the Spokane County Chief Executive Officer and/or Spokane County Risk
5 Manager for payment. This procedure eliminates process of supplementing the Spokane
6 County Prosecuting Attorney's budget and facilitates the Spokane County Chief
7 Executive Officer and/or Spokane County Risk Manager in allocating outside legal
8 counsel's fees as determined appropriate in the budgetary process.
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13 I declare under the penalty of perjury of the laws of the State of Washington that
14 the foregoing is true and correct.

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

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18 Lawrence H. Haskell, WSBA #27826
19 Spokane County Prosecuting Attorney
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7 **IN THE SUPERIOR COURT FOR ISLAND COUNTY, WASHINGTON**

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

11 Plaintiff,

12 vs.

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

16 Defendants,

17 and

18 ISLAND COUNTY BOARD OF
19 COMMISSIONERS,

20
21 Intervenor/Defendant, and
22 Counterclaim Plaintiff.

NO. 15-2-00465-9

DECLARATION OF JAMES L. NAGLE

IN SUPPORT OF PLAINTIFF'S AMENDED
MOTION FOR SUMMARY JUDGMENT

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

28 Walla Walla County uses counsel outside of the prosecutor's office for representation of
29 the County in negotiations with collective bargaining units and employment law matters. This is
30

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

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

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

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

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

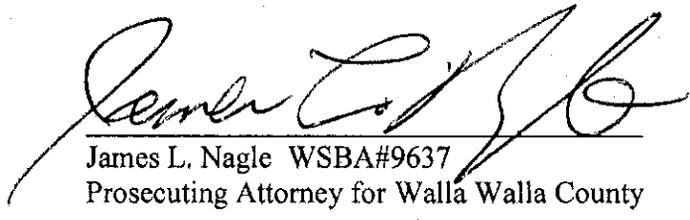
25 No lawyer has been retained or paid to represent Walla Walla County over my objection.
26 No lawyer was retained or paid to represent Walla Walla County over the objection of my
27 predecessors in office while I was a deputy prosecutor.

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

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

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


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

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

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

EXHIBIT B

Appointment and Oath of Special Deputy Prosecuting Attorney

**APPOINTMENT AND OATH OF
SPECIAL DEPUTY PROSECUTING ATTORNEY**

I, MICHAEL E. HAAS, Prosecuting Attorney for Jefferson County, State of Washington, pursuant to RCW 36.27.040, do hereby appoint PAMELA LOGINSKY, WSBA No. 18096, effective May 25, 2016, for the purpose of representing Jefferson County in *State of Washington v. Ascension Salgado-Mendoza*, Court of Appeals Div. II Cause No. 46062-9-II. This includes the authority to seek re-consideration of the underlying decision of the Court of Appeals in this matter, to file a petition for review to the State Supreme Court and file briefing if review is granted, and to take any other action necessary in that case deemed appropriate by said Special Deputy.

This appointment shall be deemed commenced on May 25, 2016, and shall continue until all matters relating to this matter are complete. I further give PAMELA LOGINSKY, the said special deputy prosecuting attorney, full power and authority to do and act in my name the same as I would in law be empowered to do if personally present for the express purpose of fulfilling the obligations under this appointment.

Due to a conflict of interest with this case, all questions related to policy or requests for assistance should be directed to my Chief Deputy Prosecuting Attorney, Julian St. Marie.

DATED AND SIGNED this 25th day of May, 2016.



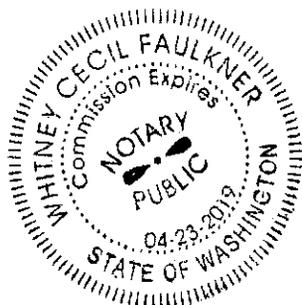
MICHAEL E. HAAS, WSBA #17663
Prosecuting Attorney for Jefferson County

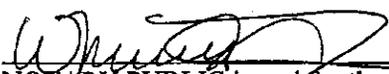
I, PAMELA LOGINSKY, do solemnly swear that I will support the Constitution and laws of the United States and the Constitution and laws of the State of Washington, and that I will faithfully and impartially perform and discharge my duties as a special deputy prosecuting attorney for Jefferson County, Washington, to the best of my ability.



PAMELA LOGINSKY, WSBA No. 18096
Special Deputy Prosecuting Attorney

SUBSCRIBED AND SWORN to before me this 26th day of May, 2016.





