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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

THE JUDGES OF THE BENTON AND FRANKLIN COUNTIES OF
THE SUPERIOR COURT: Judge Joe Burrows, Judge Alex Ekstrom, Judge
Cameron Mitchell, Judge Carrie Runge, Judge Jacqueline Shea-Brown,
Judge Bruce Spanner and Judge Sam Swanberg,

Respondents,

vs.

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

Appellant.

RESPONDENTS' ANSWER TO BRIEF OF *AMICUS CURIAE*
WASHINGTON STATE ASSOCIATION OF COUNTIES

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I. Introduction

The Judges of the Benton and Franklin Counties Superior Court, plaintiffs below and respondents herein, answer the Brief of *Amicus Curiae* Washington State Association of Counties (WSAC), as follows.

Much of the argument presented by WSAC has been addressed in the Brief of Respondents and the Respondents' Brief in Response to *Amicus Curiae* Washington State Association of County Clerks. Respondents rely primarily on those briefs in response to WSAC as well.

II. Argument

A. WSAC's Misinterpretations of the Facts.

WSAC first misinterprets the series of documents at CP 140-42 and 144, which reflect Franklin County's 2014 agreement to support planning and funding for the Superior Court Case Management System which includes development of the "Odyssey" electronic file system. *See* WSAC *amicus curiae* brief at 3. The County's agreement included the signatures of then-Presiding Judge Bruce Spanner, and Court Administrator, Patricia Austin. CP 144. Judge Spanner and Ms. Austin were also members of the Court Users Work Group formed to plan for

implementation of the Odyssey system in “early-adopter” jurisdictions.¹

WSAC’s highlighting of the Franklin County agreement implies that after the County’s agreement was made, the Superior Court lacked the ability to decide when a transition could occur from the paper file system to a fully paperless electronic system for keeping and providing court case file records. No such implication is warranted from that agreement. Instead, the agreement states that “...the County accepts responsibility for any applicable costs associated with our selected court document management system as described in the SC-CMS Implementation Cost Rules...” CP 144. It does not diminish the Superior Court’s influence over the transition from the paper system to an electronic system whatsoever.

Moreover, the “go live” agreement that WSAC refers to did not commit its parties to a full transition from paper files to electronic files at the time it was signed or at any particular time. *See* WSAC brief at 3, citing CP 119, Declaration of Michael Killian, at ¶ 17. Uses of the term “go live” and its variations such as “go-live” and “golive,” are found in numerous documents on the

¹ *See* Appendix A to the Brief of Respondents herein, the Washington Courts list of representatives to the SC-CMS (Superior Court Case Management System) Project, identifying Judge Spanner and Ms. Austin in the Court User Work Group category.

Washington Courts website. From those uses, it is clear that the term means the beginning point for the creation and use of electronic files, involving the commencement of converting paper files to electronic forms and the building of case files in the electronic system. *See, e.g., 2013 10 25 JISC MTG iMTP.pdf* (Records of the Meeting of JISC Committee, October 25, 2013). The commitment to “go live” by Franklin County was not an agreement to eliminate paper files and rely solely on electronic files from the outset or at any particular time. Nor did the use of that term indicate that the Superior Court was relinquishing or diminishing its influence over the transition from the paper system to an electronic system whatsoever.

Instead, because the form of the files maintained for judicial officers’ use is a matter of fundamental concern to courts, it should be recognized that superior court judges in participating counties and joint judicial districts are lawfully entitled to have ultimate authority within their jurisdictions to decide when the electronic system is developed to a point where the transition from the traditional paper file system can be implemented. This authority is found in the sources for constitutional, statutory, court rule-based and inherent authority of the superior courts to control the manner in which their subordinate ministerial clerk performs duties which relate to adjudicatory functions. Much has already

been said about these authorities in the briefing that Kittitas County Judge Scott R. Sparks relied on to grant summary judgment in favor of the respondents here, and in the briefing to the Supreme Court, that does not require repeating here.

B. The Effect of LGR 3 on the Clerk’s Budget.

WSAC largely repeats others’ arguments relating to the budgetary effect of LGR 3, without recognizing what the Local Court Rule says and does not say. Respondents rely primarily on their previous briefing on this subject in the Brief of Respondents and their Response to *Amicus Curiae* Washington State Association of County Clerks in response to these arguments.

But it is important to consider the words of the rule. LGR 3 provides:

(a) The clerks of Benton and Franklin Counties shall keep and maintain paper files for all cases and file types, by forthwith filing all pleadings and papers in paper files, except as may be otherwise authorized in writing by the Court.

(b) The clerks of Benton and Franklin Counties shall make up-to-date paper files for all cases and case types available to the Court, as directed by its judicial officers.

(c) While paperless courts are preferable, they should only be implemented after careful consideration of the impacts upon the Court, the legal community and the public, and only after case management systems have been configured so all of their capabilities are realized. Accordingly, neither clerk shall attempt or purport to operate with “paperless” processes unless and until the same has been approved in writing by the court. Permission will not be granted unless the Court is satisfied that appropriate workflows and work queues have been implemented, that equipment and processes have been acquired and developed to facilitate electronic signatures, and that the paperless processes do

not adversely affect the Court's ability to conduct court proceedings and other court functions. As directed by the Court, the Clerks shall work diligently, collaboratively and harmoniously with the Court to satisfy all of the conditions precedent to "paperless" court, as set forth above. In so doing, the clerks shall conform to the direction of the Court.

