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No. 96821-7

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.

BRIEF OF RESPONDENTS

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A. INTRODUCTION

Kittitas County Superior Court Judge Scott R. Sparks,¹ understood that the genesis of Local General Rule 3 of the Benton and Franklin Counties Superior Court was its Judges' belief "...that the need for paper files had not yet ceased". CP 233.² Nevertheless, the Superior Court's ministerial subordinate, the Franklin County Clerk, improperly sought to dictate otherwise and implemented an exclusively electronic (paperless) court file system over the Judges' objection. *Id.* In doing this, the Clerk terminated the traditional, reliable and well-practiced form by which judicial officers learn about cases and issues, and the form in which their orders and decrees are recorded and distributed, *i.e.*, the files and records of the Court. The Clerk's action violated the constitutional, statutory and inherent authority of the Superior Court and the legitimate needs of its judicial officers.

As a result of the Clerk's refusal to continue maintaining paper copies of court files, the court exercised its rule-making authority to require continued maintenance of "paper files for all cases and file types"

¹ Specially assigned to preside in this case. CP 236.

² Respondents will employ the same record designations as used by the petitioners, *i.e.*, "CP" for the Clerk's Papers, and "SCP" for the Supplemental Clerk's Papers.

pending court approval of a fully paperless system. CP 54. Two judicial interests made that local rule necessary: (1) assuring that time-sensitive court orders reached their intended destinations reliably and in a timely manner (CP 78-79); and (2) assuring judicial access to court files in all places where judicial business is conducted. CP 28.

Judge Sparks distilled the issue to a question of the “relative authority of the Clerk and the Superior Court”. CP 233. He looked for sources of authority which supported the Clerk’s contention that the form in which the Court’s records were kept was a discretionary power of the Clerk, and found none. CP 233. But when looking for the authority of the Superior Court, Judge Sparks recognized the clear import of the words of the Washington Supreme Court in *Matter of Recall of Riddle*, 189 Wn.2d 565, 583, 403 P.3d 849 (2017). That authority, supported by statutes which have governed court clerks since before statehood, places clerks in a ministerial and subordinate position to the court they serve.³ This means that “when acting as the clerk of the superior court, the county clerk has

³ See Washington Constitution, Art. 4, Section 26 (county clerk is *ex officio* clerk of the superior court); RCW 2.32.050(3) (clerk’s duty is to keep the records, files and other books and papers appertaining to the court); RCW 2.32.050(9) (clerk, “in the performance of his or her duties (is) to conform to the direction of the court”); RCW 36.23.030 (clerk of the superior court’s duties in keeping court records); and see Appendix B, Laws of Washington Territory (1979), Section 6, p. 71.

always been required in the performance of his or her duties to conform to the direction of the court.” CP 234, Judge Sparks’ letter opinion, quoting *Riddle* at 583.

Judge Sparks also recognized that legislative assignment of court clerks to positions subordinate to the court they serve fostered “one, uniform system of justice operating under the direction and supervision of the Supreme Court.” CP 234. By his refusal to abide by LGR 3, the Franklin County Clerk would upset that uniform system and elevate himself above the system and the court he is required by law to serve as a ministerial subordinate. Judge Sparks’ Order Granting Summary Judgment (CP 236), and Writ of Mandamus (CP 239), should be affirmed.

B. STATEMENT OF THE CASE

In December 2017, after both authorizing and participating in the beginning development of the “Odyssey” system (CP 47-48),⁴ the judges of the Benton and Franklin Counties Superior Court disagreed with the Franklin County Superior Court Clerk’s unilateral decision to discontinue maintaining paper copies of court files and records, and thereby, to restrict

⁴ *See*, Appendix A, Washington Courts list of representatives to the SC-CMS (Superior Court Case Management System) Project, listing six superior court judges as members, including Benton and Franklin Counties Superior Court Judge Bruce Spanner.

judicial officers' access to court records to electronic forms. CP 26-27.

The Judges' disagreement was not aimed at thwarting an orderly transition to Odyssey – which, upon full development, will provide fully paperless filing, maintenance and retrieval of court records. CP 26, CP 29. Instead, the Judges were concerned that they would not have access to court records in some of the locations where Court business was conducted, and that work-flows and work-queues were not sufficiently established to assure that persons and agencies that were entitled to or in need of delivery of court orders, warrants and other time-sensitive records would receive them in a timely manner. CP 26-28, CP 29-30, and CP 165-167. Continuing to have traditional paper copies of court files best assured that those needs would be met pending full development of the paperless system. *Id.*

The Clerk refused the judges' request to continue maintaining paper files pending acceptance of the fully electronic system. CP 27. In response to the Clerk's refusal, the judges adopted Local General Rule 3 (LGR 3). It requires the clerks of Benton and Franklin Counties to “keep and maintain paper files for all cases and file types, by forthwith filing all pleadings and papers in paper files, except as may be otherwise authorized

in writing by the Court.”⁵ CP 33. The Court also issued an administrative order directing the Clerk to maintain paper copies of Court files pending resolution of the methods for assuring the necessary access, routing and delivery. CP 27-32.

The judges made it clear in LGR 3 and its accompanying administrative order that they expected to participate in a collaborative process leading to a decision to convert to a paperless court file and record system,⁶ and that, consistent with RCW 2.32.050(9), the Clerk would “conform to the direction of the court” in connection with that process. CR 54, LGR 3(c).

The Clerk’s continued refusal to comply with LGR 3 led to this Mandamus action, commenced on March 21, 2018. CP 1. No discovery was undertaken by either party prior to the hearing on the Judges’ motion for summary judgment on December 7, 2018. CP 269. Judge Sparks

⁵ The Benton County Clerk has not failed to comply with LGR 3. CP 7 & 169.

⁶ As indeed they have participated from the inception of planning for development of a paperless file system. CP 26, ¶¶ 4-6 (Declaration of Judge Bruce Spanner). And see the description of the Court User Work Group, formed to provide “subject matter expertise to, and decision making on” processes and requirements for development of the case management system which includes the Odyssey system which is being developed in Franklin County. This description is at the Washington Courts website, Courts Home – Judicial Information System – SC-CMS.

issued his letter decision, and an Order Granting Summary Judgment and Writ of Mandamus on December 10, 2018. CP 232, 236, & 239. The Clerk moved for reconsideration, and, after briefing, Judge Sparks denied reconsideration on January 11, 2019. CP 287. The Clerk's petition for direct review followed.