NOTARY PUBLIC in and for the State of Washington
My appointment expires: 4/23/19

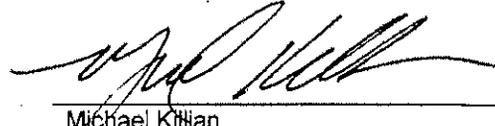
APPENDIX C

Declaration of Michael Killian

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

3 6/25/2018

Pasco, WA



4 Date and Place

Michael Killian

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APPENDIX D

Declaration of Thomas Westerman

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No. 95945-5

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

In Re the Appointment of a Special Deputy
Prosecuting Attorney

DECLARATION OF THOMAS WESTERMAN

STATE OF WASHINGTON)

) ss.

County of Franklin)

I, Thomas Westerman, Director of Finance in the Franklin County Auditor's Office, declare as follows:

1. I am competent to testify in all respects, and make this declaration from my personal knowledge.
2. I have been employed at the Franklin County Auditor's Office as an accountant for 28 years.
3. On May 22, 2018, Pat Austin hand delivered me a "Notice to the County Auditor of Franklin County, Washington" to my office in the Accounting Department located within the County Auditor's Office.
4. I was unsure of what to do with The Notice, so I provided it to Franklin County Auditor Matthew Beaton, and he directed me to contact Pat Austin, Superior Court Administrator, to inquire about the Order of Appointment referenced in the Notice. She replied to my email on May 25, 2018, by providing me another copy of the Notice along with the Order, attached to this declaration, which I provided to Mr. Beaton. That was the extent of my involvement with the receipt of the Notice and Order of Appointment.

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

6/20/2018

Pasco, WA

Date and Place



Thomas Westerman

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IN THE SUPERIOR COURT OF WASHINGTON FOR FRANKLIN COUNTY

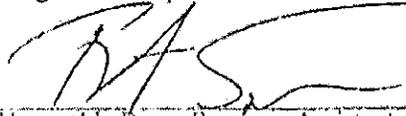
IN RE THE APPOINTMENT OF A
SPECIAL DEPUTY PROSECUTING
ATTORNEY

NOTICE TO THE COUNTY AUDITOR
OF FRANKLIN COUNTY,
WASHINGTON

NOTICE IS HEREBY GIVEN TO THE COUNTY AUDITOR OF FRANKLIN
COUNTY, WASHINGTON that the attached ORDER OF APPOINTMENT is presented for
filing of record by the Judges of the Benton and Franklin Counties Superior Court.

Dated this 21st day of May, 2018.


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


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

NOTICE TO THE FRANKLIN COUNTY AUDITOR -- 1

LAW, LYMAN, DANIEL,
KAMERRER & BOGDANOVICH, P.S.
ATTORNEYS AT LAW
1021 1/2 JOHN W. BORDO, JR. CENTER, SUITE 100
PO BOX 1000, CLATSOP, WA 97130
(509) 325-1100 FAX (509) 327-3000

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

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6 IN THE SUPERIOR COURT OF WASHINGTON FOR FRANKLIN COUNTY

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8 IN RE THE APPOINTMENT OF A
9 SPECIAL DEPUTY PROSECUTING
ATTORNEY

2018-0001-11
ORDER OF APPOINTMENT

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

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

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

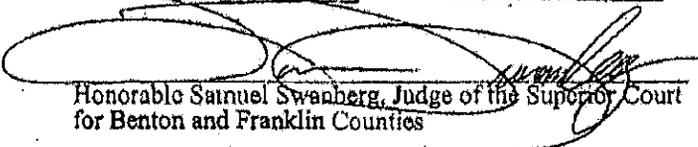
23 3. W. Dale Kamerrer, WSBA #8218, is a duly admitted and practicing
24 attorney-at-law and resident of the State of Washington, and is qualified to discharge the duties
25 of the Prosecuting Attorney of Franklin County in relation to the above-referenced action, and
26 has been performing the duties 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
2874 NW JOHNSON BLVD STE 200, TUMWATER, WA 98522
PO BOX 11880, OLYMPIA, WA 98508-1880
(360) 754-3480 FAX: (360) 257-2511

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


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

APPENDIX E

Declaration of Shawn P. Sant (Jun. 25, 2018)

- 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.

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

6/25/2018

Pasco, WA



Date and Place

Shawn P. Sant, #35535

GUY BOGDANOVICH*
 DON G. DANIEL
 JOHN E. JUSTICE*
 W. DALE KAMERRER
 ELIZABETH A. MCINTYRE*
 JEFFREY S. MYERS
 JULIE CARIGNAN
 JOCELYN LYMAN, of counsel
 DONALD LAW, of counsel
 *Admitted in WA & OR

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

(360)754-3480 FAX: (360)357-3511

Mailing Address:
 PO Box 11880
 Olympia, WA 98508

Street Address:
 2674 RW Johnson Blvd SW
 Tumwater, WA 98512

Shawn Sant
 Franklin County Prosecutor's Office
 1016 North 4th Ave.
 Pasco WA 99301-1160