(d) Pursuant to GR7(e) this rule shall become effective immediately upon filing the same with the Washington Administrative Office of the Courts.

Adopted effective January 16, 2018. (Emphasis added.)

LGR 3 does not purport to appropriate county funds. It does not direct the Clerk or the County to expend funds. It does not direct the County to provide funding. And it does not require increased personnel or staff time.

LGR 3 is addressed to court case file practices and procedures which are to be followed by the Franklin County Superior Court Clerk concerning records used and relied on by judicial officers to adjudicate cases. It was made necessary by the Clerk's unilateral and Court-opposed decision to cease maintaining and providing paper case files to those judicial officers. CP 27-28, Judge Spanner declaration at ¶¶ 6 and 7; and CP 29-31, Judicial Resolution adopting LGR 3.

The Superior Court first learned of the Clerk's unilateral decision to stop maintaining traditional paper case files after the Franklin County budgeting process was completed in 2017 for the 2018 budget year. *See* CP 27-28, ¶ 6, Declaration of Judge Bruce Spanner (stating that after informing the Clerk in October 2017 that

the Court was not ready to transition to electronic case files, the Clerk informed Court on December 18, 2017, that he would end maintaining paper files at the beginning of 2018); and *see* RCW 36.40.071 & 36.40.080 (budget hearing for adoption of final county budget is to be on first Monday of December).

The Clerk has made no showing that the budget he was given for 2018 (which was nearly identical to his budgets in 2016 and 2017 (as well as 2019) – *see* CP 178-190), had anticipated either his termination of the practice of maintaining paper court case files or any change in the case file services his office provided to the Superior Court. Nor has the Clerk shown that he had to request a budget extension from the Board of County Commissioners of Franklin County for the 2018 budget year after LGR 3 was adopted.

At the time the Franklin County budget for 2018 was set, the Superior Court Judges could not have known whether the Clerk requested or received an appropriation that would be insufficient to discharge the same paper-file-maintaining functions he had performed in previous years because he did not inform the Court that he would cease maintaining paper files until after the County budget was established. Nor could the Judges have known at the time LGR 3 was adopted (January 16, 2018) that the Clerk would claim to have an insufficient budget to comply with it. Accordingly, the adoption of LGR 3 could not have been indirectly intended to

require an additional appropriation, if in fact one would have been necessary –which is also not shown here.

WSAC’s budget-related argument is neither a genuine issue nor one that has factual or legal merit. It should be rejected.

C. Mandamus Standards.

The Superior Court’s judges have previously responded to the Clerk’s argument that there were insufficient grounds for issuance of a writ of mandamus. *See* Brief of Respondents at 28-33. Respondents primarily rely on those arguments here.

WASAC supports its arguments on the mandamus issue by reprising its budget-related arguments. *See* WSAC *amicus curiae* brief at 17-18. As shown above at 5-6, and in the Superior Court’s other briefs, LGR 3 does not purport to compel increased funding for the Court. It does not say anything about money, appropriations or budgets. It does not require the addition of personnel, increase salaries, or require additional work hours by the Clerk’s staff. Nor, as explained above, could the Superior Court have understood at the time LGR 3 was adopted that the Clerk did not have a sufficient budget for 2018 to continue maintaining and providing paper case files to judicial officers.²

² It is not conceded that the Clerk did not have a sufficient budget to continue maintaining and providing paper case files, as his budget remained essentially the same for the two years preceding adoption of LGR 3 in January of 2018, when he was keeping paper files as well as developing the paperless file system. (Continued)

There was no intent to affect budgets, or knowledge that such would follow, as was plainly the case in *Matter of Salary of Juvenile Dir.*, 87 Wn.2d 232, 552 P.2d 163 (1976). The adoption of LGR 3 did not usurp budgetary authority.

Nor did the writ of mandamus issued by Judge Sparks compel increased funding for the Court or Clerk. CP 239-241 (Writ of Mandamus). As is the case with LGR 3 and the Judicial Resolution by which it was adopted, no cost was imposed and no funding was compelled. *See* CP 50-54 (Resolution, Order and LGR 3).

WSAC finally argues that the “clear, cogent and convincing” evidence standard should be applied to the Superior Court’s entitlement to a writ of mandamus, citing *Matter of Salary of Juvenile Dir.*, 87 Wn.2d at 233-34. The *Juvenile Director Court* applied the clear, cogent and convincing standard only “when courts seek to exercise their inherent power in the context of court finance.” *Id.*, 87 Wn.2d at 251. But LGR 3 was not an enactment “in the context of court finance.” It solely concerned the form of court case records provided to the judiciary. Moreover, *Juvenile Director* did not alter the “preponderance of the evidence” standard in civil actions, including mandamus. *See Anderson v. Akzo Nobel*

And the Clerk’s budget remained largely unchanged in 2019. *See* CP 178-190.

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