C. ARGUMENT

1. Summary Judgment Standards on Review.

On review from a summary judgment decision the court proceeds *de novo* and performs the same inquiry as the trial court. *Lahey v. Puget Sound Energy, Inc.*, 176 Wn.2d 909, 922, 296 P.3d 860 (2013). The evidence, and all reasonable inferences therefrom, is viewed in the light most favorable to the nonmoving party. *Keck v. Collins*, 184 Wn.2d 358, 370, 357 P.3d 1080 (2015). Summary judgment is appropriate where there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law. CR 56(c). A material fact is one on which the outcome of the litigation depends. *In re Estate of Black*, 153 Wn.2d 152, 160, 102 P.3d 796 (2004).

Mere allegations, argumentative assertions, conclusory statements, or speculation do not raise issues of material fact sufficient to preclude a grant of summary judgment. *Grimwood v. Univ. of Puget Sound*, 110

Wn.2d 355, 360, 753 P.2d 517 (1988); *Seven Gables Corp. v. MGM/UA Ent. Co.*, 106 Wn.2d 1, 13, 721 P.2d 1 (1986). Where reasonable minds could reach but one conclusion from the admissible facts, summary judgment should be granted. *LaMon v. Butler*, 112 Wn.2d 193, 199, 770 P.2d 1027 *cert. denied*, 493 U.S. 814, 110 S.Ct. 61, 107 L.Ed.2d 29 (1989). A reviewing court may affirm summary judgment on any ground supported by the record. *Id.* at 200–201.

2. The Clerk’s Historical Arguments Founded on California Law do not Inform the Issues in this Case.

The Clerk argues at length that the development of the constitution and laws of California supports a conclusion that a policy exists in Washington prohibiting its courts from directing their ministerial, subordinate clerks in how those officers will serve the court. Little time needs to be spent plumbing the depths of California law, because the territorial laws of Washington and its constitution, statutes and court rules provide ample proof that when it comes to maintaining the files and records of Washington courts, clerks must “conform to the direction of the court.” RCW 2.32.050(9); CP 234.

County clerks are identified in Art. 11, Sec. 5 of the Washington Constitution. However, and particularly related to their duties and *ex officio* status as superior court clerks, they are not constitutional officers

with powers expressed in or implied from the Constitution. Art. 11, Sec.

5, provides, in pertinent part:

The legislature, by general and uniform laws, shall provide for the election in the several counties of boards of county commissioners, sheriffs, county clerks, treasurers, prosecuting attorneys and other county, township or precinct and district officers, as public convenience may require, and shall prescribe their duties, and fix their terms of office...

(Emphasis added.) *See also* Wash. Const., Art. IV, Sec. 26 (county clerk is *ex officio* clerk of the superior court). Nowhere in the Constitution are the powers or duties of county clerks defined, nor are clerks' relationship to the superior court described anywhere as being equal to the court or as independent from the court, particularly as to the clerk's *ex officio* Superior Court Clerk role.

The Clerk's arguments about the independence and authority of his office which are rooted in the California experience, fail to recognize the explicit history and language of the Washington Constitution, underlying statutes and court rules, and relevant decisional law.

The Clerk's powers are derived solely from Washington statutes and his duties are prescribed solely by this state's statutes and court rules.

The Clerk's arguments otherwise should be rejected.

3. The Statutes and Court Rules Governing County Clerks Provide Complete and Exclusive Definitions of their Powers and Duties.

The duties of elected clerks such as the Franklin County Clerk are defined by statute and supplemented by court rules.⁷ Those duties are not defined by the Constitution or any source of inherent authority.

Applicable statutes make clerks subordinate to the Superior Court, particularly with respect to court proceedings and records. Regarding the clerks' duties, RCW 2.32.050 provides:

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

...

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

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

...

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

⁷ State Court Rules that impose obligations and restrictions on clerks, include, without limitation, GR 15 (governing destruction, sealing and redaction of court records); GR 17 (governing clerks' administration of facsimile transmissions for filing documents); GR 30 (authorizing electronic filing and service and prescribing procedures, including GR 30(b)(3) & (4), (providing for local court rules to authorize electronic transmissions from the court, and electronic filing and service); GR 78 (prescribing certain duties of clerks while reserving authority to prescribe other duties, while recognizing RCW 2.32.050); Superior Court Administrative Rules, AR 5 (directing clerk to provide offender financial obligation information to the Department of Corrections); and CR 79 (books and records to be kept by clerks).

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

...

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

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

(Emphasis added.) *And see* RCW 36.23.030(4), "...the court shall have full control of all entries in the record at any time during the session in which they were made." The subsection - 3, 4, 6 and 7 record-related duties of clerks under RCW 2.32.050, and those of RCW 36.23.030(4), are clearly within the scope of the "direction" of the superior court, to which clerks are obligated to conform.

Prior to statehood and at the time the Washington Constitution was adopted, clerks of the territorial district courts (*i.e.*, the territorial courts of general jurisdiction), expressly served at the pleasure of their appointing judges, without statutory definition of their duties. *See* Laws of Washington Territory, 1879, Section 6, p. 71, which established the district court of Walla Walla County (authorized judge shall appoint clerk who shall hold office during the pleasure of said judge) (Appendix B.)⁸

⁸ In anticipation of Franklin County being created out of Whitman County, the territorial assembly adopted the following language: "The county of Franklin is hereby attached to Walla Walla for judicial purposes." Laws of Washington Territory, 1881, Section 8, p. 88. (Appendix C.)

This language was the same for clerks throughout the Washington territory upon creation of the courts they served. No inherent authority of clerks that overrides the authority of the court they serve can be derived from this obviously subordinating description of the position of clerk relative to the court that officer serves.

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

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

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

Thus, provisions concerning the clerk of Walla Walla County applied to judicial matters in Franklin County at statehood.

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

Rather than supporting any notion of inherent authority in court clerks, Article X, Section 4 demonstrates that clerks depend on statutory authority exclusively for definition of their powers and duties.

County clerks have no inherent authority which permits them to ignore or override their statutory and court rule-based duties, or within the scope of their services to the superior court, to fail to “conform to the direction of the court.” RCW 2.32.050(9).

4. The Superior Court, not the Clerk, is Empowered to Control the Form and Manner in Which its Records are Kept for the Court’s Use.