RECEIVED

JUN 04 2018

Client ID:
 Statement No:

Page: 1
 May 31, 2018
 Franklin-004
 4

FRANKLIN CO PA

Franklin Co. Superior Court

Previous Balance \$2,994.50

Fees

			Rate	Hours	
05/01/2018	DK	Prepare for and conduct telephone conference with BOCC / Prepare email to judges re BOCC conference / Review J. Ekstrom response to my email re Clerk's Association position / Review Fraud Report from State Auditor / Review email from J. Ekstrom re my report of BOCC conference / Review email from J. Ekstrom re local knowledge of fraud investigation outcome / Review earlier Management Letter from Auditor and County Clerk's response / Review email regarding "independently elected official" from J. Spanner / Review email chain from J. Ekstrom regarding Clerk's failure to attend hearing / Email to S. Sant re AGO comments / Review and consider Sant's response	225.00	2.20	495.00
05/02/2018	DK	Review and reply to email from S. Sant / Email to judges re same / Emails x2 from J. Ekstrom re same	225.00	0.50	112.50
05/03/2018	DK	Review email from S. Sant requesting more authorities / Check Osborn case and return information re it / Review Sant's reply, review statutes he cited, and respond to same / Email judges re latest communications	225.00	0.80	180.00
05/08/2018	DK	Email to S. Sant re BOCC meeting today / Review and consider email from Sant, forward same to judges and review reply / Email to Sant re recording of BOCC meeting / Additional emails to and from J. Ekstrom re need for further information and next steps / Begin developing motion documents for appointment by court / Review and reply to email from J. Ekstrom re Sant email content	225.00	1.00	225.00
05/09/2018	DK	Email to S. Sant re recording of BOCC meeting / Listen to BOCC meeting recording and prepare notes re same / Review and respond to email from J. Ekstrom re BOCC meeting / Telephone conference from J. Ekstrom / Draft and email recommendations to judges re Clerk's concession / Review and respond to email from Sant	225.00	2.70	607.50

Franklin Co. Superior Court

			Rate	Hours	
05/10/2018	DK	Review and reply to email from J. Ekstrom re responding to Yakely and meeting with Clerk / Review and reply to email from J. Ekstrom re message to Clerk	225.00	0.20	45.00
05/14/2018	DK	Review and respond to email from J. Ekstrom / Research re powers of judges to sue and relation to service and compensation of counsel / Draft appointment order, notice to auditor and engagement letter / Email to judges re appointment and related documents / Review and respond to email from S. Sant /	225.00	2.80	630.00
05/15/2018	DK	Review and reply to email from J. Ekstrom / Review second email from J. Ekstrom and revise documents sent yesterday / Review related materials and prepare draft letter to BOCC / Email same to J. Ekstrom / Review and reply to email from Courthouse news organization re status /	225.00	2.60	585.00
05/16/2018	DK	Review email from J. Spanner re BOCC letter / Make changes to Order, Notice to Auditor, engagement letter and letter to BOCC / Email to judges re timing and final copies	225.00	0.90	202.50
05/17/2018	DK	Emails from and to H. Yakely re Answer to Complaint	225.00	0.10	22.50
05/21/2018	DK	Review email from J. Ekstrom re letter edits and signatures on Order and notice / Edit letter to BOCC and email same plus Order and notice to J. Ekstrom / Review and reply to response / Review signed Order, engagement letter and notice to Auditor / Email to K. Johnson and S. Sant re letter to BOCC / Email to J. Ekstrom and J. Spanner re delivery	225.00	0.80	180.00
05/22/2018	DK	Email to Judges re scheduling and efficient procedure / Review and respond to reply / Prepare proposed Show Cause Order hearing for abbreviated process / Email to H. Yakely re same / Review emails from S. Sant and A. Orozco and attachments / Email to Judges re same and next steps /	225.00	1.90	427.50
05/23/2018	DK	Review, consider and respond to email from H. Yakely re motion procedure and provide appointment Order / Review and consider email from Yakely challenging appointment / Email in response requesting cooperative scheduling / Review Benton/Franklin scheduling rules, calendar and forms, and Kittitas County motion rules and schedule of Judge Sparks / Email to Judges reporting on status / Review and consider letters from and to Clerks' Association president emailed from J. Spanner / Begin drafting motion presenting alternatives to Court	225.00	2.90	652.50
05/24/2018	DK	Draft motion to enable alternative decisions by Court / Review email from J. Ekstrom / Review and reply to critical email from H. Yakely / Email to J. Ekstrom and J. Spanner re communications with defense attorney and planning for an efficient process / Review reply from J. Ekstrom /	225.00	2.70	607.50