Every decision of the Washington Supreme Court which has touched on the relationship between the Superior Court and its clerk has come down on the side of the Court’s control of its records and processes related to those records. *See Matter of Recall of Riddle, supra*, 189 Wn.2d at 583-84; *Nast v. Michaels*, 107 Wn.2d 300, 306, 730 P.2d 54 (1986)

("court case files are within the province of the judiciary ... and we find that they are not within the realm of the (Public Disclosure Act)"); *Cowles Pub. Co. v. Murphy*, 96 Wn.2d 584, 588, 637 P.2d 966 (1981) ("[c]ourts have the inherent authority to control their records and proceedings"); and see 2001 Op. Att'y Gen. No. 6, at 3 ("to the extent that the (local) court rule relates to practice and procedure rather than to the creation of substantive law, the rule is within the authority of the court.") (*quoted in Matter of Recall of Riddle*, 189 Wn.2d at 584, see *infra* at 13).

The *Riddle* case applies to the present controversy because its facts concerned recall charges against the Yakima County Clerk that included claims related to the non-performance of clerk's duties affecting judicial records-management functions (*Id.*, at 568-69), and certain in-court tasks traditionally performed by the Yakima County Clerk. *Id.* at 579-80. Prior to the recall charges, the clerk had refused or failed to perform certain traditional tasks in support of the superior court's judicial functions. *Id.* The court adopted a local rule (LAR 3) which mandated continued performance of the clerk's duties based upon existing practices, *i.e.*, much like Benton-Franklin Counties Superior Court Rule LGR 3 requires continued maintenance of paper files and records. *Id.* After the clerk took the position that the functions which the local rule addressed would not be

performed and this would lead to the shutdown of the court, a recall petition was filed against the clerk. *Id.* at 580.

Ruling that the recall charges were factually and legally sufficient, the *Riddle* court explained county clerks' subordinate position relative to the superior court and the clerk's obligation to comply with local court rules:

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

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

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

Riddle contends that LAR 3, which addresses in-court duties, is void because the court has no authority to "dictate the personnel functions of a different County department." Br. of Appellant at 28. However, as the preceding paragraph explains, a court does

have the authority to direct the functions of the clerk when he or she is acting in his or her capacity as clerk of the superior court. Cf. SAR 16(f) (powers and duties of the Clerk of the Supreme Court). Moreover, the attorney general has opined that a court's rule-making authority in regard to court clerks is subject to the same restrictions as any other rules: "[T]o the extent that the court rule relates to practice and procedure rather than to the creation of substantive law, the rule is within the authority of the court." 2001 Op. Att'y Gen. No. 6, at 3. LAR 3 (of the Yakima County Superior Court) is within the scope of the court's rule-making authority, and Riddle has no legally justifiable excuse for refusing to follow it.

Matter of Recall of Riddle, 189 Wn.2d at 583-84, (as amended Oct. 26, 2017) (italics in original, emphasis added).

The paper file maintenance obligations imposed on the Clerk by LGR 3, concern the Superior Court's files and records. Performance of these obligations relates to the Clerk's *ex officio* status as Superior Court Clerk, where he is the ministerial subordinate of the Court. *Riddle*, 189 Wn.2d at 583 (citing and quoting *Swanson v. Olympic Peninsula Motor Coach Co.*, 190 Wash. 35, 38, 66 P.2d 842 (1937) ("The superior court 'has power ... [t]o control, in furtherance of justice, the conduct of its ministerial officers,' such as county clerks.")). When acting as the clerk of the superior court with respect to the court's records, a county clerk is required "[i]n the performance of his or her duties to conform to the direction of the court." RCW 2.32.050(9)." (Emphasis added.) These

authorities leave no room for the Clerk's argument that he controls the superior court with respect to its records. Indeed, it is the opposite.

As the automation of court records has developed in Washington, its Supreme Court adopted state-wide rules that permit the filing and service of electronic court records. See GR 30 (2014). Importantly, GR 30 recognizes that superior courts have a central rule-making role in authorizing electronic transmissions. GR 30(b)(3) & (4) provide, in part:

(3) The court or clerk may electronically transmit notices, orders, or other documents to all attorneys as authorized under local court rule, or to a party who has filed electronically, or has agreed to accept electronic documents from the court, and has provided the clerk the address of the party's electronic mailbox.

(4) A court may adopt a local rule that mandates electronic filing by attorneys and/or electronic service of documents on attorneys for parties of record, ...

(Emphasis added.) These rules recognize that clerks' authority to accept and transmit electronic records is subject to local superior courts' direction and control by rule. There is no rational reason to diminish the authority of superior courts in connection with implementation of the Odyssey system.

The Clerk is not empowered by the Constitution or by any form of inherent authority to defy the Superior Court relating to the maintenance of court files and records, as the Franklin County Clerk has done.

5. LGR 3 does not Conflict with Statute.

LGR 3 does not conflict with RCW 36.23.065, which relates to the ultimate destruction of records maintained by a superior court clerk and provision of access to such records by the public. LGR 3 concerns continued judicial access to paper files and records of the court pending the court's agreement to a completely paperless system. Fundamentally, LGR 3 is not a "law relating to the destruction of court records" (RCW 36.23.065), and it does not interfere with the destruction of records when the requirements and procedures of RCW 36.23.065 are followed.⁹

The authorization of RCW 36.23.065(1) is to maintain electronic reproductions of documents so they are available "for the use of the public". (Emphasis added.) The statute does not authorize clerks to maintain electronic records alone for the superior court. The Clerk's Corrected Brief identifies this language but does not acknowledge its clear significance. *See* Corrected Brief of Appellant at 37. LGR 3 does not conflict with the maintenance of electronic reproductions for the public whatsoever.

The Clerk has also not shown or argued that he has followed the certification requirements of RCW 36.23.065(2), and yet has been

⁹ RCW 36.23.065 was last modified by Laws of 1998, ch. 226, not Laws of 1989, as the Corrected Brief of Appellant argues, at 15.

thwarted in destroying court records due to LGR 3. Moreover, the Clerk does not destroy original court records. He simply fails to maintain them in file folders by case number, and fails to provide them to judicial officers in Franklin County as LGR 3 requires. CP 166 (Declaration of Judge Bruce Spanner in Response to Amicus Curiae Brief of Washington State Association of Counties).

LGR 3 seeks only to remedy the Clerk's usurpation of control over the manner in which Court files are kept and provided to judicial officers. It does not conflict with RCW 36.23.065.

6. LGR 3 does not Conflict with a State Court Rule.

The Clerk raises for the first time in this appeal the issue of whether LGR 3 conflicts with Rules of General Application, GR 29(f). He fails to show any basis for why this argument should be considered for the first time here. Under RAP 2.5(a), an “appellate court may refuse to review any claim of error which was not raised in the trial court.” *In re Marriage of Wallace*, 111 Wn.App. 697, 705, 45 P.3d 1131 (2002). The Court should decline the Clerk's implicit invitation to consider this new issue.¹⁰

¹⁰ At the trial court level, the Clerk contended only that LGR 3 conflicted with GR 31(a)-(c)(1). SCP 12. He argued that the local rule interfered with the Clerk's obligation to make court records available to the public. But plainly, nothing in LGR 3 impairs continuing to make

In any event, the alleged conflict with GR 29(f) does not exist. The Clerk contends otherwise on the basis that the Superior Court may not exercise general administrative supervision over an elected clerk. But LGR 3 does not exert general administrative supervision. It directs the superior court clerk as to the form in which the records and files of the Court are to be maintained and provided to the Court. This is administration of judicial functions, over which the Court has full authority and the Clerk has none, but instead must “conform to the direction of the court.” CP 234; and RCW 2.32.050(9).

As pointed out above, RCW 2.32.050(3) and (9) clearly provide that the superior court clerk’s duty is to “keep the records and files” “...appertaining to the court” and “in the performance of his or her duties to conform to the direction of the court”. Keeping the records and files of the court is not the performance of “general administrative” duties by the Clerk. Such acts do not pertain to the Clerk’s office organization, his personnel decisions, his operation of record-keeping functions of the county clerk aside from maintenance of the Superior Court’s files and

court records available to the public either in electronic or paper form. Understandably, the Clerk has abandoned this argument on appeal.

records, and they do not compel him to adjust his budget requests in order to comply with LGR 3, either by direct language or reasonable inference.

The records and files of the Superior Court are, emphatically, the Court's business to administer, and to which LGR 3 is addressed. LGR 3 does not conflict with GR 29(f).

7. LGR 3 does not Usurp Duties Assigned to the Office of County Clerk for the Additional Reason that the Clerk does not Control Adoption or Implementation of the Odyssey System.

In response to the Judges' motion for summary judgment, the Clerk argued that Mandamus was improper because the manner in which he kept the Court's files and records was discretionary and could not be the subject of such a writ. Supplemental Clerk's Papers, SCP 6.¹¹ He quoted *Recall of Riddle*, 189 Wn.2d at 576, relating to "...becoming an early adopter of Odyssey" as being an act of discretion (SCP 6-7), and suggests that this makes all decisions about implementation of that system subject to the Clerk's sole discretion.

However, the adoption and development of Odyssey were not acts of the Clerk, discretionary or otherwise. Nor were those acts assigned to clerks by statute or court rule. Instead, the Odyssey project was instituted

¹¹ The Clerk also expressed doubt that LGR 3 had been adopted in a procedurally correct manner. CP 9. He has abandoned that contention on appeal.

by the Washington Supreme Court, which assigned management of the project to the Administrative Office of the Courts. Its development involved the clerks and superior courts of each participating county. Central to the system's development was a Court User Work Group consisting of members from the Superior Court Judges Association, the Washington State Association of County Clerks, the Association of Washington Superior Court Administrators, Washington Association of Juvenile Court Administrators, District and Municipal Court Management Association, the Access to Justice Board, the Washington State Bar Association, and the Administrative Office of the Courts. *See* the Washington Courts website at Courts Home – Judicial Information System – SC-CMS, under Court User Work Group (CUWG).

From the state-wide organization, down to the local level, decision-making over the development and implementation of Odyssey has been shared and collaborative. The Clerk acknowledges that development of the Odyssey system was a collaborative effort, both state-wide and in Franklin County. *See* Corrected Brief of Appellant at 17, 19 and 29. But, the Clerk unilaterally ended that collaboration without authority, and purported to divest the Superior Court in Franklin County of its opportunity to participate in deciding when to transition from the well-known and well-practiced system of maintaining and providing paper

files. In doing this, the Clerk terminated the reliable form used by judicial officers to learn about cases and issues, and the form in which their orders and decrees are recorded and distributed, *i.e.*, the paper files and records of the Court. No local court rule, as contemplated by GR 30, authorized this. Instead, as between the Clerk and the Superior Court, the Court is the higher authority. *See* RCW 2.28.010(5) (“[t]he superior court “has power ... [t]o control, in furtherance of justice, the conduct of its ministerial officers,” such as county clerks. *Recall of Riddle*, 189 Wn.2d at 583; *and see* RCW 2.32.050(9) (court clerks shall “conform to the direction of the court.”).

While sole reliance on electronic records may be the future, the Clerk’s action improperly divested the superior court’s judicial officers of their constitutional, statutory and inherent authority. LGR 3 does not usurp either a power or a duty assigned to the Clerk.

8. LGR 3 is Valid and Controlling on the Clerk.

When interpreting court rules, courts approach them as though they had been drafted by the Legislature. *State v. McIntyre*, 92 Wn.2d 620, 622, 600 P.2d 1009 (1979); *see also State ex rel. Schillberg v. Everett Dist. Justice Court*, 90 Wn.2d 794, 797, 585 P.2d 1177 (1978). A “local rule, like the civil rules of superior court, has the force and effect of

statutory law.” *Batten v. Abrams*, 28 Wn.App. 737, 742, 626 P.2d 984 (1981); and see *O’Connor v. Matzdorff*, 76 Wn.2d 589, 597, 458 P.2d 154 (1969) (en banc) (former Rule on Appeal 10 has force and effect of a statute). “A statute is presumed constitutional and the burden is on the party challenging the statute to prove its unconstitutionality beyond a reasonable doubt.” *Tunstall v. Bergeson*, 141 Wn.2d 201, 220, 5 P.3d 691 (2000). The same standards apply when the constitutionality of a regulation is challenged. *Longview Fibre Co. v. Dep’t of Ecology*, 89 Wn.App. 627, 632–33, 949 P.2d 851 (1998). Given that LGR 3 has the force of statutory law, the Clerk’s duty to continue to keep and maintain paper files is the same as if it were imposed by statute.