Franklin Co. Superior Court

			Rate	Hours	
05/29/2018	DK	Review email from J. Ekstrom / Review law on use of show cause procedures / Finish alternative motion for show cause order / Review and reply to email from H. Yakely's office re email outage / Search court files for Supreme Court's order in Okanogan County case / Telephone Okanogan County Clerk left message /	225.00	1.80	405.00
05/30/2018	DK	Review and reply to email from H. Yakely's office re changed email address / Review and respond to email from Yakely re hearing location and timing / Email to judges re attempts to economize procedures and challenges for same /	225.00	0.60	135.00
05/31/2018	DK	Return telephone from Okanogan County Clerk re Rabidou case file copies / Register for Clerkepass.com / Multiple downloads of requested records / Read and annotate records from Rabidou case in Okanogan County / Work on MSJ per email from J. Ekstrom /	225.00	2.30	517.50
		Total Fees		<u>26.80</u>	<u>6,030.00</u>

Expenses

05/31/2018	Copies, and Postage	45.61
	Total Expenses	<u>45.61</u>

Advances

05/31/2018	Records received from Okanogan Co. Clerk	12.75
05/31/2018	Records received from e-File/Okanogan Co.	6.00
05/31/2018	Records received from E-Filing	11.50
	Total Advances	<u>30.25</u>

Total Current Charges 6,105.86

Balance Due \$9,100.36

Aged Due Amounts						
0-30	31-60	61-90	91-120	121-180	181+	
6,105.86	2,994.50	0.00	0.00	0.00	0.00	

Billing History					
<u>Fees</u>	<u>Hours</u>	<u>Expenses</u>	<u>Advances</u>	<u>Finance Charge</u>	<u>Payments</u>
13,252.50	60.20	210.94	270.25	0.00	4,633.33

Payments received after 05/31/2018 are not included on this statement.

Corporate Tax ID: 91-1156390

WASHINGTON ASSOC OF PROSECUTING ATTY

June 25, 2018 - 3:00 PM

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: 95945-5
Appellate Court Case Title: In Re the Appointment of a Special Deputy Prosecuting Attorney
Superior Court Case Number: 18-2-50522-7

The following documents have been uploaded:

- 959455_Other_20180625145652SC155215_6849.pdf
This File Contains:
Other - Appendices to Reply to Answer to Motion
The Original File Name was Reply Appendices A-E.pdf

A copy of the uploaded files will be sent to:

- aplummer@ecl-law.com
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- hyakely@ecl-law.com
- jeffe@atg.wa.gov
- jjohnson@co.franklin.wa.us
- marry@lldkb.com
- ssant@co.franklin.wa.us
- tchen@co.franklin.wa.us
- toddb@atg.wa.gov

Comments:

Sender Name: Pam Loginsky - Email: pamloginsky@waprosecutors.org
Address:
206 10TH AVE SE
OLYMPIA, WA, 98501-1311
Phone: 360-753-2175

Note: The Filing Id is 20180625145652SC155215

PROOF OF SERVICE

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

On the 25th day of June, 2018, pursuant to the agreement of the parties, I e-mailed a copy of the document to which this proof of service is attached to

Teresa Chen at tchen@co.franklin.wa.us

Shawn Sant at ssant@co.franklin.wa.us

Jennifer Johnson at jjohnson@co.franklin.wa.us

Dale Kamerrer at dkamerrer@lldkb.com and at marry@lldkb.com

On the 13th day of June, 2018, I also e-mailed a copy of the document to which this proof of service is attached to the attorney for the Franklin County Clerk in the mandamus action

Heather Yakely at hyakely@ecl-law.com and at aplummer@ecl-law.com

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, 2016, at Olympia, Washington.


PAMELA B. LOGINSKY
WSBA NO. 18096

WASHINGTON ASSOC OF PROSECUTING ATTY

June 25, 2018 - 2:56 PM

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: 95945-5
Appellate Court Case Title: In Re the Appointment of a Special Deputy Prosecuting Attorney
Superior Court Case Number: 18-2-50522-7

The following documents have been uploaded:

- 959455_Answer_Reply_20180625145133SC109063_0825.pdf
This File Contains:
Answer/Reply - Reply to Answer to Motion
The Original File Name was Signed Combined Reply and Answer.pdf

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- marry@lldkb.com
- ssant@co.franklin.wa.us
- tchen@co.franklin.wa.us
- toddb@atg.wa.gov

Comments:

Sender Name: Pam Loginsky - Email: pamloginsky@waprosecutors.org
Address:
206 10TH AVE SE
OLYMPIA, WA, 98501-1311
Phone: 360-753-2175

Note: The Filing Id is 20180625145133SC109063