Local General Rule 3 was adopted unanimously by the judges of the Benton and Franklin Counties Superior Court. CP 29-31, 32, and 33. It was a legislative act of the Court, authorized by Wash. Const., art. IV, sec. 24; GR 7; and CR 83(a). Court rules are the law of practice and procedure. See, e.g., *Matter of Staples*, 105 Wn.2d 905, 909, 719 P.2d 558 (1986); GR 9; and CR 1. Unless a local rule conflicts with state court rules or is outside the scope of court procedure and practice (*i.e.*, it purports to be substantive law), its factual foundation is not subject to challenge.

‘[T]he power to prescribe rules for procedure and practice’ is an inherent power of the judicial branch, *State v. Smith*, 84 Wn.2d 498, 501, 527 P.2d 674 (1974), and flows from article IV, section 1 of the Washington Constitution, *State v. Fields*, 85 Wn.2d 126, 129, 530 P.2d 284 (1975). The legislature recognized this power in RCW 2.04.190 and RCW 2.04.200. The legislature may also adopt, by statute, rules governing court procedures. ‘If a statute appears to conflict with a court rule, this court will first attempt to harmonize them and give effect to both.’ *Putman v. Wenatchee Valley Med. Ctr., PS*, 166 Wn.2d 974, 980, 216 P.3d 374 (2009). If the statute and the rule ‘cannot be harmonized, the court rule will prevail in procedural matters and the statute will prevail in substantive matters.’ *Id.*

State v. Gresham, 173 Wn.2d 405, 428–29, 269 P.3d 207 (2012) (evidence rule prevails over conflicting statute) (emphasis added).¹² In *Wash. State Council of County & City Employees v. Hahn*, 151 Wn.2d 163, at 168–69, 86 P.3d 774 (2004), the Washington Supreme Court recognized:

...responsibility over the administrative aspects of court-related functions is shared between the legislative and judicial branches. Therefore, ‘[w]here a court rule and a statute conflict, we will attempt to read the two enactments in such a way that they can be harmonized.’ However, when the court rule concerns a matter related to the court's inherent power and we are unable to harmonize the court rule and the statute, ‘the court rule will prevail.’

(Internal citations omitted.)

Local General Rule 3 is authorized judicial legislation governing local procedures for managing the court’s files and records. It does not conflict with a state court rule. As with statutes, a challenger bears the burden of

¹² RCW 2.04.190 authorizes the Supreme Court to establish rules of pleading, practice and procedure. RCW 2.04.200 makes those rules superior to conflicting statutes.

showing that the rule conflicts with a state court rule or statute, and that harmonizing the two is not possible. *See State v. Shawn P.*, 122 Wn.2d 553, 561, 859 P.2d 1220 (1993). The rational basis test applies and requires only that the means employed by the statute are rationally related to legitimate governmental goals, and it is not necessary to show that the means used are the best way of achieving the goals. *Id.* In seeking a rational relationship, a court may assume the existence of any necessary state of facts it can reasonably conceive. *State v. Smith*, 93 Wn.2d 329, 336, 610 P.2d 869, *cert. denied*, 449 U.S. 873 (1980).

Factual evidence that meets some recognized standard of proof is not constitutionally required to justify legislation. *Jones v. United States*, 463 U.S. 354, 364, 103 S.Ct. 3043, 77 L.Ed.2d 694 (1983) (Congress' power to legislate in an area of disagreement and uncertainty does not require supporting empirical evidence).

Traditionally, we give great deference to the legislature's factual findings. 'Legislatures must necessarily make inquiries and factual determinations as an incident to the process of making law, and courts ordinarily will not controvert or even question legislative findings of facts.'

Washington Off Highway Vehicle All. v. State, 176 Wn.2d 225, 236, 290 P.3d 954 (2012) (quoting *City of Tacoma v. O'Brien*, 85 Wn.2d 266, 270, 534 P.2d 114 (1975)); and quoted in *State v. McCuiston*, 174 Wn.2d 369, 391, 275 P.3d 1092 (2012)); *see also, Washington State Legislature v.*

Lowry, 131 Wn.2d 309, 320, 931 P.2d 885 (1997) (noting the need to defer to legislative findings of fact).

Since the Superior Court adopted LGR 3 as judicial legislation, the Clerk's arguments about its reasonableness, necessity and cost are immaterial. A material fact is one that affects the outcome of the litigation. *Owen v. Burlington N. & Santa Fe R.R. Co.*, 153 Wn.2d 780, 789, 108 P.3d 1220 (2005). Because objective evidence is not required to support a legislative act, the alleged counter-facts on which the Clerk's arguments are based, even if true, would not tend to prove a fact that must be decided in order to affirm Judge Sparks' summary judgment order and Writ of Mandamus. Instead, the Benton and Franklin Counties Superior Court had near-complete authority to decide that LGR 3 was necessary and for sufficient reasons. Accordingly, there is no genuine issue as to any material fact which could have precluded summary judgment related to the validity and enforceability of LGR 3.

Although the trial court was obligated to accept the existence of any necessary state of facts which could reasonably be conceived of to support the local rule, the facts set forth in the Declaration of Judge Bruce Spanner in Support of Complaint for Writ of Mandamus (CP 27-28), and the

recitations in the Benton and Franklin Counties Superior Court Judicial Resolution No. 18-001 (CP 29), amply support LGR 3.

The declaration of Judge Spanner points out that there were deficiencies in the paperless system as of December 2017, related to its completeness, and related to the management of work-flow and work-queue processes. CP 27-28; and CP 29. There was an effort to develop those processes in 2017, but the project was not complete when the Clerk announced he would convert to a paperless system notwithstanding the Court's belief that it was not ready for full implementation. Additional facts are provided in the first and second Judge Spanner declarations that support adoption of the rule, and in the Judges' response to the amicus curiae memorandum of the Washington State Association of Counties. (See CP 27-28; CP 29; CP 47-49, ¶¶ 6 & 7; CP 165-167, ¶ 4; and CP 174, (Spanner letter at its fourth paragraph).) These include the unavailability of electronic files in jury rooms where settlement conferences in domestic relations cases were regularly conducted, and the Clerk's failure to develop electronic work-flow and work-queue processes to transmit felony judgment and sentence orders to the jail in a timely manner. Adoption of the rule was well-supported, and that support is not diminished by the immaterial arguments of the Clerk.

9. Grounds for Issuing a Writ of Mandamus.¹³

a. General Requirements.

A writ of mandamus “must be issued in all cases where there is not a plain, speedy and adequate remedy in the ordinary course of law.” RCW 7.16.170. A writ of mandamus is properly issued to compel the performance of an act or duty expressly required by law. *Staples v. Benton County*, 151 Wn.2d 460, 464, 89 P.3d 706 (2004). “The determination of whether a statute specifies a duty that the person must perform is a question of law.” *River Park Square, LLC v. Miggins*, 143 Wn.2d 68, 76, 17 P.3d 1178 (2001). Questions of law are reviewed *de novo*. *Cost Mgmt. Servs., Inc. v. City of Lakewood*, 178 Wn.2d 635, 649, 310 P.3d 804 (2013). A “local rule, like the civil rules of superior court, has the force and effect of statutory law.” *Batten v. Abrams, supra*, 28 Wn.App. at 742; and see *O’Connor v. Matzdorff, supra*, 76 Wn.2d at 597 (former Rule on Appeal 10 has force and effect of a statute).

b. LGR 3 Imposes a Mandatory and Ministerial Duty Upon Which Mandamus may be Based.

By its plain and unequivocal language, LGR 3 imposes a mandatory duty on the Clerk to keep and maintain paper court files through its

¹³ Before the trial court, the Clerk argued that the Judges were not “beneficially interested” in enforcement of LGR 3. He has abandoned that argument on appeal. Accordingly, it is not addressed here.

repetitious use of the term “shall” and its lack of any equivocal terms defining that duty. CP 54. LGR 3 cannot be read as imposing anything other than a mandatory duty. This duty is also “ministerial” because it leaves no discretion to the Superior Court Clerk as to what is to be done. See *Dress v. Washington State Dep't of Corr.*, 168 Wn. App. 319, 335, 279 P.3d 875 (2012) (citing *State ex rel. Clark v. City of Seattle*, 137 Wash. 455, 461, 242 P. 966 (1926) (quoting 18 Ruling Case Law (Mandamus) at 116.)). Moreover, the Clerk is a ministerial officer of the court. “The superior court ‘has the power ...[t]o control in the furtherance of justice, the conduct of its ministerial officers,’ such as county clerks.” *Riddle*, 189 Wn.2d at 583 (citing and quoting RCW 2.28.010(5) and *Swanson v. Olympic Peninsula Motor Coach Co.*, 190 Wash. at 38.)

c. No Plain, Speedy and Adequate Remedy Exists to Enforce the Mandate of LGR 3, Other than Mandamus.

What constitutes a plain, speedy, and adequate remedy depends on the facts of the case and rests in the sound discretion of the court in which a writ of mandamus is sought. *Grisby v. Herzog*, 190 Wn.App. 786, 812, 362 P.3d 763 (2015) (citing *City of Olympia v. Thurston County Bd. of Comm'rs*, 131 Wn.App. 85, 95, 125 P.3d 997 (2005), *review denied*, 158 Wn.2d 1003, 143 P.3d 828 (2006)); and see *Riddle v. Elofson*, 95959-5, 2019 WL 1850239, at *5 (Wash. Apr. 25, 2019) (“The question as to what

constitutes a plain, speedy, and adequate remedy is not dependent upon any general rule, but upon the facts of each particular case, and its determination therefore rests in the sound discretion of the court in which the proceeding (for a writ of prohibition) is instituted.”) (quoting *State ex rel. O'Brien v. Police Court*, 14 Wn.2d 340, 348, 128 P.2d 332 (1942), and citing James L. High, *Extraordinary Legal Remedies* 709 (3d ed. 1896) (stating that the extraordinary writ of prohibition is “one of sound judicial discretion, to be granted or withheld according to the circumstances of each particular case”)).

Appellate courts will reverse discretionary decisions of a trial court only if “the superior court's discretion was manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons.” *Cost Mgmt. Servs., Inc. v. City of Lakewood*, 178 Wn.2d 635, 649 (citing *River Park Square, LLC v. Miggins*, 143 Wn.2d 68, 76, 17 P.3d 1178 (2001); and *State ex rel. Carroll v. Junker*, 79 Wn.2d 12, 26, 482 P.2d 775 (1971)).

Where a duty arises by statute or ordinance, the “(measure) will be presumed to be constitutional, and the burden of showing otherwise rests heavily upon the challenger.” *Homes Unlimited, Inc. v. City of Seattle*, 90 Wn.2d 154, 158, 579 P.2d 1331 (1978)). By extension, a court rule equivalent to an ordinance or statute is similarly entitled to a presumption

of validity. Where a ministerial officer refuses to comply with such a specific and constitutional measure, mandamus is the appropriate remedy. *Walker v. Munro*, 124 Wn.2d 402, 407, 879 P.2d 920 (1994).

Seeking relief by way of declaratory judgment would be inadequate because LGR 3 is mandatory, it relates to an existing duty, it is directed to the Superior Court's ministerial officer and because a declaratory judgment would not immediately cure the Clerk's refusal to comply with the rule's requirement. For a remedy to be considered inadequate,

[t]here must be something in the nature of the action or proceeding that makes it apparent to this court that it will not be able to protect the rights of the litigants or afford them adequate redress, otherwise than through the exercise of this extraordinary jurisdiction.

State ex rel. O'Brien v. Police Court, supra, 14 Wn.2d at 347-48 (quoting *State ex rel. Miller v. Superior Court*, 40 Wash. 555, 559, 82 P. 877 (1905)). Here, the need for protection from the Clerk's unprincipled refusal to comply with LGR 3 warrants exercise of the extraordinary remedy of mandamus.

After LGR 3 was adopted, the Franklin County Clerk did not challenge the rule in his own action for a declaratory judgment, or other legal challenge. He simply refused to comply on the basis that as an independent elected official charged with maintaining the superior court's files and records, he alone could determine the form in which those

materials would be maintained and provided to judicial officers. CP 29, Judicial Resolution No. 18-001, ¶2; CP 48-49, Judge Spanner Declaration, ¶6; Corrected Brief of Appellant at 27, *et seq.* In doing so, the Clerk ignored his ministerial and subordinate status and the unequivocal language “conform to the direction of the court” of RCW 2.32.050(9), as well as the plain language and presumed constitutionality of LGR 3. CP 118, ¶11.

Given the Clerk’s defiance, it is not reasonable to believe that a declaratory judgment action by the Judges would have speedily or adequately assured that the Clerk would abide by a judgment affirming the local rule.

Under the UDJA (Uniform Declaratory Judgment Act, chapter 7.24 RCW), a “declaratory judgment” is an order that establishes the “rights, status and other legal relations whether or not further relief is or could be claimed.” RCW 7.24.010. In contrast, a “writ of mandamus” is an order compelling performance of a public official's existing duties.

City of Spokane v. Horton, 189 Wn.2d 696, at 716, 406 P.3d 638 (2017) (Madsen, J. dissenting) (*citing Walker v. Munro, supra*, 124 Wn.2d at 408). Compelling the Clerk’s performance was the obvious necessity here.

The Clerk was as likely to defy a judgment obtained under the UDJA as he has been to defy LGR 3 by refusal to comply with it. Nor has the

Clerk suggested any judicial remedy other than mandamus which would have afforded a plain, speedy and adequate remedy. The Writ of Mandamus issued by Judge Sparks did no more than compel compliance with an existing mandatory and ministerial duty expressly required by law where there was no alternative plain, speedy and adequate remedy at law. The Summary Judgment Order and Writ of Mandamus should be upheld.

10. Neither LGR 3 nor the Writ of Mandamus Compels Unauthorized Expenditures.

The Clerk argues that LGR 3 and the Writ of Mandamus impose expenditure requirements that have not been legislatively authorized. On its face, LGR 3 requires no expenditures. Nor does it require the Clerk to hire additional employees, have employees work additional hours, pay them higher salaries, or to purchase additional supplies. LGR 3 simply requires continued maintenance of the same kind of paper files that have been a fixture of court files for many years.

Below, the Superior Court Judges demonstrated in response to the *amicus curiae* brief of the Washington State Association of County Clerks (CP 145), that the Franklin County Clerk's budget for the years 2016, through the Clerk's requested budget for 2019, remained essentially

unchanged.¹⁴ This was despite the fact that the Odyssey electronic system was beginning to operate and going through various stages of development over that period, and the Clerk was also maintaining paper court files and records through 2018. *See* CP 178-190. Either the Clerk's termination of paper superior court files for 2019 provided no savings, or the cost of maintaining such files previously was negligible.

Many superior court actions incidentally and unpredictably affect clerks' and counties' budgets without constitutional or statutory offense. For example, a clerk's employees may be held past normal work hours to attend to trial needs, jury deliberations, and the like. As a result, they may become entitled to unpredicted overtime pay. Courts may order clerks' fees waived as to indigent litigants without predictability. *See O'Connor v. Matzdorff*, 76 Wn.2d 589, 597-600, 458 P.2d 154 (1969) (inherent in court's power to waive prepayment of court fees); and General Rule GR 34 (waiver of court and clerk's fees on basis of indigency), and GR 34(a)(2) ("[t]here shall be no locally imposed fee for making an application (to proceed *in forma pauperis*)). And courts award penalties, costs and attorneys' fees against counties in Public Records Act cases

¹⁴ It should be noted that this court need not consider issues raised only by amicus. *See Rabon v. City of Seattle*, 135 Wn.2d 278, 291 n. 4, 957 P.2d 621 (1998).

without determining that appropriations exist for the same (see CP 170-71, Judges' Response to Amicus Curiae Memorandum of Washington State Association of Counties).

The Clerk's argument that LGR 3 improperly imposes unbudgeted costs is contrary to the plain language of the local rule, and lacks substantial merit.

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

This case is related to *In re the Appointment of a Special Deputy Prosecuting Attorney, vs. The Judges of the Benton and Franklin County Superior Court*, Supreme Court Number 95945-5, which is pending decision by the Court. That case concerns the Franklin County Prosecuting Attorney's appointment of a special deputy prosecutor pursuant to RCW 36.27.040, and the accompanying express agreement to pay the attorney's fees and costs incurred in connection with the representation, including litigation. CP 205-06. In that case, the respondents have requested an award of attorney's fees and costs on several grounds. That request is also made here on the following-described particular grounds.

From and after the Prosecuting Attorney's purported termination of the contract he made to employ the undersigned attorney to represent the

Court and Judges of the Benton and Franklin Counties Superior Court in this action (CP 210), the fees and costs incurred in the presentation of this case to the assigned Kittitas County Superior Court Judge and in this appeal, have been refused payment.

A party is entitled to an award of attorney fees if a contract, statute, or recognized ground of equity permits recovery of attorney fees and the party is the substantially prevailing party. *Hwang v. McMahill*, 103 Wn. App. 945, 954, 15 P.3d 172 (2000). Since the appointment of the respondents' attorney was not properly revoked, it continued in force and should apply to the proceedings before Judge Sparks and on appeal. Attorney's fees should be awarded based upon contract.

Alternatively, the May 21, 2018, Order of Appointment based on RCW 36.27.030, which is the primary subject of the discretionary review action under Supreme Court Number 95945-5, should be applied as grounds for this request for an award of attorney's fees and costs incurred in connection with the appointment including those incurred in this appellate process. CP 207-09.

Petitioners are unable to furnish a lawful basis for having ignored the Prosecutor's appointment of a special deputy prosecutor, authorizing him to engage in litigation on behalf of the Superior Court. Moreover, petitioners do not have legal justification for the Prosecutor's attempt to

revoke the special prosecutor's appointment in light of the disability the Prosecutor had due to the ethical conflict which originally prompted the special deputy appointment. Nor have the petitioners recognized that the Clerk is the ministerial subordinate of the Superior Court who was obligated to follow LGR 3. This Mandamus action was necessary due to the Franklin County Clerk's mistaken belief that he could ignore the local general rule and decades of decisional and other law. Upon prevailing in this appeal, the respondents are entitled to an award of the attorney's fees and costs incurred in prosecuting this civil action.

RAP 18.1 authorizes awards of attorney's fees and expenses, when authorized by law and procedurally proper. Here, the contract between the Prosecutor and his special deputy supports an award of fees and costs, as does the Order of Appointment challenged in Supreme Court Case Number 95945-5.

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

D. CONCLUSION

The Judges of the Benton and Franklin Counties Superior Court respectfully request that this Court affirm Judge Scott Sparks' Order Granting Summary Judgment and the Writ of Mandamus he issued.

Respectfully submitted this 12th day of June, 2019.

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



W. Dale Kamerrer, WSBA #8218
Attorney for Plaintiffs/Respondents

CERTIFICATE OF SERVICE

I hereby certify, under penalty of perjury under the Laws of the State of Washington, that on June 12, 2019, I served the foregoing with the Clerk of the Court for the Washington State Supreme Court using the appellate CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.



Lisa Gates

Legal Assistant to W. Dale Kamerrer

E. APPENDIX

APPENDIX A

Representatives on the Superior Court Case Management System (SC-CMS) Project

	Supreme Court	Superior Court Judges' Association (SCJA)	Washington State Association of County Clerks (WSACC)	Association of Washington Superior Court Administrators (AWSCA)	Washington Association of Juvenile Court Administrators (WAJCA)	District and Municipal Court Management Association (DMCMA)	Appellate Courts	Washington State Bar Association (WSBA)	Access To Justice Board (ATJ)	Misdemeanor Corrections Association (MCA)	WA Assoc. of Sheriffs and Police Chiefs (WASPC)	WA State Assoc. of Prosecuting Attorneys (WSAPA)	Administrative Office of the Courts (AOC)
JISC Representatives	Justice Mary Feirhurst Chair	Judge Jeanette Dalton Kitsap County Judge Thomas Wynne Snohomish County	Barbara Miner King County	Delliah George Skagit County	William Holmes Kittitas County Brooke Powell Snohomish County	Aimee Vance Kirkland Municipal Court Judge James R. Heller Pierce Co. District Court Judge Steven Rosen Seattle Municipal Court Yolande Williams Seattle Municipal Court	Richard D. Johnson Clerk/Administrator COA Div. I Judge J. Robert Leach Court of Appeals	Robert Taylor Attorney at Law		Larry Barker Chief Probation Officer	Chief Robert Berg Centralia Police Dept.	Jon Tunheim Thurston Co. Prosecutor	Callie Dietz State Court Administrator
Project Steering Committee		Judge Jeanette Dalton Kitsap County Judge Gary Bashor Cowlitz County Judge Christine Schaller Thurston County (Alternate)	Barbara Christensen Clallam County Michael Kilian Franklin County	Frank Malocco Kitsap County Marilyn Finsen Snohomish County	Brooke Powell Snohomish County Non-Voting Member	Aimee Vance Kirkland Municipal Non-Voting Member Lynne Campeau Issaquah Municipal Non-Voting Member						Callie Dietz State Court Administrator Vonnie Diseth CIO / Director, Information Services Division	
RFP Project Steering Committee		Judge Jeanette Dalton Kitsap County	Barbara Miner King County Kevin Stock Pierce County Betty Gaud Thurston County	Frank Malocco Kitsap County Paul Sherfy King County	Brooke Powell Snohomish County	Aimee Vance Kirkland Municipal Court Lynne Campeau Issaquah Municipal Court							
Court User Work Group (CUWG)		Judge Bruce Spanner Benton/Franklin Counties Judge Christine Schaller Thurston County Judge Annette Pless Spokane County (Alternate)	Kim Morrison Chelan County Patty Chester Stevens County Kathy Martin Walla Walla County Alison Sonntag Kitsap County Lori Bailey Jefferson County (Alternate)	Pat Austin Benton/Franklin Counties Chris Shambo Snohomish County Pamela Hartman-Seyer Grays Harbor County	Carol Vance Benton/Franklin Counties	Cynthia Marr Pierce County Non-Voting Member		Robert Taylor Non-Voting Member		Christina Kale Non-Voting Member			Jenni Christopher Jennifer Creighton

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APPENDIX B

L A W S

OF

WASHINGTON TERRITORY,

ENACTED BY THE

LEGISLATIVE ASSEMBLY

IN THE YEAR 1879.

Published by Authority.

OLYMPIA:

C. B. BAGLEY, PUBLIC PRINTER.

1879.

AN ACT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Approved, Nov. 6. 1879.

AN ACT

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

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

LAW S
OF
WASHINGTON TERRITORY.

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

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

AN ACT

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

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

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

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

Approved Nov. 28, 1883.

AN ACT

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

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

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

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

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

Approved November 28, 1883.

AN ACT

TO CREATE AND ORGANIZE THE COUNTY OF FRANKLIN.

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

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

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

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

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

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

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

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

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

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

APPENDIX D

SESSION LAWS

OF THE

STATE OF WASHINGTON

SESSION OF 1891.

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

PUBLISHED BY AUTHORITY.

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

CHAPTER LVII.

[S. B. No. 109.]

POWERS AND DUTIES OF CLERKS OF COURTS.

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

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

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

Office hours.

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

SEC. 3. The clerk of the supreme court, and each clerk of a superior court, has power to take and certify the proof and acknowledgment of a conveyance of real property, or any other written instrument authorized or required to be proved or acknowledged, and to administer oaths in every case when authorized by law; and it is the duty of the clerk of the supreme court and of each county clerk for each of the courts for which he is clerk—

1. To keep the seal of the court and affix it in all cases where he is required by law.
2. To record the proceedings of the court.
3. To keep the records, files and other books and papers appertaining to the court.
4. To file all papers delivered to him for that purpose in any action or proceeding in the court.
5. To attend the court of which he is clerk, to administer oaths, and receive the verdict of a jury in any action or proceeding therein, in the presence and under the direction of the court.
6. To keep the journal of the proceedings of the court, and, under the direction of the court, to enter its orders, judgments and decrees.
7. To authenticate by certificate or transcript, as may be required, the records, files or proceedings of the court, or any other paper appertaining thereto and filed with him.
8. To exercise the powers and perform the duties conferred and imposed upon him elsewhere by statute.
9. In the performance of his duties to conform to the direction of the court.

Seal.
Record.To authenticate
records.

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

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

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

Approved February 26, 1891.

CHAPTER LVIII.

[S. B. No. 105.]

MANNER OF COMMENCING CIVIL ACTIONS.

AN ACT relating to the manner of commencing civil actions.

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

SECTION 1. Civil actions in the superior courts shall be commenced by filing a complaint with the clerk of the court. The clerk shall, at the time the complaint is delivered to him to be filed, indorse thereon a certificate of the filing thereof, showing the date of such filing. <sup>Filing com-
plaint.</sup>

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

LAW LYMAN DANIEL KAMERRER & BOGDANOVICH

June 12, 2019 - 11:35 AM

Transmittal Information

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Appellate Court Case Title: The Judges of Benton and Franklin Counties v. Michael Killian, et al.
Superior Court Case Number: 18-2-50285-6

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